

# NEWS LETTER

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### FIRST WORKSHOP ON THE ENFORCEMENT OF THE ISTANBUL PROTOCOL

The National Commission of Human Rights in collaboration with the Ministry of Foreign Affairs and the Office of the United Nations High Commissioner of Human Rights in Mexico organized and carried out the First Workshop on the Enforcement of the Istanbul Protocol , which took place in the conference area of the Foreign Affairs Ministry, in Mexico city from November 21 st to 23 rd , 2005.

representatives of the local organizations of human rights and professionals from other institutions, which support the work of the state commissions, as well as representatives of the Human Rights Attorney's Office of Guatemala participated in this workshop.

#### RECOMENDATIONS

General recommendation 10/2005 about torture, inhuman, cruel and/or degrading treatment.

November 17 th , 2005

On November 17 th last, the National Commission of Human Rights issued its General Recommendation number 10, in order to report the persistence of torture in Mexico and, on the basis of complaints and cases investigated and documented from 1990 to 2004, it asks the public prosecutors to commit themselves to define

a strategy which, involving the three levels of the government, establish specific actions for the effective prevention of torture and for the known cases to be promptly investigated and settled.

The General Recommendation is addressed to the General Attorney of the Republic, to the Military prosecutor and to the prosecutors of the federative entities, as well as to the secretaries, deputy secretaries, and general directors of Federal Public Security, of the Federal District government and of the federative entities.

On the grounds of the ethical and legal principle, which says that "no crime must be fought against by committing another crime", the CNDH states that complaints about alleged torture actions are submitted before all entities, on account of the actions of public servers, in order to obtain confessions or accusations. Therefore, such complaints and the corresponding reports must be promptly and effectively investigated, due to the extreme violation of guarantees which characterizes torture. No activity performed by the State may be based upon despise for human dignity.

The Recommendation reminds the authorities of the fact that when there are evidences of torture, the State must promptly and effectively investigate the public servers involved, punishing those who are responsible for said crime, and ensuring the victim a compensation for damages, as well as providing them with the medical care and rehabilitation, which allow them to go back to the condition they were in before the violation of their rights. Both torture victims and witnesses or investigators of cases related to that kind of misconduct must also be protected against possible violent actions, threats or any other form of intimidation.

The main torture methods reported to the CNDH are trauma due to beating with hands, feet or blunt objects, beating with boards in gluteus muscles and ears, asphyxia or drowning by introducing simple or fizzy water in the nose, mouth and ears, and through immersion in rivers, wells, pools or buckets, as well as by putting the head inside plastic bags; electric discharges in testicles, rectum, feet, legs and thorax; burning with cigarettes, hot iron rods or exhaust pipes; permanent injuries caused by firearms; sexual violence;

hanging from feet, fingers or neck; exposure to chemicals such as the introduction of tow with gasoline inside the mouth, and torture resulting from positions or postures, which affect tendons, joints and muscles.

Torture is strictly forbidden in the Mexican legal system, even in cases such as war, war threat, fight against terrorism and against any other crimes, state of siege or emergency, internal disturbance or conflict, internal political instability or other kinds of public emergency or disasters; it also has the character of a crime against humanity.

Torture violates the content of the Political Constitution of the Mexican State, of the American Convention on Human Rights, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of the Interamerican Convention to Prevent and Punish Torture, of the Code of Conduct for Law Enforcement Officials, and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

Recommendation 36/2005

November 9<sup>th</sup> , 2005

Case : Appeal submitted by Reynaldo Sánchez García.

Addressee Authority : H. Constitutional City Hall of Eduardo Neri's Municipality, Guerrero.

On June 20<sup>th</sup> , 2005 the National Commission opened the file number 2005/246/GRO/4/I, due to the appeal submitted by Reynaldo Sánchez García, against the refusal to the Recommendation 10/2005, on the part of Eduardo Neri's City Hall, Guerrero, which was issued by the Commission for the Defense of Human Rights of the State of Guerrero .

The complaint was based upon the agreement of March 2<sup>nd</sup> , 2004, by means of which the H. Eduardo Neri's City Hall, decided that due to the fact that Reynaldo Sánchez García did not use the commercial store number 64, located in the municipal market of said place, the rights of the person who had possession of the store should be recognized; said person was his son, Víctor Sánchez Reynoso. The situation described caused the affected party to appear before the Commission for the Defense of Human Rights of the State of Guerrero . As a result of the complaint submitted and of the investigations made, on April 6<sup>th</sup> , 2005, the local organism issued the recommendation, which was rejected by the responsible authority.

