

NEWS LETTER

Number 184

June 2008

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THE ORGANIZATION OF AMERICAN STATES (OAS) RECOGNIZES THE ROLE PLAYED BY NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

June 5 marked the first time ever that the Organization of American States (OAS) passed a resolution to acknowledge the role that National Institutions for the Protection and Promotion of Human Rights have played in the region (in our country's case it would be the National Commission of Human Rights). The resolution is based on the surveillance and promotion of fundamental rights and proposes the beginning of several joint activities in such areas.

The proposal, which seeks to strengthen National Institutions akin to the National Commission of Human Rights (Spanish initials CNDH), was formulated by Jennifer Lynch, President of the Canadian Human Rights Commission and by the Mexican Ombudsman, José Luis Soberanez Fernández, who is the current Secretary General of the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas. Said resolution was approved during the 38th General Assembly of the OAS, which was held this week in Medellín, Colombia.

The resolution presented by the General Assembly of the OAS petitions for the Permanent Council to produce a report that will help generate the proper instruments for the creation of joint activities in the field of human rights. The resolution will also focus on the sharing of experiences, suggestions and practices related to the proper manner in which complaints should be managed and handled, as well as on training and promotion activities that will help increase awareness on fundamental rights.

The CNDH considers that through this resolution's approval, the OAS is recognizing the efforts made by the National Public Institution for the defense of Human Rights in México, as well as its breadth, organization and the final results obtained in all of its duties.

RECOMMENDATIONS

The following is a summary of all recommendations issued by the CNDH for the month of June. A complete version can be found in this institution's official website.

Recommendation 23/2008

18 June, 2008

Case: The students of a private school located in Villa de Etla, Oaxaca

Responsible Authority: The Governor of the State of Oaxaca

Through the file received by the CNDH on January 4 2008, the President and Secretary of the Permanent Commission of the Federal Legislative Branch issued a statement of agreement, approved during a session held on the same day. The agreement demanded that the National Commission dictated the necessary cautionary measures to insure the physical and psychological safety and integrity of minors victimized by alleged aggressions that took place in a private school located in Villa de Etla, Oaxaca.

Since the case surpassed the interest of the Federal Entity and caught the attention of public opinion, the National Commission exercised its power of attraction on January 11 in order to learn the facts that led to the creation of complaint file CNDH/1/2008/288/Q, based on articles 60 and 14 of the Internal Rulebook of the National Commission of Human Rights

The National Commission received a complaint formulated by Q7 on December 3 2007, which described accusations of alleged violations of Human Rights committed against several teachers of a private school located in Villa de Etla, Oaxaca. Accusations were

made against public officials attached to the Attorney General's Office of the Republic, leading to the opening of complaint file 2007/5109/1/Q.

Motivated by the complaint originally filed by Q7, and based on Article 85 of the Internal Rulebook of the National Commission of Human Rights, the CNDH agreed to add the aforementioned file to complaint file CNDH/1/2008/288/Q on February 19 in order to prevent duplicity of any of the violations that took place in the aforementioned private school.

The National Commission found violations to the right to proper protection of crime victims, derived from the omission of providing the offended minors and their immediate families with medical and psychological assistance. In addition, public officials attached to the Attorney General's Office of the State of Oaxaca failed to guarantee the physical integrity of the minors.

Therefore, on June 18 2008, the National Commission issued Recommendation 23/2008, addressed to the Governor of the State of Oaxaca. The Recommendation demanded that all proper instructions be issued in order to guarantee that all damages suffered by minors A1, A2 and A3 and their immediate families be immediately repaired, including providing them with all the required medical and psychological assistance that may have derived from the actions committed against them. The Commission demands that any necessary instructions be issued as soon as possible, so that all victims and witnesses are provided with the proper security measures in order to guarantee their safety and to prevent them becoming the target of any reprisals. In addition, the Internal Control Body of the Attorney General's Office of the State of Oaxaca must initiate the proper administrative investigation procedure against the public authorities in charge of the integration and determination of initial investigation files 121(FM)/2007 and 122(D.S.)/2007.

