

NEWS LETTER

Number 165

November 2006

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PARTICIPATION OF THE CNDH IN THE 37th PERIOD OF SESSIONS OF THE COMMITTEE AGAINST TORTURE OF THE UN.

November 7th, 8th, and 9th, 2006, in Geneva , Switzerland , as part of the 37th period of sessions of the Committee against Torture of the UN and the Fourth periodical Report of México to this organism, the CNDH participated for the first occasion with the presentation of a report.

In representation of the National Ombudsman, Mr. Raúl Plascencia Villanueva, First General Visitor, made note that since 1990, the CNDH has received 8,447 complaints from persons that stated to have been victims of torture or other forms of mistreatment. He expressed that during the investigation, the authorities overseeing the cases of violations being brought to their attention frequently carry out actions so as to avoid sanctions, abandoning the investigations before reaching conclusions, obtaining the desisting of complainants, presenting partial and inopportune reports, and prolonging unnecessarily the judicial activities, so as to leave the burden of proof in the hands of the crime victims, on top of commonly being the same institutions accused of committing acts of torture, who are in the position of investigating their own personnel, making it unclear whether they act with impartiality.

Plascencia Villanueva, who was accompanied by Ambassador Javier Moctezuma Barragán, Executive Secretary of the CNDH, stressed that the federal and state governments generally use as a recourse the non acceptance of the recommendations of the commissions of defense of human rights, derived from the cases of torture and other forms of mistreatment and even deny the existence of that practice.

The document presented to the Committee against Torture mentions the responses of the authorities of the events of violations occurred in Guadalajara, Jalisco, on May 28th, 2004, derived from the celebration of the 3rd Summit of Latin America, the Caribbean and European Union, and more recently, in the case of the violent events occurred on the 3rd and 4th of May, 2006, in the municipalities of Texcoco and San Salvador Atenco, State of México, as well as in Recommendation 13/2006.

In reference to the preliminary investigation initiated by the Attorney General's Office of that federative entity against the National Ombudsman, the First General Visitor of the CNDH, and the General Director of the First Visitorship, for alleged crimes against the honor of three public servants of the Attorney General's Office, the correlator of the Committee against Torture, F. Marino Menéndez, considered: "It is quite strange that the Attorney General's Office of México, the PGR, has not fulfilled a single one of the recommendations of the CNDH since June – regarding the case of a tortured person – and yet, on the other hand, has initiated a criminal investigation against the Ombudsman."

RECOMMENDATIONS

The following is a presentation of a synthesis of the recommendations issued by the CNDH during the month of November. The complete version of these recommendations may be consulted on the internet page of this institution.

General Recommendation 13

November 17th, 2006.

On the Illegal Practice of Migratory Verifications.

The CNDH issued General Recommendation 13, on the Practice of Illegal Migratory Verifications on behalf of diverse federal, state, and municipal authorities, that without being authorized to do so, carry out illegal actions of vigilance and verification against foreign undocumented migrants, actions in violation of fundamental rights to juridical equality, free transit, legality and the security of persons.

The recommendation proposes that the State not be limited to exercising its sanctioning faculty in the migratory area, but rather, it also should assume the design of public policies and set in motion regional and global strategies with the concurrence of other nations involved in the migratory phenomenon, so that the rights of migrants may be safeguarded.

For the CNDH, it is particularly serious to see the conduct of employees of private security companies that lend their services in railway installations who, arguing that foreigners who travel aboard the railways lack the documents for their legal stay in Mexican territory, detain them and put them at the disposition of the National Institute of Migration (INM) or some police corporations.

Based on the above, the CNDH requests the Ministries of National Defense and the Navy, and the Attorney General's Office of the Republic to instruct the public servants of those institutions so that they abstain from carrying out acts of migratory verification beyond the limits of the law, against persons of foreign origin who are present in the country, as well as to cease the detentions deriving from it, without reducing their collaboration with the INM when they are explicitly required to do so by law.

To the Ministry of Interior it was asked that they instruct the INM so that personnel in charge of receiving detained migrants by elements of private security bring these events to the attention of the Public Prosecutor so that the responsible persons may be investigated.

To the governors and governors of the States and the Chief of the Government of the D.F., it was requested that they provide the medium for instructing elements of the police corporations in the sense that they abstain from carrying out illegal acts of migratory verification on foreigners in national territory and cease detentions; As well, that with full respect for the municipal autonomy, they may transmit this recommendation to the municipal presidents, so that the police corps under their responsibility avoid also carrying out illegal acts of verification of migratory documentation.

General Recommendation 13, approved by the Consultative Council of this National Organism, is public in character and is issued with the purpose of promoting changes and modifications of some administrative practices that constitute or propitiate violations of human rights.

