

# NEWS LETTER

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### FIRST PERIOD OF SESSIONS OF THE HUMAN RIGHTS COUNCIL OF THE UNITED NATIONS, JUNE 19-30

In deference to the first session of the new Human Rights Council of the United Nations, the Executive Secretary of the National Commission of Human Rights, Javier Moctezuma Barragán, in representation of the President of this national organism, Dr. José Luis Soberanes Fernández, attended this important meeting in the city of Geneva, Switzerland.

In the aforementioned meeting, Dr. Moctezuma appeared in representation of all the National Human Rights Institutions which make up the International Coordinating Committee of the National Human Rights Institutions (CIC), of which Dr. Soberanes Fernández, is the Vice-president.

In his message before the members of the Council, Dr. Moctezuma Barragán stated that the National Institutions offer experience and recommendations in accordance with the scope and implementation of the obligations of the States in the area of human rights; support and participate in the investigation into the effectiveness of the protection of human rights at the national and regional level; offer objective and solid documentation on the situation of human rights on the national level; give follow up to the recommendations of the organs of the United Nations; educate and train in the area of human rights at the national level and carry out public campaigns of information about the activities of the international system of human rights.

The first session of the new Human Rights Council of the United Nations, ended with adopting eight resolutions, three decisions and two declarations from the President of this new organ of the United Nations Organization.

### RECOMMENDATIONS

Recommendation 19/2006

June 13, 2006.

Case: Mr. Sergio Raúl Almaraz González.

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

On August 4, 2005, the National Commission of Human Rights (CNDH) opened file 2005/3188/1/Q for a formal written deposition presented by Mrs. Karina Lopez Arizmendi, in which she described various presumed violations of the human rights of her husband, Sergio Raúl Almaraz González, attributed to medical personnel of the IMSS. On June 29, 2004, Almaraz González had intense pain in his legs, numbing of his feet and the calves of his legs, as well as difficulty in walking. With those symptoms, Almaraz González went to the IMSS Clinic 2 in Mexico City. There, he was diagnosed as having "peripheral venous insufficiency" and was referred to Zone Hospital 27. Due to the patient's health, he was sent to yet another hospital, the La Raza National Medical Center. Personnel there sent him back to Zone Hospital 27, and from there he was referred once more to La Raza for evaluation and clinical studies. Certain studies were made in La Raza in mid-December, and Mr. Almaraz González was given a new appointment for January 17, 2005. He did not appear for that appointment, however. Eight days earlier, on January 9, due to misdiagnosis and faulty medical attention he worsened and required an operation in that same hospital. Both his legs were amputated, and one kidney ceased functioning.

Analysis of evidence contained in the file of the complaint to the National Commission shows violations of the human right to protection of health that risked the health and life of Mr. Sergio Raúl Almaraz González, violations which can be imputed to medical personnel of

the La Raza Nacional Medical Center because those public servers failed to give him timely and quality medical attention. Their late diagnosis and faulty treatment led to the amputation of both legs of Mr. Almaraz González.

Therefore, on June 13, 2006, the CNDH issued Recommendation 19/2006, directed to the IMSS General Director, asking to give notice to the Internal Control Organ to open and define the administrative procedure to be initiated against public servers who were responsible in this case. In addition, administrative procedures were to be initiated that would lead to indemnification according to law of Mr. Sergio Raúl Almaraz González.

The Recommendation also requested due control and medical care for the post-operative consequences of Mr. Sergio Raúl Almaraz González, as well as all necessary physical and mental rehabilitation, plus any orthopedic apparatus which he might require; in addition, administrative instructions were given to insure that professional medical attention will be given to patients of La Raza Nacional Medical Center in order to avoid acts such as those which led to this recommendation; administrative orders were issued to impart instruction to both medical and administrative personnel of this hospital regarding both the content and obligatory observance of the Official Mexican Norm (NOM) applicable to the health sector; administrative guidelines were generated covering those cases in which major surgery must be done, requiring that surgery be performed by those public servers obliged to do it, and thereby avoiding future situations in which surgery is done by resident personnel or inexperienced personnel.

