

# NEWS LETTER

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### SPECIAL FUND FOR OMBUDSMEN AND NATIONAL HUMAN RIGHTS INSTITUTIONS IN LATIN AMÉRICA AND THE CARIBBEAN

During the event which was held August 28 to 30 in the city of Caracas, Venezuela, the Secretary General of the Network of National Institutions for the Promotion and Protection of Human Rights of the Americas formally received the Head of the Secretariat of the Special Fund for Ombudsmen and National Human Rights Institutions in Latin America and the Caribbean.

This Act was held in the presence of the representative members of the Presidency of this Special Fund.

## RECOMMENDATIONS

The following is a synthesis of the recommendations issued by the National Human Rights Commission (CNDH) during the month of August. The complete version can be consulted on the web site of this institution.

Recommendation 28/2007

August 7, 2007

Case: Appeal by Mr. Abel del Ángel Fuentes.

Addressee Authority: Constitutional Governor of the State of Veracruz.

On March 8, 2007, this National Commission opened file 2007/88/1/RL, responding to the challenge presented by Mr. Abel del Angel Fuentes, in which he manifested his disagreement with Recommendation 66/2006 issued by the State Human Rights Commission of Veracruz and directed to the Ministry of Health Services and Assistance of that federal entity, regarding the petition of compensation for damages which he formulated.

From the analysis of documentation included in this challenge, this National Commission observed that on August 19, 2005, the State Human Rights Commission of Veracruz received the complaint of Mr. Abel del Ángel Fuentes, in which are identified presumed violations of the Human Rights of his deceased wife, Mrs. Lucia Flores Alonso, by medical personnel of the Manuel I. Ávila Civil Hospital in the city of Pánuco, Veracruz, who did not provide the medical attention required by the patient and her newborn children, which motivated the opening of this file Number 7607/2005.

The State Human Rights Commission of Veracruz made the corresponding investigations and found that there exists institutional responsibility on the part of the State Minister of Health for not having had present a gynecological obstetrician who would have been indispensable for caring for the babies and their mother, and for not having had the medical equipment necessary for attending the babies, an omission which translated in the negation of guaranteeing the right to protection of the health of the wronged mother and her unborn children, which provoked her death, leading to the issuance on July 17, 2006, of Recommendation 66/2006 in which is suggested a) that an administrative procedure be begun against the medical personnel of the Manuel I. Avila Civil Hospital in the city of Pánuco, Veracruz, who are responsible for not having given the required attention to the wronged person, b) that compensatory indemnization be awarded to the husband of the wronged person due to the injury caused, c) that the corresponding agent of the Public Ministry be shown these facts, and d) that the Manuel I. Avila Civil Hospital be given personnel with the characteristics and profiles which each job position demands, so that the hospital can provide the emergency attention that may be required.

On November 16, 2006, the sub-director of Legal Affairs of Health Services of Veracruz informed the State Human Rights Commission of Veracruz the acceptance of Recommendation 66/2006, with the exception of section b).

In that respect, the National Commission considered that, effectively, in the present case there remain accredited violations of Human Rights regarding the right to life and the right to protection of health, deriving from the inadequate giving of public health service, since the Manuel I. Avila Civil Hospital in Pánuco, Veracruz has neither the necessary specialized medical personnel nor the required medical equipment, and thus, could not offer the wronged person the attention required by her state of health, resulting in her death and that of her unborn children.

As a result, on August 7, 2007, this National Commission issued Recommendation 28/2007, directed to the Constitutional Governor of the State of Veracruz, to the end that he gives instructions to the corresponding person(s) that, as soon as possible, they carry out clause b) of Recommendation 66/2006, issued on July 17, 2006, by the Veracruz State Human Rights Commission.

Recommendation 29/2007

August 8, 2007

Case: Mrs. Norma Mireyda Contreras Castro and her newborn daughter.

Addressee Authority: Commissioner of the National Migration Institute.

Mrs. Norma Mireyda Contreras Castro, a Honduran national, was detained on August 23, 2006, by elements of the National Migration Institute (INM) in Reynosa, Tamaulipas, because her legal presence in México was not accredited, and for that reason was taken to the Local Delegation of the INM in that city. On the same day she was certified to be 37.1 weeks pregnant, that she was stable and able to travel. On August 24, 2006, the Chief of the Department of Migratory Control and Judicial Affairs of that Delegation initiated the corresponding migratory proceeding, a resolution of expulsion against the migrant.

