

# NEWS LETTER

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### THE CNDH IN REGARDS TO THE STATEMENTS OF FORMER OMBUDSMAN JORGE CARPIZO MCGREGOR

In regards to some opinions given as press statements last September 9 of the current year by the former ombudsman Jorge Carpizo McGregor, the Human Rights National Commission answers as follows:

Many years since, the evolution and function of the institution of the Ombudsman in our country have been a permanent topic of debate and discussion by a number of scholars and specialists, as well as civil organizations and social groups of a variety of tendencies. This is a debate that the very CNDH encourages and which best results are enrichening. However, the CNDH rejects that, with the pretext of the exertion of that right, as it is clear in this case, it is used to manage a misleading criticism as an instrument of pressure groups, in a possible attempt to exert a decisive influence from now on in the process of institutional succession of the national Ombudsman in 2009.

As an autonomous institution of defence and promotion of the human rights, assisting and solving complaints for alleged abuses of the authorities, the CNDH has achieved to have for eight years a stable position, superior to 7 points in average, in the citizenry acceptance and confidence index, in the independent surveys developed by, among others, the UNAM, IFE-Segob, Gaus A.C., Consulta Mitofsky, Ipsos-Bimsa, Alduncin y Asociados, Ulises Beltrán y Asociados. The CNDH is placed among the five institutions with higher national acceptance and confidence.

The expenses and execution of the programs of the CNDH are subject to the evaluation, supervision and control of several external and internal instances, such as the Superior Auditing Body of the Federation; the H. Chamber of Deputies, by means of periodical reports sent by the Finance and Public Credit Secretary. The institution is as well supervised by the annual revised study of the Financial and Budget Statements, performed by the accounting offices authorized by the SHCP, the Internal Auditing Body and the compulsory annual reports of the president of the CNDH.

## RECOMMENDATIONS

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

Recommendation 44/2008

September 11, 2008

Case: Discrimination in the International Airport of Mexico City

Addressee Authority: Mr. Genaro García Luna, Public Security Secretary and Mr. Luis Téllez Kuenzler Communications and Transport Secretary

On February 14, 2007, this National Organism received the complaint of A1, who referred that on February 10, 2007, in the flight 907, coming from Zacatecas, Zacatecas, and towards Mexico City, he asked a flight attendant for an airport aisle wheelchair to descend from the airplane and when he arrived to the mentioned airport, the wheelchair had not been set. After 15 minutes, he asked another flight attendant how long he had to wait, and the answer was that the chair had not been timely requested. He asked his assistant, in view of the situation, to help him to his own manual wheelchair, which was in the equipment compartment and he made his way out on

that means of transportation. Nevertheless, between the national and the international terminals, he was intercepted by elements of the Federal Preventive Police (PFP), who led him to the offices of the Civil Aeronautics General Direction, later on to the District Attorney's Office Public Prosecutor, and finally, to the Federation Social Representation, facts which were the origins of file 2007/710/1/Q.

Additionally, on March 16, 2007, A1 had submitted another complaint by phone, in which he stated that, in that date, during the flight 214 coming from Oaxaca, Oaxaca, he realized of the mistreatment suffered by a female passenger by the crew and that he had recorded what had happened. Because of this, when the airplane landed in the airport of Mexico City, and being in the remote station number 42 of the runway, the captain order to retain his manual wheelchair to keep him from descending from the airplane, for he had to be interrogated by elements of the PFP, which opened file 2007/1284/1/Q. On September 2, 2008 this institution, supported by article 85 of the Internal Rule of the Human Rights National Commission, agreed to accumulate to file 2007/710/1/Q the diverse file 2007/1284/1/Q.