The Internal Control Body of the Institute for Public Education in the State of Oaxaca must be thoroughly informed of all the facts included in the observations chapter of this document, so that all and any proper administrative investigation procedures may be initiated against all public officials attached to this institution that may have been responsible of omitting the opportune and necessary intervention in the cases of minors A1, A2 and A3. In addition, the Commission must be kept informed at all times of the results yielded by this investigation from start to finish. On the other hand, in all cases of abuse suffered by minors, the Institute for Public Education in the State of Oaxaca must be provided with thorough instructions, so that public officials attached to the institution are properly informed, thus immediately assuming any and all of their informative and collaborative responsibilities. All public officials responsible for seeing to these cases must make certain that offenses such as these can be prevented and, if deemed necessary, reported to the pertaining legal authorities and brought before the Internal Control Body. In addition to any and all actions taken by pertaining authorities, public officials must conduct their respective tasks without prejudice, so that their hierarchic superiors may receive accurate information on all of the facts, in an immediate and expeditious manner. Likewise, all measures deemed necessary must be taken in order to prevent and eliminate the social stigmatization suffered by child victims and their immediate families. Recovery and social rehabilitation of the victims must also be facilitated, keeping the greatest interests of minors under vigilance at all times. All administrative measures deemed necessary, such as proper training and preventive actions, must be taken in order to guarantee that offenses like the ones which led to this Recommendation do not happen again in the schools of the State of Oaxaca. Thorough analysis of the psychological profile of all personnel attached to said schools must be provided, in addition to any and all requirements needed for them to operate. By making use of its proper functions, the Institute for Public Education in the State of Oaxaca must adopt any and all administrative measures deemed necessary in order to guarantee that potential perpetrators of sexual aggression against minors are immediately separated from the children until a final resolution on their legal situation can be reached. The Institute for Public Education in the State of Oaxaca must also initiate an administrative procedure to make certain that an inspection of the school attended by the offended minors is carried out in order to evaluate the level of education and conditions of dignity and safety under which education services are provided. In the case that the inspection yields irregularities, all previously considered precautionary measures must be established on a state level to prevent the institution in question continuing to provide its current education services.

Recommendation 24/2008

24 June 2008

Case: Mrs. María Alicia Yupa Llayco, an Ecuadorian immigrant

Responsible Authority: The Commissioner of the National Institute of Immigration

On November 13 2007, the National Commission obtained a written complaint filed by Mrs. Lidia Tenesaca, of Ecuadorian nationality, from the migratory station attached to the National Institute of Immigration (Spanish initials INM), located in Iztapalapa. Actions reported in the complaint may include possible violations to Human Rights committed against Mrs. María Alicia Yupa Llayco, also Ecuadorian.

Based on the results yielded by the analysis of evidence found in file /4894/5/Q, the National Commission has established that public officials attached to the INM's migratory stations located in Tuxtla Gutiérrez and Tapachula, Chiapas, and Iztapalapa, committed violations to the Human Rights of health and life protection, as well as to legality and legal security in detriment of Mrs. María Alicia Yupa Llayco.

The conclusions above are based on the fact that medical personnel attached to the INM, responsible for providing the victim with assistance from October 20 – 26, 2007, were found guilty of negligence and incompetence, since they failed to provide an adequate diagnostic to the victim, who presented clear signs of hyperthyroidism. It was not until October 28, 2007 that one of the doctors working

for the INM's migratory station of Iztapalapa detected that the victim presented signs such as an irregular heartbeat and hyperthyroidism. Mrs. Yupa Llayco died at the "Dr. Manuel Gea González" General Hospital on November 1, 2007, at 4:30 P.M., due to thyroids storm and cardiogenic shock.

The medical personnel responsible for providing the victim with the proper attention from October 20 – 26, 2007, clearly ignored their obligations, as stated by the Official Mexican Norm NOM-168-SSA1-1998 of the Clinical File - an obligatory statement for all providers of medical attention that operate within the public, social and private sectors. This conclusion was reached due to the fact that no clinical file was produced to prove that the INM provided the victim with any medical assistance during her stay in the Tapachula and Iztapalapa migratory stations, in spite of petitions made by Mrs. María Alicia Yupa Llayco for medical attention. Although the victim did receive medical attention on different shifts and hours within the aforementioned migratory stations, no diagnostic was made of any of the health problems presented by the victim and the case was not followed up properly, until October 28, 2007 as officially recorded.