To carry out that resolution, she was taken to the migratory station of the INM in Iztapalapa, Distrito Federal. Due to her pregnancy, on September 3, 2006, personnel of that institution sent her to the General Hospital Dr. Manuel Gea González, form the Health Department, where she give birth to a girl.

On September 7, 2006, the aggrieved parties were taken to the installations of the INM in Tapachula, Chiapas, where they were expelled on September 8, 2006, as citizens of Honduras, an act that deprived the new-born baby of its right to be registered in national territory.

The information and evidence contained in file 2006/4516/5/Q shows that public servants of the National Migration Institute violated, to her detriment, the Human Rights to legality and judicial security of the foreigner Norma Mireyda Contreras Castro. Insofar as the harm done to her recently-born child, in addition to the two already cited, the right to equality, to identity, to nationality, to a name, to be registered at the moment of birth, and to legal personality; the preceding, since personnel of the INM, specifically the person in charge of the office of the migratory station of the INM in Mexico City and the Chief of the Operative Department of the INM in the same locality, in spite of the fact. that they were aware that the minor daughter of Mrs. Norma Mireyda Contreras Castro was born in national territory, did not carry out measures which would have informed Mrs. Contreras Castro of her daughter's right to be registered as a Mexican citizen and, in consequence, reconsider the expulsion of wronged persons and avoid carrying out that measure.

For those reasons, on August 8, 2007, this National Commission issued Recommendation 29/2007 to the Commissioner of the National Institute of Migration, in which the following was recommended: that corresponding administrative steps be taken to locate Mrs. Norma Mireyda Contreras Castro, a Honduran migrant, and inform her officially of the right of her daughter to be registered as a Mexican national, and in like manner inform her that said right can be exercised by both parents; that corresponding administrative measures be taken which will leave without effect the warning dictated by the INM on September 8, 2006, against Mrs. Norma Mireyda Contreras Castro and her daughter of Mexican nationality, that notice be given to the Internal Control Organ of the Ministry of Public Function in the INM which will begin, according to law, an administrative investigation procedure against the personnel of that Institute who were involved in the expulsion of the wronged persons, and in the failure to realize corresponding administrative actions to bring about the migratory regularization of Mrs. Norma Mireyda Contreras Castro, a Honduran migrant; in like manner, that an investigative administrative procedure be initiated against involved public servants of the INM who failed to dictate measures whereby the newly-born daughter of Mrs. Contreras Castro could enjoy her right to inscription in the Civil Register and to obtain a name and nationality, the preceding due to the facts listed in the chapter of observations in this Recommendation; the Internal Control Organ of the Public Function Ministry in the INM so that according to law an investigative administrative procedure be initiated against the public servants of that Institute in Reynosa, Tamaulipas, who were involved but did not fulfill their obligation to inform Mrs. Contreras Castro of her right to consular assistance; an investigative administrative procedure is to be initiated according to law before the same Internal Control Organ against the person who then was in charge of the office of the migratory station of the INM in Tapachula, Chiapas, who failed to send the report which was requested by this National Commission for the due integration of the present case; instructions are given to the corresponding persons, that they take the necessary administrative measures so that the female and male babies who are born on national soil, and whose parents be undocumented migrants, and who are at the disposition of the INM, be enrolled in the competent Civil Registry so that they may enjoy their right to name and nationality; similarly, that parents of these minors be permitted to carry out the steps necessary for their migratory regularization; instructions shall be given to the corresponding person or persons to the effect

that public servants of the INM be trained regarding the due observance of the rights of children, specifically, regarding the right of every child to inscription in the Civil Register, to obtain a name and nationality, in order to avoid in the future that they incur in omissions of irregularities such as those shown in this Recommendation.

Recommendation 30/2007

August 28, 2007

Case: Mr. José Luis Manuel Mejía Pérez.

Addressee Authority: H Government Council of the Salvador Zubirán National Institute of Medical Sciences and Nutrition.