#### Recommendation 20/2006

June 21, 2006.

Case: Mr. Nelson Geovanni Barrios Guiti and other Central American migrants.

Addressee Authority: National Institute of Migration (INM).

On April 18, 2005, public servers of the INM arrested, in the town Méndez, near Saltillo, Coahuila, Mr. Nelson Geovanni Barrios Guiti, as well as Kenis Isabel BernándeZ, Benigno Hernández Palma, José Francisco Alcántara, Pablo Rigoberto Antúnez, Isaías Ramos Cruz, Marco Antonio Ramos, Juan Carlos Martínez Suazo, Marlon Miranda, Hugo René Álvarez, Óscar Humberto Canales, Walter Santiago Martínez, José Wilmer Calderón, José Milton Mendoza, Ricardo Enrique Murillo, Erlyn Yovanny Dubon, José Antonio Pérez, Jorge Benítez Gálvez, José Aníbal Altamirano y Wilson Francisco Amador Ávila, while they traveled on board a train going to Nuevo Laredo, Tamaulipas. One of the INM agents physically harmed Mr. Nelson Geovanni Barrios Guiti while arresting them. That some INM agent, without explaining why, ordered all the arrested persons to take off their shoes and made them walk approximately one and a half kilometers, while Mr. Nelson Geovanni Barrios Guiti was obliged to carry the shoes of his companions during the walk. Later, they were taken in a vehicle to the preventive detention cells of the municipal jail at Ramos Arizpe, Coahuila.

For the National Commission of Human Rights, it was proven that public servers of the INM violated the rights of personal integrity, dignified treatment, legality and judicial certainty of Mr. Nelson Geovanni Barrios Guiti and the other Central American migrants, human rights which are established by various national and international legal instruments.

As a result, on June 21, 2006, the National Commission of Human Rights issued Recommendation 20/2006, directed to the Commissioner of the INM, in which it is recommended to issue instructions to whom it may concern to abstain from using preventive detention cells as migratory stations; that supervisory mechanisms and training courses to be promoted in order that, in cases similar to that which resulted in this recommendation, there will be no arbitrary actions by public servers of the INM during the arrest and transit of foreigners; finally that the Internal Control Organ of the INM initiate and resolve the pertinent administrative procedures against the public servers identified as the responsible authorities.

#### Recommendation 21/2006

June 21, 2006.

Case: Nelson Javier Cruz Anaya, Pablo Roberto Varela Castellanos and other Central American migrants.

Addressee Authority: National Institute of Migration (INM).

On February 10, 2006, personnel of the National Commission of Human Rights made a supervisory visit to the INM migratory station in Saltillo, Coahuila. There, the arrested migrants Nelson Javier Cruz Anaya and Pablo Roberto Varela Castellanos, both Honduran citizens, complained of abuse by personnel of the migratory station. For that reason, this national organism opened complaint file 2006/652/5/SQ.

Out of this investigation the National Commission determined that the physical integrity of the complainants Pablo Roberto Varela Castellano and Nelson Javier y Cruz Amaya had not been respected, and neither was the right to dignified treatment respected in the cases of María Elena Gutiérrez López, Erick Roberto Girón, José Peralta or José Reyes Paz, as during the night of February 9-10, 2006, with the pretext of an investigation of a supposed attempt by the arrested persons to escape from the INM migratory station in Saltillo, Coahuila. The deputy delegate ordered all the foreigners out of their dormitories and go to the basketball courts. Once they made a line, he separated the complainants from the rest of the group and indicated that they go to a room where personal belongings are stored.

In that place, the same public server assaulted Nelson Javier Cruz Amaya, used foul language with him and threatened him to make him confess the supposed escape attempt. Immediately afterwards, Cruz Amaya was ordered to go to the dormitories. There another deputy delegate, one who did not belong to this migratory station, kicked Cruz Amaya in the back, causing him to fall, while continuing to threaten Cruz Amaya with rude and vulgar language. Later, Cruz Amaya was confined in a dark room which once had been used as a bathroom and is currently abandoned.