Therefore, on June 24, 2008, the National Commission issued Recommendation 24/2008, addressed to the Commissioner of the INM. The first point petitioned for the Commissioner to provide the pertaining authorities with the proper instructions, so that the Internal Control Body of the Public Function Secretary of the INM can initiate the proper administrative procedure, in accordance to the Law and against the public officials responsible for the intervention and certification of all medical attention provided to the late Mrs. María Alicia Yupa Llayco. Said measure must correspond to statements reported in the observations chapter included in this Recommendation. The second point demands for any and all administrative instructions deemed necessary to be conducted, in order to establish the psychological and physical state of immigrants sent to migratory stations attached to the INM as soon as they arrive, so that detainees found in detention areas may be provided with high quality, professional medical attention and in accordance to the terms dictated by all applicable legal norms. Finally, all administrative procedures deemed necessary must be dictated in full compliance with the Official Mexican Norm NOM-168-SSA1-1998 of the Medical File, which must be properly applied to detainees found in all migratory stations attached to the INM, whenever they petition for medical attention, so that they may be provided with adequate services. In addition, all personnel attached to migratory stations must receive training that is in full compliance with the aforementioned Norm.

Recommendation 25/2008

27 June 2008

Case: Appeal filed by Mrs. Rufina Rabadán Vázquez

Responsible Authority: The President of the Board of Directors of the LVIII Legislation of the Honorable Congress of the Free and Sovereign State of Guerrero. Members of the Honorable Constitutional Municipality of Chilpancingo de los Bravo, Guerrero

On September 28 2007, the National Commission opened file 2007/333/4/RI, in response to the contestation appeal presented by Mrs. Rufina Rabadán Vázquez, motivated by the failure to comply with Recommendation 38/2007 on behalf of the Municipal President of Chilpancingo de los Bravo, Guerrero.

Mrs. Rabadán Vázquez stated that on August 27 2006, her father in law asked police officers Arturo González Cristóbal and Marcelino Venancio Miranda, both attached to the Municipal Office of Public Safety of Chilpancingo de los Bravo, to take her husband, José Luis Casimiro de los Santos, to the municipal police precinct, due to the fact that he had been consuming alcoholic beverages for several days. The police officers in question agreed and placed Mr. José Luis Casimiro in the back of a police pick-up truck, where they told him to seat on top of the spare tire before heading for the aforementioned precinct, disregarding all security measures. On their way to their destination, Mr. Casimiro de los Santos fell off the truck and hit his head hard against the sidewalk, suffering grave injuries that eventually led to his death.

Once the pertaining motions included in file CODDEHUM-VG/204/2006-I were carried out, the Commission for the Defense of Human Rights in the State of Guerrero was able to prove that public officials attached to the Municipal Office of Chilpancingo de los Bravo, Guerrero, violated the fundamental rights of legality and legal safety in detriment of Mr. José Luis Casimiro de los Santos. For this reason Recommendation 38/2007, was issued and addressed to the Municipality of Chilpancingo de los Bravo on July 9, 2008. On August 2, said institution received file CHJSPM/067/2007, as the Trustee for the Attorney General's Office of the Municipality was able to confirm that the Recommendation had been accepted. The Recommendation petitioned for an administrative procedure to be opened against the public officials involved in the case, as well as for compensation for all damages created by this incident. However, on August 24 2007, the Municipal President reported that the second point of the Recommendation would not be accepted. In other words, it was indicated that the damage suffered by Mr. Casimiro de los Santos' immediate family would not be repaired via compensation, despite the fact that his death was caused by the deficient actions of public officials attached to the Municipality itself.

The National Commission has agreed with the scope of Recommendation 38/2007, for it seems clear that the accused public officials transported Mr. José Luis Casimiro in an illegal and arbitrary manner. In addition, once the victim found himself in their custody, the accused parties failed to adopt the proper measures of caution, surveillance and protection - all necessary measures for the fulfillment of their duties. It was this carelessness that led to the death of Mr. Casimiro de los Santos, as he hit his head hard after falling from the cargo hold of the pick-up he was riding at the time.