On July 11, 2006, this National Commission received the written complaint of Mr. José Luis Manuel Mejía Pérez in which he related that on August 16, 2005, he presented himself at the Emergency Service of the Salvador Zubirán National Institute of Medical Sciences and Nutrition, since he had suffered a burn on the heel of his right foot, and no treatment was given, having been told that the wound was clean and that an implant would be made, giving him a prescription for a silver nitrate pomade. He indicated that during four months he saw various specialists, that to each of those doctors he explained the problem with his foot, and those doctors performed various studies, but none treated his foot surgically, that he was not interned and on only one occasion were antibiotics prescribed, and on the following day those antibiotics were withdrawn; that as time passed the bandage became infected, for which on December 14, 2005, he presented himself again at the emergency area with high fever and general declining health. Remaining hospitalized, he was informed that on the 16th of that month and year his foot would be amputated, a circumstance which he did not accept. He subsequently requested his release. He also indicated that he then went to the 1st of October Hospital of the Institute of Security and Social Services for Workers of the State, where his foot was amputated above the knee.

From analysis of the file, this National Commission supports the claim that, in detriment to the complainant, his right to protection of health was violated, resulting from inadequate public health service given by public servants assigned to the Salvador Zubirán National Institute of Medical Sciences and Nutrition. Due to facts presented, on March 30, 2007, a solution for the complainant via conciliation was proposed to the General Director of the Salvador Zubirán National Institute of Medical Sciences and Nutrition; nevertheless, on April 18 of the current year the legal representative of that Institute indicated that the group he represented did not accept said proposal.

On the other hand, it was announced that the Internal Control Organ in the Salvador Zubirán National Institute of Medical Sciences and Nutrition initiated file Q-000002/206-091, motivated by the complaint that Mr. Mejía Pérez presented in said dependency in which he requested from the National Medical Arbitration Commission (CONAMED) an institutional medical opinion, which concluded in its third point that "We do not observe elements of malpractice in the attention given to the patient by the general surgery service. The development of his case indicated the need for a deeper study by means of magnetic resonance, as was done." On April 17, 2007, this file was sent to the archive for lack of elements to make a determination.

This National Commission does not concur with the said decision, considering that it did not have documentation which established the cause (burns) and effect (amputation) in time, space and connection, it is not possible to emit any judgment or opinion.

From the cited material, this National Commission considers that amputation of the right pelvic member of the wronged person derived directly from delay and omission of adequate medical management from the day that the patient came to the emergency room of the cited Institute, which permitted the advance of the septic process to the calcaneus bone, and from the evidence in the clinical file it follows that during four months the attending physicians, whose responsibility was to give quality medical attention to the wronged person, permitted the infection to evolve in sepsis, a foreseeable situation which was not taken into account.

As a result, on August 28, 2007, this National Commission issued Recommendation 30/2007 to the Honorable Government Council of the National Institute of Medical Sciences and Nutrition so that, with elements derived from the investigation practiced by this National Organism, authorization was given to the Internal Control Organ in this Institute for the reopening of the investigative proceeding initiated in file Q-000002/2006-91, and that this National Commission be informed from the beginning until its resolution; the corresponding person is instructed to carry out the respective institutional measures so that the wronged person be authorized physical rehabilitation, psychological attention and a prosthesis; in addition, payment of reparation is ordered for the injury in favor of Mr. José Luis Manuel Mejía Pérez, as a consequence of the institutional responsibility deriving from the inadequate medical attention that he was given, according to the observations set forth in the cited Recommendation, and that evidence which shows its fulfillment be sent to this National Organism, and that the corresponding person be directed to impart training courses to the personnel of the cited institution, to avoid omissions in the future such as those referred to in the title of this Recommendation.

Recommendation 31/2007

28 de agosto de 2007

Case: Mr. José Antonio Sierra Rayo.

Addressee Authority: General Director of the General Hospital of Mexico.

On September 11, 2006, Mrs. Selene Aguilar Olivares presented a complaint to the Human Rights Commission of the Federal District. It was, for reasons of competence, forwarded to this National Commission. In it, she stated that her husband, José Antonio

Sierra Rayo, who suffered from cancer of the colon, received very poor attention since May, 2006, in the General Hospital of México, where he was denied admission on the grounds that no beds were available and, since his condition was terminal, priority had to be given to those patients with good chances for survival. On October 5, 2006, the complainant informed this National Commission that her husband died on September 14, 2006.

From the analysis of the file, violations are accredited to the right of protection of health which harmed Mr. José Antonio Sierra Rayo, perpetrated by doctors who attended him in the General Hospital of Mexico, based on the following considerations:

On April, 2005, the wronged person was diagnosed in the General Hospital of Mexico as having adenocarcinoma of the rectum extending to the sigmoides, for which he was admitted for the extirpation of the tumorous growth, the diagnosis of cancer having been corroborated.

