

# NEWS LETTER

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### HUMAN RIGHTS AGENDA 2006 .

Upon presenting the 2006 Human Rights Agenda to the public, April 4th of this year, which was delivered to the Presidential Candidates, the National Ombudsman manifested that this Organism demands from them a clear and explicit commitment with human rights.

The Human Rights Agenda contains 18 chapters which point out the principle risks and threats to the advancement of human rights in Mexico , in the eyes of the organism, and the proposals for confronting them.

The proposals of the agenda deal with the topics of public insecurity, modifications to the criminal justice system, rights of victims of crime, the principle of the presumption of innocence, arbitrary detentions, torture and mistreatment, road blocks, gender violence, care of minors and the elderly, crimes against journalists, use of polygraph, reclusion centers, alternative punishments, early release, rights of ethnic groups and indigenous communities, migrants, the right to the protection of health and the right to non-discrimination.

During an event effectuated in the auditorium of the National Center of Human Rights, Soberanes Fernández stated that the new government will have, as its first task, to face insecurity of the streets and impunity, phenomena which are closely linked to one another and corruption.

He stated that the candidates have so far spoken of the problem itself but have said little about how they will bring about their campaign promises, and thus, scarcely anything has been heard about their focus upon the fundamental problem of public security and the enforcement and administration of justice.

He explained that with the delivery of this agenda, each one must be aware that one of them will be elected governor and will be from then on responsible, as chief of the federal executive branch, for a great quantity of proposals and projects inherent in the presence of the fundamental rights of the Mexican people.

### RECOMMENDATIONS

Recommendation 6/2006

April 3rd 2006.

Case: Mr. JLCH.

Addressee Authority: Federal Ministry of Public Security.

On November 21st, 2003, Mr. JLCH was doing carpentry work in front of his domicile with friends when approximately 12 people in civilian clothes arrived, handcuffed, and dragged him into his apartment with the objective of interrogating him over the question of where he had hidden drugs. He was beaten with a metal hammer in the thigh, thrown to the floor and wrapped with a towel in the face and head while being doused with water, kicked in various body parts, threatened about telling anyone of the incident and finally left unconscious.

From the analysis of the evidence which make up the file, it was determined that federal and state public security members incurred in acts of torture against Mr. JLCH in their unlawful exercise of public service; As a result, his rights to personal integrity, legality, and judicial certainty, set down in various national and international juridical instruments were violated.

For this reason, the National Commission issued Recommendation 6/2006, addressed to the Federal Ministry of Public Security and to the constitutional governor of the state of Baja California, so that the former may notify the corresponding internal control organ, and establish the administrative responsibility of the public servers of the Federal Preventive Police, while ordering and effectuating the indemnization payments for damage and injury caused and for both the federal and state authorities to establish guidelines and actions for the adequate prevention of torture, through training of the members of the Federal Preventive Police.

With respect to the constitutional governor of Baja California, it was recommended that he notify the General State Control Organ of Baja California, so as to initiate and resolve the administrative proceedings of the corresponding responsibilities against the public servers of the State Preventive Police and of the sub commander of Special Services of the Direction of Public Security of the municipality of Mexicali, Baja California; and to order and effectuate indemnization payments for damage and injury caused, as well as to establish guidelines and actions for the adequate prevention of torture, through training of the members of the State Preventive Police.

Recommendation 7/2006

April 5th 2006.

Case: Minor Sebastián Pintos Hernández.

Addressee Authority: General Direction of the Institute of Social Security and Services for State Workers (hereinafter ISSSTE).

On October 25th, 2005, the National Commission opened file 2005/4487/1/Q as a complaint presented by Rosa María Pintos Barrios, through which she alleged human rights violations against her nephew Sebastián Pintos Hernández, attributed to the medical personnel of the ISSSTE.

In April 2003, the minor, Sebastián Pintos, was diagnosed with infoblastic leukemia in the hospital of the city of Cuernavaca , Morelos, for which he was channeled to the "20 de Noviembre" National Medical Center , where he was given the necessary medical treatment over period between 2003 and 2004 of chemotherapy and radiotherapy. Over the first two months of 2005 the minor's situation evolved satisfactorily. Nonetheless, in March of 2005 the victim suffered a setback, which led to his consideration for the program of spinal medulla transplants in July of that year, under the condition that he would have to wait, as there was a waiting list for children suffering from the same conditions. But the family members of Sebastián Pintos Hernández complained that the list was not advancing fast enough because the health center was not buying the necessary pharmaceutical products for carrying out the transplants; and that they had knowledge of three children falling into a terminal condition owing to the lack of the medicine.