The National Institution feels that said procedure must be considered as pretense on the part of the responsible authorities, for they failed to take into consideration the fact that, at the time of his detention, no evidence was found to indicate that Mr. Casimiro de los Santos was carrying out any activity considered to be illegal or criminal under punitive law, much less considered as a serious offense. Likewise, there was no proof to suggest that the detention of Mr. de los Santos was the direct result of the fulfillment of a properly established and motivated order, granted by any responsible authority. Mr. Santos was found inside his home at the time of his detention and, since he recognized the administrative resolution issued on February 12, 2008, the victim was taken "as a detainee".

Moreover, no consideration was given to the fact that the public officials in question were submitted to toxic evaluation seven hours after the event and that metabolic alcoholic residue was found in the urine samples submitted by both; a concentration of 0.08 grams of alcohol was found in the systems of both accused parties, enough to produce alterations in their balance. On the other hand, it was claimed that blame for the event should be placed on the victim, since the high percentage of alcohol found in his blood was what eventually led to inability to control his movements and such claim was supported by the general physiological alterations found in his body. All of the above points to the unmistakable lack of certainty needed in order to bring a resolution to the aforementioned administrative procedure.

On June 27 2008, the National Institution issued Recommendation 25/2008, addressed to the President of the LVIII Legislation of the Free and Sovereign State of Guerrero and to the members of the Honorable Constitutional Municipality of Chilpancingo de los Bravo, Guerrero.

The CNDH deems that compensation for the damage suffered must be paid, in accordance to the corresponding Law and in full compliance with laws established by the Second Paragraph of Article 113 of the Political Constitution of the Mexican United States, as well as to Articles 70, 72 and 73 of the Law of the National Commission of Human Rights.

Recommendation 26/2008

30 June 2008

Case: Mr. AI and others

Responsible Authority: Attorney General of the Republic

On November 10, 2006 and February 2, 2007, the National Commission received the complaint files presented by federal public attorneys attached to the Second District Court of the State of Guanajuato. Through the complaints they presented, the aforementioned attorneys reported alleged violations to the Human Rights of A1, A2, A3, A4, A5 and A9, claiming that public officials attached to the Attorney General's Office of the State of Guanajuato and members of the Mixed Unit for the Attention of Small Commerce (Spanish initials UMAN), an institution located in Irapuato and Guanajuato City, Guanajuato, had savagely beaten the victims during the time they had been held in detention.

Likewise, the accusing parties reported that, even as they were issuing their statements, while held in their homes though no warrants for their arrest had been presented to them, the victims had clearly sustained injuries during the time spent in detention. However, the facts were ignored by agents attached to the Prosecution of any responsible Jurisdiction, such as the Federation, which constitutes impunity.

On the other hand, a complaint reported by the joint public defense attorney of the First District Court of the State of Guanajuato was received via fax on February 1. Through the complaint, the attorney in question stated that public officials attached to both the Attorney General's Office of the State of Guanajuato and UMAN, had broken into the homes of A6 and A7 violently, and proceeded to beat both victims. The attorney added that the victims had then been put inside a truck and taken to the back of Los Olivos graveyard, where the beatings had continued. Both victims were held in the graveyard for approximately three hours. During this time they received constant hits to the ribs, thighs and face as a means of torture, so they would confess to selling drugs.

Afterwards, another complaint was received on June 6, 2007 from a public defense attorney attached to the Second District Court of the State of Guanajuato. In this case, the complaint reported that public officials attached to the Attorney General's Office of the State of Guanajuato and members of UMAN, had broken in violently into the home of A8, where they proceeded to destroy the victim's home, in addition to detaining her. The victim stated that she was tortured physically and psychologically from the moment she had been detained until she had been transported to the facilities of the General Attorney's Office. The victim was put under arrest at 4:00 am, on April 12, 2007 in San Miguel de Allende, Guanajuato and not transported to Guanajuato City until 6:00 am on the same day, despite the fact that the authority responsible for handling this particular case was located in San Miguel de Allende.