After the analysis of the file, the National Commission considered that the municipal authority deprived the complaining party of his leasing rights and of the commercial license, without starting a legal action before the competent courts, as it is established in the applicable laws and without any legal bases or reasons for its resolution, thus violating human rights to judicial certainty and legality, established in the Mexican Political Constitution and in several international instruments.

On the other hand, the National Commission agreed with the state organism for the protection of human rights, pointing out that the trustee and the secretary performed their public function wrongfully, and therefore, the administrative authority must determine whether they have administrative responsibility or not.

Due to the aforesaid, the National Commission issued Recommendation 36/2005, addressed to the members of the H. Eduardo Neri's City Hall, for them to comply with the recommendation issued by the Commission for the Defense of Human Rights of the State of Guerrero .

Recommendation 37/2005

November 10<sup>th</sup> , 2005

Case : Appeal submitted by M.A.C.C .

Addressee Authority : H. City Hall of Carmen Municipality, Campeche .

On May 19<sup>th</sup> , 2005 the National Commission of Human Rights received the appeal submitted by the minor M.A.C.C. due to the refusal of the recommendation that the Commission of Human Rights of the State of Campeche addressed to the H. City Hall of Carmen Municipality, Campeche .

The complaint submitted to the Commission of Human Rights of Campeche was based on the actions against minor M.A.C.C., committed by staff of the Direction of Public Security, Roads and Transit of Carmen, Campeche , as during his detention he was subject to injuries and to an attempt of rape.

The State Commission addressed a recommendation to the Mayor of Carmen, Campeche , as the violation of human rights to legality and judicial certainty of the affected party M.A.C.C. was proved. Said recommendation was not accepted.

After the analysis of the evidences in file 2005/197/CAMP/5/I, it is concluded that during the detention of the complaining party, his physical integrity was affected, as well as the fact that he could have been subject to an attempt of rape and of an arbitrary detention, which violates articles 14, 16 and 19 of the Mexican Political Constitution.

Due to the aforesaid, on November 10 th , 2005 the National Commission issued Recommendation 37/2005, addressed to the constitutional City Hall of Carmen Municipality, Campeche, modifying the recommendation issued on February 16 th , 2005, it was required in the first point the opening of an administrative procedure of investigation against the staff of the Municipal Direction of Public Security, Roads and Transit of said City Hall, who were involved in the facts described by the complaining party; in the second point it was asked to State prosecutor provide information, in order to start the corresponding previous investigation, on account of the crimes to which the minor M.A.C.C. could have been subject, and finally, there was a third point in which it was asked to give instructions for the fulfillment of the recommendation issued by the Commission of Human Rights of the State of Campeche, on April 16 th , 2005, in record 47/2004-VR.

Recommendation 38/2005

November 25 th , 2005

Case: Appeal submitted by Felicidad Flores Solórzano.

Addressee Authority: Human Rights State Commission of Querétaro.

The National Commission opened the file 2005/2/QRO/1/I, due to the appeal submitted by Felicidad Flores Solórzano, in which she disagreed with the resolution issued by the Human Rights State Commission of Querétaro, due to the aforementioned determination which considered a conciliatory proposal fulfilled, even when the responsible authority declared to be impeded to accomplish it.

The general director of the Cultural and Educational Communication State System, told Felicidad Flores that the state governor and other public server ordered the general director to dismiss the offended from employment, due the fact that her brothers had a priista (political party) background, as well as the above mentioned public servers wanted a male voice for the " La Hora Nacional " programme. For those actions the local organism made a conciliatory proposal, which was rejected by the responsible authority, notwithstanding the State Commission considered that the conciliation was fulfilled.

Accordingly, on 25 of November 2005, this National Organism issued Recommendation 38/2005, addressed to the President of the Human Rights State Commission of Querétaro in order to revoke the resolution related with the case of Felicidad Flores Solórzano, and submit another, according to law, which will allow to restore of the human rights violated to the offended.

Recommendation 39/2005

November 29 th , 2005

Case : Appeal submitted by Guadalupe del Rosario Heredia Hernández.

Addressee Authority : H. Constitutional City Hall of Carmen Municipality, Campeche .

On May 19 th , the National Commission of Human Rights received a written document from Mr. Guadalupe del Rosario Heredia Hernández, by means of which he submitted an appeal against the decision made by the President of the H. Constitutional City Hall of Carmen, Campeche, in which he refused to accept the recommendation issued on February 11 th , 2005 by the Commission of Human Rights of said federative entity. Said recommendation required the identification of the members of the Municipal Operative Direction of Public Security, Roads and Transit of said City Hall, who infringed the human rights of Isidro Heredia Hernández, when they broke into his domicile. The recommendation also asked for the pertinent sanctions to be applied, and for the necessary administrative actions to be ordered, so that the members of said operative direction take adequate steps in order to preserve the right to privacy.