Based on the analysis of the evidence which make up the file, the National Commission determined violations of the right to the protection of health and that the physical integrity and life of the minor Sebastián Pintos Hernández was put in danger by the actions of the personnel of the "20 de Noviembre" National Medical Center, especially in view of the fact that the public servers of the ISSSTE recognized the lack of medicine in supply.

As a consequence, the National Commission stated that the ISSSTE did not act within the law as it did not give the victim opportune attention, which it is institutionally obligated to do. At the same time, the institution declined to attend the decrees relating to the right to the health protection, set down in the international instruments that establish a minimum margin of quality in the medical services which the State offers to its population.

In response to the above, the National Commission issued Recommendation 7/2006 a ddressed to the General Director of the ISSSTE requesting the institution to accelerate the efforts of acquiring the pharmaceutical products that the minor Sebastián Pintos Hernández requires in the treatment of his illness, and that the bone marrow transplant of the victim be undertaken in a timely fashion; to follow through on the postoperative development for his rehabilitation and provide all the health centers of the institution, which have bone marrow transplant programs, with the personnel, infrastructure, equipment and materials necessary in order for the programmed surgical interventions to be carried out with the appropriate timeliness; to indicate the appropriate officials of the Internal Control Organ of the ISSSTE to initiate and determine the administrative proceedings against those responsible for the medicine supply.

Recommendation 8/2006

April 10th 2006.

Case: Gregorio Rodríguez Hernández.

Addressee Authority : Constitutional Government of the State of Sinaloa .

On November 28th, 2004, this National Organism was made aware of the homicide of Gregorio Rodríguez, graphic reporter of the newspaper El Debate of Mazatlán, Sinaloa.

In attending the case, personnel of the National Commission visited the domicile of the wife of the victim and they assisted her in some of the administrative processes before the State Public Prosecutor's Office; as well, she requested the intervention of this National Organism in the investigation of the facts surrounding the death of her husband, Gregorio Rodríguez Hernández, and the supervision of the integration of the preliminary investigation file ESC/1/371/2004.

Based on the analysis of the documents that make up the file, it was determined that there were several irregularities in the integration of the investigation, slowness and a lack of efficient practice in their duties on the part of the prosecuting authority, which generated the violations of the right of victims and offended people, stemming from the lack of legality, judicial certainty and the appropriate access to justice, and thus concluded that a lack of fulfillment of public function in law enforcement had occurred.

If in fact the prosecuting authority exercised penal actions against the material authors of the homicide of the reporter victim, during the integration of the investigation it was determined that the members of the State Prosecutor's Office police force of Sinaloa, upon whom the responsibility of the investigation rested, had not fulfilled several orders of localization and presentation of people who could be linked to the homicide, as well as in appropriately ratifying the reports that had been presented to the prosecuting authority.

The lack of an appropriate investigation in the homicide of Gregorio Rodríguez Hernández, graphic reporter, also violated the right to freedom of expression, in view of the fact that the aggressions against journalists, reporters, graphic reporters, or any other means of communication, and the impunity from sanctions, imply acts of intimidation toward other communicators, which in turn affects the free exercise of their profession.

In view of this, the National Commission issued Recommendation 8/2006, addressed to the constitutional Governor of Sinaloa, requesting that the Internal Control Organ of the General Attorney's Office be indicated to initiate and determine an administrative proceeding against the agents of the Public Prosecutor's Office who intervened in the integration and determination of the preliminary investigation ESC/371/2004, as well as those members of the Prosecutor's Office police force who were encharged but did not fulfill in the localization and presentation of several people, and to instruct the corresponding agent of the Public Prosecutor's Office to determine the criminal responsibility that they may have incurred in. As well, the Public Prosecutor's Office of Sinaloa was instructed to continue with the lines of investigation which remain open within the file; and to carry out the necessary actions to strengthen the formulated accusations in the pending criminal processes 161/2004 and 86/2005.

Recommendation 9/2006

April 9th 2006.

Case: Herlinda Casas Corral.

Addressee Authority : Mexican Institute of Social Security (hereinafter IMSS).