Results from the analysis conducted to obtain evidence has led the National Commission to ascertain that violations to the Human Rights of legality, legal safety and physical, and psychological integrity were committed; violations that can be attributed to the cruel and/or degrading treatment under which victims A1, A2, A3, A4, A5, A6, A7 and A8 were subjected to. All of the aforementioned violations can be attributed to public officials attached to the Attorney General's Office of the State of Guanajuato and to any public officials attached to the Attorney General's Office of the Republic who may be found guilty of omission.

As a consequence, the National Commission believes that the facts must be considered as typical actions of torture, since the victims were beaten either at the time of their detention or well before they had been placed under the responsibility of the Attorney General of the Republic. Such actions constitute a violation that qualifies as a crime against humanity, implying that an attempt was made against legal safety and legality, as well as an offense against the right to physical and psychological integrity, and respect that all human beings are entitled to.

Therefore, on June 30 2008, the National Commission issued Recommendation 26/2008, addressed to the Constitutional Governor of the State of Guanajuato and to the Attorney General of the Republic, petitioning the following:

To the Constitutional Governor of the State of Guanajuato: clear instructions must be issued to assure that the right to receive the necessary medical and rehabilitation services is provided to those persons victimized by physical or psychological torture, so that they may recover to the state they were in before suffering violations to their Human Rights. Such actions must be carried out through the implementation of measures meant to include the repair of material and immaterial damages caused by torture. On the other hand, any authorities deemed responsible must be properly instructed and, in full compliance of the Law, initiate and determine an investigation against the ministerial police agents and social representatives of the Attorney General's Office of the State of Guanajuato attached to UMAN and involved in the facts that originated this statement. The investigation must be based on considerations established in the observations chapter of the Recommendation and the National Commission must be kept informed of the results of the investigation from start to finish. Likewise, the Office of the Governor of Guanajuato must issue the proper instructions to any authorities deemed responsible so that the Secretary of Public Affairs of the State of Guanajuato may oversee the initiation and determination, in accordance to the Law, of an administrative investigation procedure held against the public officials attached to the Attorney General's Office of the State of Guanajuato, based on the observation chapter of the Recommendation. The National Commission must be kept informed at all times, from the moment the investigation is initiated and until a certain determination is reached. At the same time, all public officials responsible of public safety, be it in the areas of crime prevention and the procurement of justice or in the areas of the execution of sentences, must receive clear instructions in order to avoid any problems concerning miscommunications, detentions or mistreatment that may derive in the practice of torture, be it physical and/or psychological.

Medical inspectors must be provided with video and audio recording equipment that will assist them in medical revision procedures in order to guarantee better impartiality and objectivity in the work done by said public officials. In addition, all interrogation procedures carried out by agents of the Prosecution must be recorded by public officials or the defense attorney must be allowed to record the interrogation. Likewise, instructions must be issued to the pertaining authorities, so that personnel attached to the Attorney General's Office of the State of Guanajuato receive adequate training with regards to Human Rights in order to prevent similar irregularities such as the ones that led to the production of this document.

To the Attorney General of the Republic and the Constitutional Governor of the State of Guanajuato: the necessary institutional measures must be implemented and followed by all agents of the Prosecution of the Federation, legal-medical and/or inspectors, and all other personnel attached to the Attorney General's Office of the Republic. Said measures must assure that specialized medical-psychological investigations in cases of torture and/or mistreatment can be carried out to help guarantee that omissions such as the one observed in the Recommendation in question can be avoided. In addition, a strategy that involves federal and state authorities must be defined within the legal framework provided by the General Law that Establishes the Bases for Coordination of the National System of Public Safety so that the foundation and proper actions can be established in order to provide adequate prevention of torture. For this purpose, personnel of all Public Safety Offices and all authorities in charge of sentences, in addition to all medical personnel must receive proper training and kept constantly updated on matters such as Human Rights, opposition exams, periodical evaluations, and selection contests for all areas of public safety, ranging from crime prevention to law enforcement and sentence execution. Policies concerning subjects such as physical and psychological torture must be reinforced in order to insure that justice is served swiftly and completely. Finally, adequate measures must be taken in order to insure that the alleged victims of torture, all witnesses and those responsible for conducting the investigation, as well as their immediate families, may be placed under protection from any acts or threats of violence or any other type of intimidation that may result from the investigation.