From the analysis of the evidence appearing in the aforementioned files, this National Commission proved the violation to the Human Rights of A1 to legality, to freedom and to judicial certainty, caused by the illegal deprivation of freedom he suffered by elements of the Federal Preventive Police, due to the fact that the petitioner, on February 10, 2007, was held inside the facilities of the International Airport of Mexico City, and who was pretended to be taken to the Civil Aeronautics General Direction without having done any illicit action, and was later on taken to the social representative of the District Attorney's Office and, finally was presented to the Federal Public Prosecutor in a period of more than three hours; these ministerial public officers, within to the limits of their function and according to their attributions, stated that they did not count with elements to open any investigation against the petitioner. Therefore, this institution concluded that the elements of the PFP of the Public Security Secretary violated the Human Rights to legality and judicial certainty.

On the other hand, it was proved that the Human Rights to judicial certainty and to legality were violated, as they are provided in articles 14, second paragraph, and 16, first paragraph, of the Political Constitution of the Mexican United States, as well as the right to equality, due to the discriminatory treatment for the handicapped, held in the 1st article, third paragraph of the Political Constitution of the Mexican United States against A1, by the public officers of the Civil Aeronautics General Direction, depending on the Communications and Transports Secretary, due to the fact that, on February 10 and on March 16, 2007, in the arrival of flights 907 and 214, respectively coming from Zacatecas and Oaxaca, in the first date the petitioner was denied from the airport aisle wheelchair that he required for his mobilization, and in the second, without any justification and for the order of the captain of the airplane, the crew took away A1's manual wheelchair and he was barred from the descent from the airplane, keeping the petitioner for approximately one hour and a half in the place, denying thus the petitioner the commodities for his mobilization in equal and non-discriminatory conditions.

Therefore, on September 11, this National Commission issued Recommendation 44/2008, addressing the Secretaries of Public Security and of Communication and Transport, in which the Public Security Secretary is requested to give instructions in order to repair the moral and material damage caused to A1, as a consequence of the institutional liability in which they incurred, in the terms of the stated considerations in the body of this Recommendation, informing this Institution from its beginning to its conclusion. On the other hand, it is requested to involve the Internal Auditing Body of the PFP to open an administrative investigation procedure against the elements that surpassed their limits of action on February 10, 2007 in the facilities of the International Airport of Mexico City, based on the considerations stated in the chapter of observations of the Recommendation, informing this National Commission from its beginning to its conclusion; likewise, to instruct the elements of the PFP about the hypotheses that support the detention of a person, as well as the administrative liabilities that can be held derived from the excess or omission in which they can incur. As well, to adopt the corresponding internal measures to avoid the repetition of acts like those which were the topic of this Recommendation, informing this National Commission the results obtained; likewise, to give instructions to whom it is relevant to implement the actions needed to give the staff of that Secretary the adequate training in matter of maintenance and respect to the Human Rights; as well, to teach the functions and attributions of the crew of aircrafts during the flight and in land, to avoid situations as those happened on February 10, 2007.

It was requested to the Communications and Transports Secretary to give instructions to compensate the moral and material damage caused to A1, as a consequence of the institutional liability incurred, in the terms and considerations stated in the body of this Recommendation, informing this National Commission from its start to its conclusion. On the other hand, it is requested to involve the Internal Auditing Body of that Secretary to open an administrative investigation process against the public officers appointed to the Civil Aeronautics General Direction for the omissions incurred on February 10 and March 16, 2007 in the facilities of the International Airport of Mexico City and as well, to involve the Public Prosecutor, based on the considerations marked in the chapter of considerations of the Recommendation, informing this National Commission from its start to its conclusion. Likewise, it is requested to instruct the public officers of the Civil Aeronautics General Direction about the procedure that the reports delivered by airline staff or the very passengers will have, in order not to repeat the facts that are the origin of this Recommendation. As well, it is requested to give instructions to whom it may concern in order to make the licensees and suppliers of air transportation fulfil the Application of Guidelines for the Access of Handicapped People to Airport Facilities, as well as the norm issued on that matter and to implement the mechanisms or guidelines needed in order to avoid that the captains and staff of the aircrafts, during the flights and in land, incur in irregular actions as the ones that are the origin of the current document. Finally, it is requested to instruct to whom it is relevant in order to implement the actions needed to give the personnel of the Civil Aeronautics General Direction the adequate training in the matter of compliance and respect to the Human Rights.