Guadalupe Casas Casas presented a complaint before the State Commission of Human Rights of Durango, where she stated that on July 6th, 2005, a doctor from the General Hospital of Zone One of the IMSS in the state of Durango performed a lumbar mielograph upon her mother which set off a series of side effects leading to the woman's immobility and problems with respiration.

Days later, the plaintiff detected a ball in her mother's right side of the back, and upon notifying the orthopedist and the nurse of the same health center, was told that this was an effect of her bed stay.

Presented with the poor attention given to Herlinda Casas Corral, the plaintiff went to the social worker of the aforementioned health center who indicated to her that she would talk with the director of the hospital so as to give her mother the appropriate care. As a result, Internal Medicine personnel were sent to examine the patient who informed her that the diagnosis was a total lack of metabolic control, infected lungs, and possible pneumonia; the "abscess" was infected, her blood was not clotting, she had bacteria and acute anemia. On July 26th, 2005, she began to receive potassium, as well as injections, but two days later her mother entered a state of coma and at 18.30 hours on July 29th, 2005, she died.

Based on the analysis of the evidence, the National Commission determined that the rights of the victim to life and protection of health were violated by the medical personnel of the General Hospital of Zone One of the IMSS in Durango, as there were important discrepancies with respect to the diagnosis and treatment among the services of Internal Medicine, Orthopedic-Trauma and Pneumology, which finally led to her death.

Based on the above, the National Commission issued Recommendation 9/2006, addressed to the General Director of the IMSS, instructing the institution to carry out the indemnization payments that legally proceed to the family of Herlinda Casas Corral, in consequence of the institutional responsibility in the inadequate medical attention which was given to the victim, On the other hand, to indicate Internal Control Organ of the IMSS to initiate and determine the administrative proceedings against the doctors that were in charge of the care of the patient; as well, to dictate the corresponding administrative means to ensure the adequate medical evaluation of the patients on the part of doctors to bring about a rapid and correct diagnosis and to apply the adequate treatments for the recovery of health among the rightsholders and to observe the Official Mexican Norms that are set to that effect.

Recommendation 10/2006

April 28th 2006.

Case: Appeal submitted by Felipe de Jesús Martínez Zapata.

Addressee Authority : Autonomous University of Yucatán (hereinafter UAY).

Felipe Jesús Martínez Zapata presented his written complaint before the Commission of Human Rights of Yucatán over the alleged violations of human rights committed against him by the public servers of the UAY, in view of the fact that in the year 2002, he went to the offices of the university to apply for his degree and professional certificate, where they informed him that there had been administrative errors in his preparatory certificate which nullified the validity of those studies. Upon finishing the corresponding investigations, the state Commission issued Recommendation 25/05 to the Director of the UAY, and on September 7, 2005, the legal General Representative of the institution stated the non-acceptance of the Recommendation.

From the analysis of the body of evidence which makes up the file, the CNDH determined that the public servers of the UAY violated the petitioner's human rights to audience, legality, and judicial certainty.

It is necessary to mention that Felipe de Jesús Martínez Zapata presented and passed his professional exam and brought forth the corresponding document which made him be eligible for applying for the respective degree. Nonetheless, as he was not notified of the determination of non-validity of the preparatory certification, and the annulment of two subjects, the right to audience was breached and consequently was left in a defenseless state.

In view of these findings, this National Organism considers the reasoning offered by the State Commission in Recommendation 25/2005 to be valid, as the legal requisites of any administrative document were not fulfilled.

Base on the above, the CNDH, on April 28th, 2006, issued Recommendation 10/2006 addressed to the Director of the UAY to resolve the question over the validity of the preparatory certification of Felipe de Jesús Martínez Zapata, in a way that upholds the right to audience, legality, and judicial certainty, and to notify him of the determination so that if it were the case he may exercise the legal actions that the law allows; as well, to issue the corresponding administrative guidelines in order prevent a repetition of the acts which gave origin to the present pronouncement, and to notify the interested parties, in the future, of any revisions in the certification of studies; as well, as soon as possible, and after the fulfillment of the legal requirements demanded by the applicable normativity for the processing of the degree and professional certificate, these should be issued to Felipe de Jesús Martínez Zapata.

Recommendation 11/2006

April 28th 2006.

Case: Mrs. LF and Mrs. CS.

Addressee Authority : Ministry of Labor and Social Supervision (hereinafter ST and PS), National Institute of Migration (hereinafter INM).