DOMESTIC ISSUES

June 12, World Day Against Child Labor

The National Commission of Human Rights considers that the validity of the rights of children is still far from translating into better living conditions for approximately five million minors currently forced to work under unhealthy conditions or victimized by the illegal exploitation that is child labor in our country.

Poverty and social disparity are still the reigning conditions that influence the vulnerability of the rights of children the most. Especially, in the case of children who find themselves forced to work under deplorable conditions to fulfill their need to sustain themselves.

Guaranteeing better health, education and attention conditions for all children must continue to be a priority in our country; a priority that the three levels of government must see to.

According to Statistics provided by the International Labour Organization (ILO), there are approximately 250 minors in the world between ages five and 14, who are forced to work and, over 100 million girls and boys have to work under unhealthy and high risk conditions, considered to be the worst kinds of child labor.

In México, the right to work is regulated by Articles 5 and 123 of the Political Constitution of the Mexican United States and by its regulating rules. Some of the prerogatives that minors under 16 must have are the following:

All minors must have complete freedom to choose the best work with no restrictions other than legality,
Minors must be provided with the freedom to continue with their obligatory education,
Medical exams must be constant and free of charge,
Retribution for the work done must be fair,
Equality at work,
No discrimination,
Working days must be six hours long for six weeks a day,
Minors shall not work after 10 PM,
Minors have the right to 18 vacation days per year,
In addition to each and every prerogative enounced in the Constitution and its regulating laws.

For the CNDH, consolidation of an environment that offers integral protection to our girls and boys is a priority. The respect of children's fundamental rights is of primordial interest within the agenda of the Mexican nation. A social structure that celebrates its daily human development in an integral and sustained manner is required. Economic, political, social, cultural and additional investments made in their favor will mean that minors can take full advantage of their human rights.

Through its Program on the Affairs of Women, Children and Family, the CNDH has encouraged girls and boys to express themselves freely, so that their opinions receive the proper attention. The program also promotes respect to the rights of children within families, schools, communities and states, so that the practice of any kind of exploitation related to work can be eradicated.

FOREIGN ISSUES

Regional Conference for Latin America and the Caribbean Preparatory for the Durban Revision Conference

On June 17, the Regional Conference for Latin America and the Caribbean Preparatory for the Durban Revision Conference was held in the city of Brasília, Brazil. The Conference was attended by representatives of the American National Institutions of Human Rights, Ecuador and México. The latter attended as the representative of the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas.

After analyzing the first draft of the final document presented in the Regional Conference, a difference with regards to the absence of reference of National Institutions of Human Rights was noted, in spite of the fact that multiple references were made concerning the role played by civil society organizations. It was also noted that in spite of the above, paragraphs 34 and 75 of the first draft made reference to National Institutions, understanding that these institutions are responsible for the production and implementation of public policies that seek to eliminate discrimination, while promoting racial equality and not as National Institutes under the terms of the Principles of Paris. Therefore, the National Institutions that were present during the Regional Conference issued a communiqué addressed to the Conference's Secretariat, stressing the need to establish the scope of paragraphs 34 and 75 as they are in the original draft of the document under discussion. It must be said that the manner in which the term "National Institutions" is used in the aforementioned paragraphs does not correspond to the content of Resolution 48/134 of the U.N.'s General Assembly or to Resolution 2005/74 of the National Commission of Human Rights. For this reason, it was suggested that institutions referred to in paragraphs 34 and 75 must be deemed as "Special Government Bodies", since such institutions are in charge of elaborating and implementing public policies on this subject.

With regards to National Human Rights Institutions (NHRI) themselves, a proposal was made to include a new paragraph 10: "Recognizing the work being done by National Human Right Institutions in their current state as independent actors in the struggle against racism, racial discrimination, xenophobia and all other related forms of intolerance, which can be defeated through the promotion and protection of human rights." Likewise, a new paragraph 76 was included: "Exhorting States to guarantee the independence of all NHRI, along with an effective inter-relation and coordination with Special Government bodies, as well as with other actors found within civil society".

Finally, the main accomplishment of this Conference was the direct reference made about National Human Rights Institutions, as well as recognition of the importance of the work done by such institutions in the fight against discrimination, just as the final document of the Regional Conference clearly reflected.

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