The National Commission, in accordance with the appeal, decided to confirm the recommendation issued by the Commission of Human Rights of the State of Campeche, based upon the fact that the analysis of the evidence shows that on August 7 th , 2004,

public servers of the above mentioned operative direction broke into the affected party's domicile, thus infringing the human rights to domestic inviolability, to legality and judicial certainty, which appear in the constitution and in several international instruments.

On the basis of the aforesaid, on November 29 th , 2005, the National Commission issued Recommendation 39/2005, addressed to the members of the H. Constitutional City Hall of Carmen, Campeche, in order that they accept the recommendation issued on February 11 th , 2005, by the Commission of Human Rights of the State of Campeche, and for the fulfillment of all the terms thereof.

Recommendation 40/2005

November 29 th , 2005

Case : Appeal submitted by José Jesús de Atocha Lara Ávila.

Addressee Authority : Constitutional Government of the State of Yucatán .

On February 4 th , 2005, the National Commission received the appeal submitted by José Jesús de Atocha Lara Ávila, against the Ministry of Protection and Roads of Yucatán, due to their failure to comply with recommendation 42/2004 issued by the Commission of Human Rights of the State of Yucatán.

The logical-legal analysis of the evidence which forms part of record 2005/68/YUC/5/I, shows that on February 5th, 2005, members of the Ministry of Protection and Roads of Yucatán detained José Jesús de Atocha Lara Ávila, who was hurt during said detention.

For that reason, on May 14th, 2002 Mr. Lara Ávila filed a complaint before the Commission of Human Rights of the State of Yucatán against public servers from the Ministry of Protection and Roads of said state, who detained him and as a result of its investigations, the Commission of Human Rights of the State of Yucatán issued Recommendation 42/2004, addressed to the Minister of Protection and Roads of said federative entity.

Later on, the Minister of Protection and Roads of the state of Yucatán sent a resolution to the State commission, which contained a private reprimand to the persons who detained the complaining party (without disregarding previous proceedings), even though he did not accept the Recommendation 42/2004, issued by the state organism, and for this reason José Jesús de Atocha Lara Ávila submitted an appeal.

To that respect, the National Commission opened the appeal file, and concluded that the rights of the complaining party to legality, to body integrity and to judicial certainty established in articles 14, 16 and 19 of the Mexican Political Constitution were infringed by public servers of the Ministry of Protection and Roads of Yucatán.

Therefore, on November 29th, 2005 the National Commission issued the Recommendation 40/2005, addressed to the constitutional Governor of the state of Yucatán, confirming the terms of the Recommendation 42/2004, and requiring, in the first point, to give instructions to the Minister of Protection and Roads of the state of Yucatán, in order to comply with the third point of Recommendation 42/2004, and that instructions should be given to the corresponding persons for the purpose of directing the public servers with the Ministry of Protection and Roads of the State of Yucatán, in order that from now on, all administrative processes of a certain responsibility, are carried out by a competent authority, in accordance with the main formalities of the procedure, prescribed by the law.

Recommendation 41/2005

November 30th 2005

Case : Marcelo García Guevara .

Addressee authority : General Direction of the Institute of Safety and Social Services of State Workers (ISSSTE).

The National Commission opened the file 2005/1595/GRO/1/SQ, relating to the complaint presented by Pedro García Guevara and others, which indicates that on march 22, 2005 the victim was operated on in the Hospital Clinic of ISSSTE in Chilpancingo, Guerrero, for a scrotal hernia, however, on the 31st of that month, he was readmitted with an infection in the surgical wound. Despite his readmission, on April 3rd 2005 cardiogenic shock began as a result of arterial hypotension, which without having been attended to opportunely, resulted in his death.

For this reason, the National Commission determined that the medical personnel of the said institute did not fulfill the stipulations of national law and emmitted the Recommendation 41/2005, addressed to the General Director of the ISSSTE, with the aim of effectuating the indemnization payment to the family. In the same manner, it was determined to undertake administrative proceedings against the attending physician of the victim.

Recommendation 42/2005

November 30th 2005

Case: Appeal submitted by José Bernardino Hernández and others.

Addressee Authority: Constitutional Government of the State of Michoacán .

The National Commission opened the file 2005/163/MICH/1/I, motivated by the appeal submitted by José Bernardino Hernández and others, concessionaries of the public transportation service in Morelia, Michoacán, for the insatisfactory fulfillment by the Coordinating Commission of Public Transport of Michoacán (Cocotra) of Recommendation 45/04, issued by the State Commission of Human Rights of Michoacán.

