

NEWS LETTER

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THE NATIONAL OMBUDSMAN MET THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

On February 7, Dr. José Luis Soberanes Fernández, President of the National Human Rights Commission met Mrs. Louise Arbour, United Nations High Commissioner for Human Rights, to whom he expressed his concerns for the consequences in the field of liberties, that several laws resulting from the reform of the legal framework of the justice system would bring. Among these reforms, a highlighted one is the possibility of carrying out search and seizure operations houses without a warrant.

Besides, he reiterated the conviction of the CNDH that the direct participation of military effectives in public security operations must be temporary. To assume the increasing presence of soldiers in the streets or to have to accept a higher insecurity "is a false dilemma", stated the national Ombudsman, so that it is still a must to have a plan to progressively withdraw the effectives and to substitute them with the presence of prepared policemen, efficient in the fight against organized crime.

During his interview, Dr. Soberanes Fernández declared his concern for the noticeable lack of interest of several authorities in the strengthening of the State Human Rights Commissions in the country. He pointed out that, by means of the Mexican Federation of Human Rights Public Organizations, "we try to give them impulse and support; however, we do not find the expected response from other institutions of the Mexican government."

Mrs. Arbour was interested in the operations of the National Preventive Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishments, run by the CNDH. About the topic, she was informed that the visits to detention centers in Mexico City had concluded, and as a result of such visits, the first document of observations on dignified treatment and torture in the centers in charge or the former General Direction of Prevention and Social Readaptation of the Government of Mexico City, was issued.

The High Commissioner of the United Nations highlighted that, among the tasks to come, there are the respect to indigenous peoples' rights, the eradication of gender violence, of impunity and of the lack of access to justice and she offered her support for the advance of Mexico in the legislation in the issues of justice.

The National Human Rights Commission and the Office of the United Nations High Commissioner for Human Rights agreed to strengthen the actions and reflections about the challenges and different issues that the national institutions for the promotion and protection of human rights confront.

In the meeting, that took more than one hour, the five General Visitors Raul Plascencia Villanueva, Susana Thalía Pedroza de la Llave, Andrés Calero Aguilar, Mauricio Ibarra Romo and Mauricio Farah Gebara, participated in representation of the CNDH too.

RECOMMENDATIONS

The following presents a synthesis of the recommendations emitted by the CNDH during the month of February. The complete version can be consulted on the website of this institution.

Recommendation 4/2008

February 5, 2008

Case: On the case of minor VLGf

Addressee Authority: Government of the State of Oaxaca

On October 3rd, 2007, this National Commission received the complaint from MLV, in which she stated that her son, the four-year-old minor VLGf, was attacked both physically and sexually by the personnel of a private school. On May 23, 2007, she denounced the facts to the public prosecutor of the Specialized Agency on Sexual Crimes in Oaxaca City, Oaxaca, which began the prior investigation 191(D.S.)/2007.

She added that the prosecutor on sexual crimes of the Office of the Attorney General of Justice in the State of Oaxaca executed dilatory practices during the integration of the prior investigation, because nearly five months of inactivity passed, in spite of the fact that she presented all the elements of evidence she had, to the due clarification of the facts she denounced. Moreover, on August 14, 2007, the prosecution authority of the case summoned her "extraofficially" in the premises of such Office, where the mentioned prosecutor proposed her a conciliatory deal with the alleged perpetrators of the facts committed against her son.

She added that, as a consequence of the dilatory practices in the delivery of justice, at the end of September, 2007, she gave the case to the consideration of the media of the State of Oaxaca, which caused the indignation of society, and as a result, on September 29, a demonstration was performed, aimed to claim for justice and for the imprisonment of the aggressors of her son. This motivated the authorities to issue the corresponding arrest warrants, thus apprehending PR1; however, arrest warrants against PR2 and PR3 are still unfulfilled.

Due to the importance of the case, on October 9, 2007, this National Commission exerted its faculty of attraction, starting the complaint in file 2007/4183/1/Q.

In order to get the necessary elements for the case, a report on the consecutive facts of the case and a certified copy of prior investigation 19/(D.S.)/2007 was requested to the Attorney General for Justice of the State of Oaxaca, as well as a report from the General Director of the Public Education State Institute.