On May 12th, 2004, the CNDH received, a disclosure by the Prosecutor of Human Rights of the State of Guanajuato related to the complaint presented by the Sin Fronteras, I.A.P., and the Frente Auténtico del Trabajo organizations, which stated the details of the case of the victims LF and CS, Chinese nationals, who were hired in their country of origin to work in an assembly company under certain working conditions which were not respected.

The victims were subject to working conditions contrary to Mexican Legislation, in virtue of the fact that they were obligated to work more 17 hours a day from Monday to Saturday, and 10 hours on Sunday, unable to leave the work center, except on Sundays for two

hours, and accompanied by supervision personnel of the company; in the same fashion, their salary was subject to discounts through fines, all of which were overlooked by public servers of the ST and PS.

As well, the migration authorities have tolerated that the company retain identification and travel documents of the mentioned workers, and at the same time detains these same women workers when they are unable to accredit their legal stay within country at the moment of being required to do so, which propitiates the violation of the human rights of those migrant persons, as well as the Trading of People.

Based on the above, the National Commission issued Recommendation 11/2006, addressed to the Ministry of Labor and Social Supervision and the Commissioner of the INM, requesting both for coordinated actions between both institutions in the supervision of the conditions in which foreigners give services in national territory. On the other hand, the Ministry of Labor and Social Supervision was recommended immediately to instruct the personnel of that ministry to carry out the task of inspection and supervision of the general working conditions to which the people of Chinese origin who work in the assembly company are subject, and to issue, were it to be necessary, the pertinent corrective measures; a second point to instruct the personnel of the Ministry to carry out a review of the labor contracts signed by Chinese nationals with the company who work in the country, and to dictate the legal corrective actions that it deems pertinent; the third point to instruct the Mexican Institute of Social Security to carry out a onsite visit to the domicile of the assembly company, with the objective of assuring that it is fulfilling the contributions stipulated by the Law of Social Security, and to contribute the elements of proof that are in its possession to the preliminary investigation 194/2003, registered in before the first agency of the Public Prosecutor's office in Valle de Santiago, Guanajuato so as to decide this issue, and finally, a fourth point, to instruct the Internal Control Organ of the ST y PS to initiate and determine an administrative proceeding against the public servers in the area of inspection and supervision of general working conditions for their possible administrative and institutional responsibility upon failing to verify the conditions in which the Chinese workers offered their services to the assembly company.

or its part, the Commissioner of the INM was recommended first to carry out an inspection and verification visit to the foreigners that work in the assembly company to make sure of the complete fulfillment of article 64 of the General Population Act, and should it be necessary, emit the pertinent measures for the foreigners to have in their possession the respective migration documentation; in the second point, the Coordination of Migratory Control and Verification of the Institute was indicated to resolve, legally, the legal migratory situation of the victim LSP, in view of the fact that she contends that her stay in the country is legal, and if she was unable to accredit this when she was required to do so, this is imputable to that authority, for not fulfilling punctually article 64 of the General Population Act, and in a third point, the Internal Control Organ of the INM was indicated to initiate and determine, as the law allows, the administrative proceedings of investigation against the public servers of the Regional Delegation of the INM in Guanajuato for their probable administrative and institutional responsibility in tolerating that the assembly company retain the migratory documents of the foreign workers of Chinese nationality that work for it.

## INTERNATIONAL ISSUES

Attendance to the meeting of the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families of the UN.

The National Commission of Human Rights manifested before the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families of the United Nations, (UN), their worry about the governmental and legislative measures approved in the United States of America against migrants, and informed about diverse actions of the migratory elements of that country and the participation of private groups in patrolling the border with Mexico.

Javier Moctezuma Barragán, Executive Secretary of this National Organism, spoke, before the members of the Committee, of the serious violations of fundamental rights that the undocumented migrants suffer who enter our country by actions of the agents of the authority, according to the complaints which victims have submitted before the National Commission and based on the complaints in the files that the CNDH is legally responsible for investigating by way of its Fifth General Visitorship.

When it participates in Geneva, Switzerland in the period IV of sessions of the mentioned committee, created as an organ of control and supervision of the fulfillment of the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families the CNDH will contribute in the preparation of the analysis of the first report presented by the Government of Mexico on the fulfillment of this Convention.

In the framework of this period of sessions, the executive secretary of the CNDH met with the president of the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families of the UN, Prasad Kariyawasam, who he formally granted

the position of this National Commission in relation with the migratory phenomenon and the situation of human rights of migrants in Mexico, as well as the Mexican migrants in the United States.

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