Upon analysis of the evidence it was decided that Cocotra had not carried out the necessary actions to guarantee security, despite having pledged to do so. In virtue of this, the CNDH emitted Recommendation 42/2005, addressed to the Constitutional Governor of State of Michoacán, with the aim of giving orders for the rapid fulfillment of Recommendation 45/04, and resolving the administrative measures for the necessary actions to guarantee security in the work place.

Recommendation 43/2005

November 30th 2005

Case: About the Property Santana

Addressee Authority : Constitutional Government of the State of Mexico

The CNDH opened the file 2004/2431/HGO/1/SQ, derived from the complaints submitted by the Commission of Human Rights of the State of Hidalgo, by María Guadalupe Alcántara Monry and the legal representatives of the San José Piedra community, municipality of Tepeji del Río, Hidalgo, in which they claim that public servants of the General Attorney's Office and General Direction of Public Security and Transit of the State of Mexico, carried out an operation to reconstitute a private person with the rights to the property 'Santana', located in the zone bordering between the States of Mexico and Hidalgo, which caused the eviction by violent means of the inhabitants of the zone, destroying their homes, as well as their crop fields. The National Commission attracted the complaint, as the alleged acts were committed in two different states, and since the nature and severity of the deeds transcended beyond the interests of both states and spilled out into the national public opinion.

As a result, the CNDH emitted Recommendation 43/2005 seeking to initiate the administrative proceedings against the elements of the Judicial Police and the General Direction of Public Security and Transit, who injured the victims during the operation carried out on the property; as well as giving instructions for the indemnization of damages; notifying the social representation of the local jurisdiction of the entity; in the same manner, starting the administrative proceedings against the agents of the Public Prosecutor's office of the local jurisdiction, and finally capacitation courses for the elements of the Investigative Police of the Public Prosecutor's office, pertaining to the control and dispersion of crowds, within the framework of respect for human rights.

## NATIONAL ISSUES

XXV National Ordinary Congress of the Mexican Federation of Public Organisms of Human Rights.

On November 24th and 25th, the XXV Ordinary Congress of the Mexican Federation of Public Organisms of Human Rights was held in the city of Campeche .

Within the framework of the tasks of the Congress, the new directive committee 2005-2007 made its oath. This committee is headed by Miriam Cárdenas Cantú, (Coahuila); the Secretary María Luisa Saucedo López (Tabasco); the Treasurer Eladio Navarro Bañuelos (Zacatecas); the Vice President of the Northern Zone, Eréndira Real Castro (BCS), the Vice President of the Southern Zone, Yesmín Lima Adam (Chiapas), the Vice President of the Eastern Zone, Sergio Valdespín Pérez (Morelos) the Vice President of the Western Zone Óscar Humberto Herrera López (Nayarit).

## INTERNATIONAL ISSUES

Annual Meeting of the Council of Directors of the International Ombudsman Institute (hereinafter IOI).

From November 6<sup>th</sup> to 10<sup>th</sup>, in Antigua and Barbuda, the Annual Meeting of the Council of Directors of the IOI was held. The meeting was attended by Ambassador Salvador Campos Icardo, executive secretary of the CNDH, on behalf of Dr. José Luis Soberanes, who is the Regional Vice President of this Institute in Latin America.

Among the tasks carried out in this meeting, elections of the Council of Directors took place. Almost all of its members were reelected, with the exception of Vice President Lethebe Maine who was replaced by Dr. Hayden Thomas, Ombudsman for Antigua and Barbuda.

X Congress and Annual Assembly of the Iberoamerican Ombudsman Federation (hereinafter FIO).

From November 14<sup>th</sup> to 17<sup>th</sup>, 2005 in the city of Asunción, Paraguay, the X Congress and Annual Assembly of FIO were held.

Within the framework of the meeting the Declaration of Asunción was adopted. In this declaration it was recognized that poverty, inequality and social exclusion prevailing in the majority of the Latin American countries are factors that constantly impair the full enjoyment of human rights.

inally, changes were made in the Directive Council of FIO for the 2005-2007 period. Said Council is now presided over by Dr. Enrique Múgica Herzog (Spain). The Vice Presidents of the Council are: Dr. José Luis Soberanes, Ombudsman of Mexico; Beatrice Alamanni de Carrillo (El Salvador); Claudio Mueckay (Ecuador); Manuel María Páez Monges (Paraguay) and Alicia Pierini (Buenos Aires, Argentina).

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