From the logico-legal analysis of the facts and evidences integrating the complaint file, this National Commission had the elements to prove violations to the right to due and prompt justice administration, derived from the delay in the integration of the prior investigation, as well as the unfulfillment of the arrest warrants issued by the Third Judge of First Instance in Criminal Matters in Ixcotel, Centro, Oaxaca, into the criminal cause 133/2007, attributable to staff from the Attorney General of Justice's in the State of Oaxaca.

On the other hand, although the authority issued the corresponding arrest warrants, to date, only the apprehension of PR1 has been performed. This causes a clear judicial uncertainty about the current issue and favors the impunity of the fact, contravening the right to due and prompt and due justice administration against the victim of the crime, those affected and the minor's relatives.

From all the above, this National Commission considered that, in order not to leave the conducts committed against minor VLGF unpunished, the Office of the Attorney General for Military Justice, the Office of the Attorney General of Justice of Mexico City and the Attorney General Offices of the thirty states which integrate the Federation, and the Attorney General of Justice Office of the State of Oaxaca must perform the necessary actions to accomplish the arrest warrants issued by the Third Judge of First Instance in Criminal Matters in Ixcotel, Centro, Oaxaca, into the criminal cause 133/2007 against PR2 and PR3 as soon as possible and as it is strictly deemed by law.

Therefore, this National Human Rights Commission issued the following recommendations to the Constitutional Governor of the State of Oaxaca:

FIRST. Give instructions to whom it corresponds to offer help to the victims and witnesses of the facts narrated in the chapter of observations of the current document as soon as possible, and take the corresponding security measures to avoid any intimidation or retaliating action against the affected minor, his relatives and witnesses of the facts which originated the current issue.

SECOND. Give instructions to the Attorney General of Justice of the State of Oaxaca to develop the necessary actions to fulfill the arrest warrants issued by the Third Judge of First Instance in Criminal Matters in Ixcotel, Centro, Oaxaca, into the criminal cause 133/2007 against PR2 and PR3.

THIRD. Give instructions to whom it corresponds in order to involve the Internal Comptroller in the General Attorney's Office to begin the corresponding administrative process of investigation to the Prosecutor in charge of the investigation 191(D.S.)/2007, due to the considerations marked in the chapter of observations of the current recommendation, and inform this National Commission from its beginning to its conclusion, as well as, if it is found from the investigations that a crime was committed, involve the Federal Social Representation for it to exert its attributions.

FOURTH. Give instructions to whom it corresponds so that the considerations detailed in the chapter of observations of the current document are disclosed to the Internal Comptroller of the State Public Education Institute of Oaxaca, in order to begin an administrative process of investigation against the public officers of such Institute who omitted to intervene timely and properly in the case of minor VLGF, informing this National Commission from the beginning to the conclusion of the investigation.

FIFTH. Give instructions to whom it corresponds to have the State Public Education Institute of Oaxaca giving the necessary orders to the public officers of such office, in any case of abuse of minors, to accept their responsibilities of information and immediate collaboration to prevent, assist and, if such is the case, denounce the case to the pertinent prosecution authorities and to the Internal Comptroller, without prejudice to the swift information to their hierarchical superiors, to let them know the facts, informing in due time about the actions that in the case this authority adopts for such purposes.

SIXTH. To take the measures needed to prevent and eliminate the social stigmatization of the infant victims and their relatives; and to facilitate their recovery and reintegration to their community as well as safeguard the superior interest of the minor.

SEVENTH. To adopt the measures in the administrative field, to guarantee that acts as the one which originated the current recommendation do not recur, by means of preventive and training actions in schools of the State of Oaxaca, including the psychological profile analysis of the staff who works in the education system.

EIGHT. To adopt the measures in the administrative field, needed to assure that the alleged perpetrators of a crime of sexual aggression against minors, and that due to their functions have to be in contact with minors, are immediately suspended until a final determination about their legal situation is reached.

NINTH. Give instructions to whom it correspond to have the State Public Education Institute of Oaxaca beginning the corresponding administrative process by means of which an inspection to the private school in which the minor VLGJ studied is held, in order to evaluate the quality of teaching as well as the conditions of dignity and security in which the education service is administered, and if some irregularities rise from such revision, adopt the preventing measures included in the State regulation, to bar the institution from the administration of the service until the minimum essential conditions to fulfill it are guaranteed.

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