Recommendation 45/2008

September 11, 2008

Case: Discrimination due to health problems towards elements appointed to the Secretary of Navy because they suffered from HIV  
Addressee Authority: Admiral Secretary C.G. Dem Mariano Francisco Saynez Mendoza Secretary of Navy

The National Human Rights Commission issued Recommendation 45/08, addressing the Secretary of Navy for the case of two elements of that institution, who were discharged from the active service – retirement for presenting permanent uselessness for acts off duty -, when they were detected as infected with the Human Immunodeficiency Virus (HIV), with the argument that the legislation that rules the armed forces considers their case, in spite of the fact that the Supreme Court of Justice of the Nation considered the grounds for retirement based on that motive unconstitutional.

The first case is referred to the written complaint delivered by Mr. A1 in this National Organism on July 3, 2007, in which it is stated that in January, 2007, he was submitted to a surgery in the Navy Hospital of the Port of Veracruz, where several tests were developed on him, among which, it was the HIV test, from which he resulted to be positive.

The second case was started by the complaint presented on December 10, 2007, by Mr. A2, who stated that, on July, 2007, he was notified that he had been discharged, from June 1, for presenting uselessness for acts off duty, because the virus had been detected on him, act that he considered discriminatory, assuring that, besides, he had acquired the virus in the surgeries to which he had been submitted in the Navy Medical Center.

On October 24, 2007, the Directive Board of the ISSFAM, granted him the compensation economical benefit, decision that was confirmed by the Finance and Public Credit Secretary, and against which the Sixth Metropolitan Regional Court of the Administrative and Financial Federal Court of Mexico City demanded its nullity, and which verdict is pendant.

From the analysis of the information that was collected by the personnel of this National Organism in charge of the case, violations to the human rights of equality and of no discrimination for health problems, as well as to legality and judicial certainty were proved.

This was done due to the fact that the expert reports elaborated by medical personnel of that institution indicated that those affected required strict medical surveillance and that they could not develop activities that the active service to the Army requires due to their changing clinical situation and the need to count with continual medical service. The unfulfilment of the limitations of the disease, to develop high performance physical activities, poor medical surveillance and minimal follow-through to the pharmacological treatment could cause an accelerated deterioration and death in the short term.

It is noticeable that the authorities of the Secretary of Navy argue to the CNDH that, since their recruitment in the service to the arms, the personnel accepts to be subject to the duties and attributions that the laws and regulations of the Navy of Mexico, so that "the application of the legislation does not constitute an act of discrimination."

The argument is unacceptable for this National Organism, since the determination of that public entity against the individuals A1 and A2, in retiring them from the service for uselessness for health reasons is supported in article 226 of the Law of the Social Security Institute for the Armed Forces, and such Law cannot be worthier that the Political Constitution of the Mexican United States, which forbids the practice of any act of discrimination or the damage to the rights and liberties of the people, as well as the right to the protection of health.

As well, such legal precept was declared unconstitutional in Full Session of the Supreme Court of Justice of the Nation, since February 27, 2007, with the approval of the case law thesis 131/2007, dated October 15, 2007, stating: "Article 226, second category, fraction 45, of the Law of the Institute related, that considers the legal cause of retirement for uselessness based on the seropositivity to antibodies of the Human Immunodeficiency Virus (HIV), violates Article 1 of the Federal Constitution."

Likewise, paragraph 4 of the Mexican Official Norm NOM-010-SSA2-1993, for the Prevention and Control of HIV Infection points out the ways of transmission of the disease and that the HIV positive people are not necessarily agents of infection or are useless to develop the functions required by the Army.