Recommendation 39/2006

November 1st, 2006.

Case: On the case relative to the violent events occurring in Iztapalapa.

Addressee Authority: Ministry of Federal Public Security.

The CNDH opened the file 2006/942/5/Q for the case relating to the violent events occurring on March 6 th , 2006, in the migratory station of the National

Migration Institute (INM), in the delegation Iztapalapa, Mexico, of the Federal District .

On March 6th, 2006, a group of approximately 50 captured foreigners blocked the access to the male section within the migratory station and retained one migration officer, in protest of the lack of definition in their legal situation.

Personnel of the INM exhorted the protesting foreigners to remain calm and to dialogue, obtaining a negative response, for which the aforementioned personnel requested the introduction of the police corps within the male detention area with the objective of regaining control of the installations.

In virtue of this, at 16:30 hours, a group of approximately 70 elements of the Federal Preventive Police (PFP) entered the area wearing helmets, shields, clubs, with the purpose of regaining control of the installations. Various captured foreigners attempted to contain their entrance, hitting them with diverse objects, such as metal stools and fragments of concrete; nevertheless, the police elements carried out the operation and obligated the captured persons to proceed toward the posterior end of the basketball court, where they were finally subdued through the use of force.

Several of the prisoners were physically attacked by the police elements, who continued to kick and strike them with clubs, even after they were found to be subdued and motionless on the floor. Later, the subdued foreigners were transported to the area of customs within the station placed face down on the floor and tied by feet and hands with plastic tape.

Among the victims, the cases of Messrs Yoelvis Jiménez Román and Lorenzo Betancourt Álvarez, of Cuban nationality, stand out who were hit with clubs and kicked by elements of the PFP.

As well as the two previous cases, another 22 foreigners were wounded, for which they were attended by medical personnel of the Rescue and Emergency Squad of the BETA group of Protection of Migrants, who carried out the tasks of first aid, healing and immobilizations of the foreigners; 11 of the wounded prisoners were transported for attention to the General Hospital "Dr. Manuel Gea González", a dependency of the Ministry of Health, where the Adjunct Visitor also was present along with a medical forensic specialist of the CNDH.

Deriving from the violent events, 27 foreigners of Brazilian, Cuban, Eritrean, Ethiopian, Ghanaian, Honduran, Jamaican, and Russian nationalities were wounded and their human rights were violated in legality, judicial certainty, integrity, and personal security, as well as the right to dignified treatment by public servants of the PFP.

Based on the above, the CNDH recommended the Ministry of Federal Public Security to notify the Internal Organ of Control so as to initiate the corresponding administrative proceedings against the elements who carried out the excessive use of force against the foreigners, as well as for the probable responsibility in which incurred the personnel who were in charge of the operation; as well, to release instructions so that the accusations may be formulated before the Attorney General's Office in the probable criminal conducts committed by elements of that corporation against the foreigners, and to instruct the corresponding persons to the effect that the elements of the PFP may be trained with respect to the appropriate use of force and of the equipment which was assigned to them for the fulfillment of their work, as well as on the techniques of detention, subduing, apprehension, persuasion, crowd behavior, non violent solutions to conflicts, technical means which limit the employment of force, and stress management.

Recommendation 40/2006

November 27th, 2006.

Case: Case relating to the events which occurred in the area surrounding the Palace of San Lázaro of the Honorable Congress of the Union, from August 14th to September 1st, 2006.

Addressee Authority: Ministry of Federal Public Security, Presidential Guards.

On the 14th of August, 2006, the National Commission initiated the file 2006/3927/1/Q motivated by the telephone call by the then Federal Deputy Eliana García Laguna, in which she brought forth claims of presumed violations of human rights against deputies and sympathizers of the Democratic Revolution Party, by elements of the Federal Preventive Police (PFP) and the Greater Presidential State (the Secret Service).

On August 14th, 2006, a bus arrived to the Palace of San Lázaro of the Honorable Congress of the Union, with several demonstrators who were impeded in their efforts of installing themselves in the entrance of the Chamber of Deputies, a situation which motivated the then Federal Deputies to attempt to dialogue with the authorities of the Presidential Guards and with personnel of the PFP; nevertheless, the mentioned authorities commenced attacking them physically and verbally and to take down in a violent manner the encampments that they had begun to install in the main entrance of the Palace of San Lázaro of the Honorable Congress of the Union.

It was added in the complaint file that Ms. Norma Martínez Loustalot who stated that on the same date, upon attempting to install herself peacefully together with approximately 100 other persons in the surrounding area of the Palace of San Lázaro so as to carry out a demonstration, the PFP began to place metal riot walls along the Congreso de la Unión avenue, and later cleared the people away through the use of force, even utilizing tear gas.