On June 16, 2005, the wronged person was advised to have, as additional therapy, five doses of chemotherapy together with 25 sessions of radiotherapy during August and September, but as the surgical findings showed persistence and advance of the tumorous activity, the chemotherapy and the radiotherapy should be applied for six months, it being probable that having administered additional treatment after the surgery of April, 2005, with chemotherapy and radiotherapy for six months, he would have been afforded a better prognosis and better quality of life.

Thus, the attention and medical management given to Mr. José Antonio Sierra Rayo by the attending physicians of the Outpatient Consulting Service for Mixed tumors of the General Hospital of Mexico was inadequate, in virtue of which when he came on January 9 with urethral bleeding, hematuria plus intense pain in the area of the perineum and the lumbar region due to tumorous activity, he was prescribed only symptomatic medicine. Similarly, the public servants, as the patient continued with urethral bleeding and intense pain in the perineal and lumbar regions on February 28 and March 28, 2006, the public servants denied him admission for management of intense secondary pain due to tumorous activity, limiting themselves to prescribing ambulatory management, which was repeated on July 31, 2006, the date on which the wronged person had his final outpatient consultation.

In virtue of these facts, on August 28, 2007, the National Commission issued Recommendation 31/2007 to the General Director of the General Hospital of Mexico, in which he was asked to order and make payment stemming from the concept of reparation of damages to family members of the wronged person, as a consequence of institutional responsibility deriving from inadequate medical attention which was given, and that evidence be sent to this National Commission showing its fulfillment; in addition, this is to be overseen by the Internal Control Organ in the General Hospital of Mexico to ensure that it initiate and determine, according to law, an investigative administrative procedure against the medical personnel assigned to the Oncological Service who participated in the events; in like manner, issue instructions to guarantee that study protocols be followed which are required to integrate precise diagnosis, permitting the establishment of adequate treatment, and thereby give prompt quality medical attention to patients, thus avoiding acts and omissions such as those which led to this Recommendation; similarly, instruct the indicated persons to give training to avoid omissions in the future such as those referred to in the section of observations of this Recommendation.

Recommendation 32/2007

August 28, 2007

Case: Appeal of challenge presented by Mr. Jesús Pérez Medina.

Addressee Authority: H. Constitutional Municipal Council of Zitácuaro, Michoacán

On January 8, 2007, this National Commission opened file 2007/8/1/RI, responding to the appeal filed by Mr. Jesús Pérez Medina in which he specified as an offense the refusal of the Municipal President of Zitácuaro, Michoacán, to accept Recommendation 123/05, issued November 30, 2005, by the State Human Rights Commission of Michoacán in the file of complaint CEDLDH/MICH/01/0109//22/08/05, that was initiated due to acts committed against the complainant by members of the Municipal Police of that locality, who on August 28, 2005, brought about his arrest and injured him while he was tending the business of his son, Atelzón Jesús Pérez.

The analysis of the file shows that once the Local Organ completed its investigation of file CEDLDH/MICH/01/0109//22/08/05, it had ascertained the material facts of the complaint, due to which the Public Security Directorate of Zitácuaro, Michoacán, omitted making the report that was requested, for which reason on November 30, 2005, Recommendation 123/05 was sent to the Municipal President of Zitácuaro, but no reply was received concerning its acceptance. For those reasons, and as a result of the admission of the appeal of challenge, said Municipal President made clear to this National Commission its definite refusal to accept Recommendation 123/05 and did not present documentation to accredit the acts of police elements related to the facts which would have shown conformity with the Law.

For that, this National Organism considered that the finding of the State Human Rights Commission of Michoacán was correct and in accordance with the law when it found that elements of the Municipal Police of Zitácuaro, Michoacán, incurred in violations of the rights to legality and judicial security.

In consequence, on August 28, 2007, this National Commission issued Recommendation 32/2007, directed to the Honorable Constitutional City Council of the Municipality of Zitácuaro, Michoacán, which requests that body to issue instructions for the carrying out of Recommendation 123/05, which was emitted on November 30, 2005, by the Michoacán State Human Rights Commission.

Recommendation 33/2007

August 28, 2007

Case: Mrs. Jaime Murrieta Briones, Eugenia Cicero Rivera and Mr. Aurelio Suárez Núñez.