In the equipment area, the same deputy delegate of that migratory station said to another migrant, Pablo Roberto Varela Castellanos, that he must tell what he knew about the supposed escape attempt, threatening him in the same way that Cruz Amaya had been. Then, a federal migration agent was told to take Varela Castellanos to the dark room, where he was attacked physically and kept handcuffed for the major part of the night.

Thus, for the National Commission of Human Rights it is clear that the public servants of the INM identified in this recommendation did in fact violate the rights to dignified treatment, personal integrity, legality and judicial certainty of Nelson Javier Cruz Amaya and Pablo Roberto Varela Castellanos.

Therefore, on June 21, 2006, the National Commission of Human Rights issued Recommendation 21/2006, directed to the Commissioner of the INM, recommending that the Internal Control Organ be given instructions to begin and resolve the corresponding administrative procedure against public servers responsible, and that within the scope of its capacity, a framework and actions be established to avoid and prevent the execution of such arbitrary actions and undignified treatment of arrested migrants. These changes are to be accomplished by proper training of public servers of the INM.

Recommendation 22/2006

June 21, 2006.

Case: Mr. Santos Catalino Portillo.

Addressee Authority: National Institute of Migration (INM).

On April 4, 2005, Mr. Santos Catalino Portillo Funes was arrested by municipal police elements of Purísima del Rincón, Guanajuato, as a result of a complaint filed by his concubine before the INM. In it, she accused him of lacking documents to establish his legal residence in Mexico. Thus, he was placed at the disposition of the Third Agency of the Federal Public Prosecutor in León, Guanajuato. Since the INM did not file a complaint against Portillo Funes for any presumed offense, the social representative sent him on April 5, 2005, to the facilities of the INM in León. That same day Mr. Santos Catalino Portillo Funes and several other foreigners were taken to holding cells of Public Security in San Miguel de Allende, Guanajuato, used by the INM as a migratory station.

On April 6, 2005, Mr. Portillo Funes was examined by the medical advisor of the Direction of Public Security of San Miguel de Allende. The advisor judged that he was "apparently healthy and able to travel".

On April 8, 2005, elements of the Direction of Public Security handcuffed Mr. Portillo Funes by one hand to a bar in the cell in which he had been isolated from other prisoners.

Between 4:00 and 5:00 o'clock on the morning of April 9, Mr. Santos Catalino Portillo Funes was found dead in his cell. The state's general attorney of Guanajuato began investigation 544/2005-II-03-A13, which was referred, for reasons of incompetence, to the Federal General Attorney's Office on July 12, 2005. The medical report of the autopsy, prepared by a physician of the State's General Attorney, states that the cause of death was pneumonia at multiple sites.

The National Commission of Human Rights has documented that elements of the Direction of Public Security of Guanajuato, informed federal migratory agents that Portillo Funes needed medical attention but, nevertheless, did not take measures necessary to guarantee his rights to life and protection of health, among others.

Based on those findings, the National Commission of Human Rights recommended that the Commissioner of the INM should instruct the personnel of the INM to not use public jails as migratory stations, and that those installations that are so used must permit undocumented foreign migrants to pass their time of arrest in conditions that guarantee the respect of their human rights; as well, for the family of the victim to be paid indemnizations, and for the elements of this case known to the INM to be provided to the federal public representative that is concerned with the investigation, as well as to the Internal Control Organ in the INM of the Public Function Ministry which puts together the the administrative investigation file concerning the conduct of public servers of the INM.

#### Recommendation 23/2006

June 21, 2006.

Case: Concerning the conditions of confinement of migrants in the district jail of the third judicial district of San Nicolas de los Garza, Nuevo Leon.

Addressee Authority: National Institute of Migration (INM).