It was further added to the complaints presented to this National Organism, the statements from several residents of the neighborhoods near the Legislative Palace of San Lázaro, who claimed that in order to pass through the zone to arrive to their domiciles, to work, or to accompany their children to school, they were ordered to show the above mentioned authorities their identifications of the Federal Electoral Institute, which added to the blockade of the zone, impeded their right to free transit.

Based on the analysis carried, the CNDH accredited violations to human rights of legality, judicial certainty, free transit, demonstration, physical integrity, and respect for constitutional immunity, motivated by the inappropriate use of public function, attributable to the public servants of the Presidential Guards and the PFP, against the then Federal Deputies of the LIX Legislature, a Senator of the Republic, as well as the demonstrators and residents of the area near the Congress of the Union.

In the same manner, the CNDH stated that the ejection of the demonstrators, effectuated on August 14th, 2006, by the PFP, was arbitrary and unjustified.

In consequence, on November 27th, 2006, the National Commission issued Recommendation 40/2006, addressed to the Ministry of Public Security and the Chief of the Presidential Guards, requesting, firstly, that the Internal Organ of Control be notified so as to initiate an administrative proceeding against the elements that exceeded the limits of the use of physical force the past 14th of August, 2006, in the immediate areas of the Palace of San Lázaro of the Honorable Congress of the Union; to notify the General Attorney's Office of the contents of the present recommendation, so that the preliminary investigation may be initiated against the elements of the PFP who violated the human rights of the then federal deputies of the LIX Legislature, of the demonstrators and neighbors of the community surrounding the Legislative Palace of San Lázaro; to grant the personnel of that Ministry the adequate training, and to release the necessary orders so that the public servants of the PFP, before any excessive use of physical force, may observe the dispositions contained in the third chapter of their law, and adopt the necessary providences so as to safeguard the human rights of persons.

It was recommended to the Chief of the Presidential Guards to notify the Control Organ and the General Assistance of the Presidential Guards so that an administrative proceeding may be initiated against the elements of that corporation who exceeded the limit of appropriate use of physical force and that limited the liberty of transit of the citizens who required access to the nearby areas; to establish the necessary coordination with the Board of Directors of the Chamber Deputies so that the protection of the legislative space may be constrained only and exclusively to the installations that are occupied by it, in both its interior and the periphery which surrounds it and that it should be subject to the limits prescribed in the Constitution; that the respect for the legal precepts that govern the juridical life of the Presidential Guards may be observed and the activities in which its elements participate should be supervised, with the aim of assuring that they are conducted in strict adherence to the law and with respect for fundamental rights of persons; to release instructions to the corresponding persons to the effect that the necessary actions may be implemented so that the personnel of the Presidential Guards are granted the adequate training for avoiding the irregularities such as those that gave origin to the present recommendation.

Recommendation 41/2006

November 29th, 2006.

Case: On the case of the minors DBGC and KMRL.

Addressee Authority: Government of the Federal District .

On March 10th, 2006, the minors DBGC and KMRL were detained by the person responsible for the business "Extra", in the delegation Miguel Hidalgo of this city, accused of robbery, which brought about the arrival to the place of elements of the Ministry of Public Security of the Federal District, who put the minors at the disposition of the agent of the Public Prosecutor's Office ascribed to the Seventeenth Agency of Central Investigation for Minors of the Public Prosecutor's Office of this city, which opened the preliminary investigation FAM/57T1/326/06-03, and who conceded them their liberty on bail of \$6,083.75 (six thousand eighty three Mexican pesos 75/100 cents) under the concept of procedural obligations, and \$5,110.35 (five thousand one hundred and ten Mexican pesos 35/100 cents) under the concept of pecuniary sanctions, which totaled \$11,194.10 (eleven thousand one hundred and ninety four Mexican pesos 10/100 cents) for each one the minors.

On March 11th, 2006, the preliminary investigation was forwarded to the Direction of Commissioners of Minors of the General Direction of Prevention and Treatment of Minors, ascribed to the Ministry of Federal Public Security, where it was registered by the ascribed Commissioner of the Department of Integration and Follow-up of Acts without Minors, who integrated the same file and put the minors under the disposition of the corresponding authority in the case, the Eighth Unitary Councilor of the Council of Minors of the Federal District, who then determined to forward the files to the archives of that institution in virtue of the fact that complaining party granted a pardon to the probable guilty persons.

As the CNDH considered that violations of human rights existed against the minors in question, it addressed a proposal of conciliation to the Sub Deputy of Justice and Human Rights of the Public Prosecutor's Office of the Federal District . In response, the General Director of Human Rights of the referred dependency stated that he lacked the elements to order an investigation into the probable criminal and or administrative responsibility of the ministerial personnel that integrated the preliminary investigation FAM/57T1/326/06-03.