Addressee Authority: Constitutional Governor of the State of Chihuahua

On September 6, 2006, the National Commission had knowledge, via newspaper articles, that during the night of September 5 of that year, in Ciudad Juárez, Chihuahua, Mr. Jaime Murrieta Briones, a photographic reporter for El Diario, and Mrs. Eugenia Cicero Rivera and Aurelio Suárez Núñez, both reporters for the afternoon newspaper PM, were attacked and beaten, their vehicles damaged by bullets and their photographic cameras stolen, presumably by elements of the State Investigation Agency of Chihuahua, when they were covering the news that approximately 20 persons were disturbing the peace and drinking alcoholic beverages on the city street, a place where five vehicles of that state agency also were found.

Due to the preceding facts, personnel of this National Commission telephoned Mr. Manuel del Castillo Escalante, president of the Journalists Association of Ciudad Juárez, Chihuahua, who confirmed what was reported in the above-mentioned journalistic articles and formulated a complaint for the offense against the reporters in the events previously described, and in addition asked for participation of this Institution in following the investigation which was initiated by the Attorney General of that federal entity.

From the information and evidence which is in file 2006/4287/5/Q, it is accredited that public servants of the Chihuahua State Investigative Agency violated the Human Rights to freedom of expression, to legality, to physical integrity and personal security of Mr. Jaime Murrieta Briones, photographic reporter of El Diario, and Mrs. Eugenia Cicero Rivera and Mr. Aurelio Núñez, both reporters of the afternoon newspaper PM. Similarly, it was found that public servants assigned to the Attorney General of the State of Chihuahua violated the rights to legality and judicial security of the wronged persons because the initial investigation CZN/59/06 was not correctly completed.

For the preceding reasons, on August 28, 2007, this National Commission issued Recommendation 33/2007 to the Constitutional Governor of the State of Chihuahua, which recommends the following:

Instructions are given to the indicated persons to the effect that the Ministry of the Controller of the State of Chihuahua should begin and resolve, in accordance with law, an administrative procedure to determine the responsibility in which incurred those elements of the State Investigative Agency of Chihuahua who were involved in this matter, mindful of the considerations contained in the chapter of observations in this document, keeping this National Commission informed from the beginning to the final resolution.

Instructions are given to the concerned persons to the effect that the aforementioned Ministry of the Controller of the State of Chihuahua should begin and resolve, in accordance with law, an administrative procedure to determine the responsibility in which incurred those agents of the Public Ministry who took part in the criminal investigation file CZN/59/06 for the omissions and irregularities which are mentioned in the chapter of Observations of this Recommendation, keeping this National commission informed from its beginning to its determination.

Instruct the Attorney General of the State of Chihuahua to proceed with the realization of the investigation CZN/59/06, considering elements of this Recommendation, in order to continue with the investigation and, when convenient, determine it according to law.

The indicated person is ordered to take the necessary administrative steps so that the wronged persons may receive reparations for damage in accordance with law, in virtue of the considerations presented in the chapter of observations of this Recommendation. And that evidence which shows fulfillment of this Recommendation be sent to this National Commission.

Instructions are given to the persons concerned to implement the diffusion of a culture of respect for Human Rights through publicity campaigns directed to the general population, as well as by giving training courses directed to public servants in general, and regulatory dispositions be promoted so that elements of police groups preserve and guarantee the rights of journalists, the right to freedom of expression and to information, in order to avoid in the future that they incur in conducts similar to those described in this document. Those actions must be done periodically, and their results and impact should be able to be measured and reviewed.

Instructions are given to the persons concerned to the effect that the Ministry of the Controller of the State of Chihuahua begin and resolve according to law an administrative procedure to determine the responsibility in which public servants of the State of Chihuahua who failed to reply to the request for information made by this National Commission have incurred, in virtue of considerations presented in the chapter of observations of this Recommendation, keeping this National Commission informed from the beginning to the final resolution.

## NATIONAL AFFAIRS

7th Workshop about the application of the Istanbul Protocol and the Optional Protocol of the Convention Against Torture

On August 10 and 11 of the current year, the 7th Workshop concerning the Application of the Istanbul Protocol of the Convention Against Torture was held in the Islas Mariás Federal Penal Colony in the State of Nayarit.

The Workshop was held with the collaboration of this CNDH, the Federal Minister of Public Security, The Attorney General of the Republic, the Minister of Foreign Affairs, the Minister of the Interior, the ILANUD, and the Citizens Institute of Studies Concerning Insecurity A.C.

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