From the supervisory visits made by personnel of the Nuevo León State Human Rights Commission on April 26 and December 31, 2005, and those made by personnel of the National Commission of Human Rights on June 30, July 7, August 31, October 20, and December 14, 2005, it was showed that the district jail of San Nicolás de los Garza, Nuevo León, was being used as a migratory station by the INM. Undocumented migrants held there were not given eating utensils adequate for taking their meals. They were not given soap or towels for their personal hygiene. They were not given enough clean mattresses or blankets for sleeping. Most of the time, a large number of the undocumented migrants had to sleep on the floor because of the conditions of their cells. The toilets frequently did not work, or were in such bad condition that they could not be used. Added to the lack of hygiene of those toilets, that produced a fetid odor that could lead to infections.

In the jail-house cells, undocumented women migrants were held in the women's area, where they constantly were together with persons who were being prosecuted for some crime or who had been convicted and sentenced. For those reasons, on April 5, 2006, a foreign woman who had been held in that area was attacked by two inmates.

Analysis of evidence contained in files 2005/2227/NL/5/SQ, 2005/2892/5/Q and 2006/1628/5/Q, shows that public servers assigned to the INM regional delegation of the State of Nuevo León violate the rights of dignified treatment and legality, wronging Raquel Soares Braganza, Jersson Matilde Euceda Suazo, Rubia Alves Dos Santos Faleiro, Leidi Yessenia Hernández and 127 more undocumented migrants who are citizens of Brazil, Honduras, Guatemala, El Salvador and the United States of America. All those persons were found arrested in cells of the district jail of San Nicolás de los Garza, Nuevo León.

Therefore, the National Commission of Human Rights, on June 21st, 2006, issued its Recommendation 23/2006, directed to the Commissioner of the INM, recommending that he instruct the personnel of that institute to abstain from using local preventive detention facilities as migratory stations. The Political Constitution of the United Mexican States establishes, in the first paragraph of Article 18, that preventive prison is to be used only for crimes which merit corporal punishment, and that arrest is a strictly administrative measure.

Thus, so that those places which are used will allow undocumented foreigners to be in conditions which respect their human rights, it is requested that the Internal Control Organ take notice of this situation and begin the corresponding administrative procedures against the public servers of the INM who are responsible for these administrative irregularities.

#### NATIONAL ISSUES

Third Workshop on the Application of the Istanbul Protocol.

May 15th and 16th, 2006 were the dates on the Third Workshop on the Application of the Istanbul Protocol in the port city of Veracruz, organized by the CNDH in coordination with the Office of the United Nations High Commissioner for Human Rights and the Ministry of Foreign Affairs.

The Workshop was directed at the State Human Rights Commissions in the southeastern region of the country, with the objective of training the personnel of these organisms in the knowledge pertaining to the Istanbul Protocol and their capacity to diagnose and detect elements of torture.

The Inauguration was attended by Dr. Javier Moctezuma Barragán, Executive Secretary of the CNDH, Noemí Quirazco Hernández, President of the State Commission of Human Rights of Veracruz; Dr. Nieves Gómez Dupuis, expert of the Office of the United Nations

High Commissioner for Human Rights, and Dr. José Antonio Guevara Bermúdez, Deputy General Director of Human Rights and Democracy of the Ministry of Foreign Relations.

## INTERNATIONAL ISSUES

International Workshop "The Right to Education within the American Continent", Guayaquil, Ecuador.

The National Commission of Human Rights, in its character as General Secretary of the Network of National Institutions for the Promotion and Protection of Human Rights of the American Continent, organized the International Workshop "The Right to Education within the American Continent" in Guayaquil, Ecuador.

This workshop, which took place on the 24th and 26th of May, this year, with the support of the Defensor del Pueblo (Ombudsman) of this country, was attended by representatives of 11 countries of the continent. Its aim was to present experiences and draw diagnostic conclusions on the state of the right to education in each of the member countries subscribing to the network.

Among the attendants to the ceremony were Dr. Javier Moctezuma Barragán, in representation of Dr. José Luis Soberanes Fernández, Ombudsman of Mexico and Secretary of the Network; Dr. Claudio Mueckay Arcos, Defensor del Pueblo of Ecuador and Jaime Nebot Saadi, Mayor of Guayaquil.

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