Based on the above, on November 29th, 2006, the CNDH issued Recommendation 41/2006, addressed to the Chief of Government of the Federal District, with the aim that a notification should be sent to the Public Prosecutor's Office of the Federal District, to the end that an investigation should be initiated to establish the administrative responsibility in which the agent of the Public Prosecutor's Office may have incurred, who integrated the preliminary investigation file FAM/57T1/326/06- 03 in attention to the fact that this person detained the victims for a time span of six and eight and a half hours, respectively, without putting them under the immediate disposition of the Direction of Commissioners of Minors, as well as the fact that the amount of bail that was set for them to concede their liberty was not proportional to the amount robbed, as they were two chocolates, worth \$30.00 (thirty pesos 00/100 cents national currency) and there was an inadequate conservation and packing of the object of the crime, as well as notifying the Attorney General's Office of the Republic so that it may initiate the corresponding preliminary investigation.

Recommendation 42/2006

November 29th, 2006.

Case: Appeal submitted by Messrs Abel Montesinos Vélez and Abraham Vázquez González.

Addressee Authority : Constitucional Government of the State of Tlaxcala .

On July 11th, 2006, the CNDH received the appeal that Messrs Abel Montesinos Vélez and Abraham Vázquez González presented against the insufficiencies in the fulfillment by the Public Prosecutor's Office of the State of Tlaxcala of Recommendation 02/2004, issued March 2nd, 2004, by the Commission of Human Rights of that entity.

From the evidence it was determined that the Public Prosecutor's Office cited has not fulfilled the recommendation in view of the fact that the preliminary investigation 310/2004/Tlax-4, which was motivated by the committing of the crime of torture against the Messrs Montesinos Vélez, Vázquez González and others, has not been determined.

The events described in this Recommendation draw the conclusion that the procurement of justice has been delayed unjustifiably and in consequence, the human rights to judicial certainty and legality have been violated.

ased on the above, on November 29th, 2006, the CNDH addressed Recommendation 42/2006 to the Governor of the State of Tlaxcala aimed at sending instructions to the corresponding persons so that they may fulfill Recommendation 02/2004, issued by the Commission of Human Rights of said federative entity, so that at the shortest possible time the preliminary investigation 10/2004/Tlax-4 may be determined; to notify the Control Organism so that an investigation may be initiated to establish the administrative responsibility regarding the delay in the determination of that investigation.

NATIONAL ISSUES

New Regional Office of the CNDH in Campeche .

The CNDH will set in march a regional office for the attention to complaints in the city of Campeche , Campeche , with will receive accusations from migrant workers and offer to the general public services of legal orientation, among others.

The area of competence of this new office of attention will comprise also the states of Yucatán and Quintana Roo, where there is a strong presence of migrants, mainly central Americans, in their transit toward the United States .

With this office, the CNDH broadens its network of attention to the public in the south of our country, where now has four more regional offices in Coatzacoalcos, Veracruz; San Cristóbal de las Casas and Tapachula, Chiapas; and Villahermosa, Tabasco, As well as those in the north: Ciudad Juárez, Chihuahua; Reynoso, Tamaulipas; Nogales, Sonora, and Tijuana, Baja California.

IV WORKSHOP ON THE APPLICATION OF THE ISTANBUL PROTOCOL.

On the 22nd, 23rd and 24th of November, 2006, in the city of Hermosillo , Sonora , the “Workshop on the Application of the Istanbul Protocol and the Optional Protocol to the Convention against Torture” was held, which were ratified by Mexico on April 11th, 2005.

The objective of the Workshop was to train the public servants of the local instances involved in the detection and accusations of this practice, on the diagnosis and detection of the elements of torture, , as well as to create a conscience of the obligations of prevention of torture, contracted by Mexico.

INTERNATIONAL ISSUES

V Ordinary General Assembly of the Network of National Institutions for the Promotion and Protection of Human Rights on the American Continent.

On November 28th, 2006, in the city of Buenos Aires , Argentina , the 5th Ordinary General Assembly of the Network of National Institutions for the Promotion and the Protection of Human Rights in the American Continent was held.

During this Assembly, elections were held in which the National Ombudsman, José Luis Soberanes Fernández, was reelected as General Secretary of the Network.

OFFICERS

President
José Luis Soberanes

First Visitor
Raúl Plascencia Villanueva

Second Visitor
Susana Thalía Pedroza de la Llave

Third Visitor
Andrés Calero Aguilar

Fourth Visitor
Jorge Ramón Morales Díaz

Fifth General Visitor
Mauricio Farah Gebara

Executive Secretary
Salvador Campos Icardo

Technical Secretary of the Council
Jesús Naime Libián