The National Human Rights Commission determined to issue Recommendation 45/08, addressing the Secretary of Navy, Admiral Francisco Saynez Mendoza, to give instructions to repair the moral and material damage to the ones affected, for the institutional liability incurred in, and to set aside the procedures of retirement, performing the clinical expert opinions in which the development of the disease is detailed and to practice the ones affected the exams to value their physical and mental abilities in order to decide about the convenience of their reassignment.

Besides, it is requested to carry on supplying the proper benefits of social security, particularly the health service. It is also requested to train the staff of the Secretary of Navy to apply the judicial norm, especially if they are resolutions issued by the highest court of the

country to achieve an effective protection of human rights. Finally it is requested to adopt preventive measures to avoid the repetition of discriminatory acts.

Recommendation 46/2008

September 11, 2008

Case: Appeal of Mr. Demetrio Reynosa Cantor

Addressee Authority: Deputy Martín Mora Aguirre, President of the Directive Board of the LVIII Legislature of the H. Congress of the Sovereign and Free State of Guerrero; Members of the H. City Council of the Municipality of Teloloapan, Guerrero

On May 15, 2008, this National Commission received the impugnation document presented by Mr. Demetrio Reynosa Cantor, in which he manifests his disagreement for the rejection of Recommendation 071/2007, issued by the Human Rights Defence Commission of the State of Guerrero and addressed to the H. Constitutional City Council of Teloloapan, in the aforesaid State, so that file CNDH/5/208/141/RI was opened.

From the analysis of the documents comprehended in the appeal, this National Commission noticed that on May 7, 2007 the State Commission received Mr. Demetrio Reynosa Cantor's complaint, in which he points out alleged violations to his human rights, perpetrated by public officers of the municipality of Teloloapan, since the mayor and the secretary of this municipality sent an official document to him on April 11, 2007, by means of which they let him know the contents of the agreement issued by the municipal town hall on March 26 of the same year, in which it was decided to build a street that would affect his property, situated in the community of Tianquizolco Ixticapan; he was as well ordered to cooperate as it was needed with the staff of Public Works and Urban Appearance.

The plaintiff added that afterwards, some public officers went to his address and he pointed out that he did not agree in the building of the street, because his property was small and they left immediately. He stated as well that, on May 4, other public officers went to his address again along with some neighbours of the community and that they proceeded to demolish the wooden and barbed wire fence that rounded the southeast side of his property and removed the loose stones that were in that place. Then, with an axe and a chainsaw, they cut down several fruit trees and destroyed part of the backyard made of concrete, a little rustic bathroom and levelled off other fraction of the property for the new street. Finally he stated that, when he demanded to be shown a legal order to perform the aforesaid actions, they did not have one such order so they left.

Once the Human Rights Defence Commission of the State of Guerrero had developed the corresponding investigations and estimated that the human rights of the petitioner had been violated, on December 6, 2007 the Recommendation 071/2007 was addressed to the members of the H. Constitutional City Council of Teloloapan, of the aforesaid State, authority that did not respond in regards to the acceptance of the Recommendation.

In the integration of the disagreement settled by the plaintiff, this National Commission requested the members of the Constitutional City Council of Teloloapan, Guerrero, the corresponding report, and that authority has not given response to date, so that, in this case the facts were considered true according to the contents of Article 65, second paragraph of the National Human Rights Commission Law.

Regarding this case, this National Commission considered that, actually, the violations to the human rights to legality and judicial certainty of the petitioner were proved, since the public officers of the Constitutional City Council de Teloloapan, did not provide any proof to the administrative procedure considered in articles 2, 3 and 4 of the Expropriation Law of the State of Guerrero, fulfilling the requirements that this legal precept establishes and that essentially consists in the following: It is responsibility of the Executive Power of the State, by itself or on requirement of any municipality or a particular, to declare public utility and order, if it the case, the definitive occupation in benefit, among others, of the collective of a municipality; the aforementioned declaration must be published in the Official Diary of the State and must be personally notified to those affected, who can lodge an appeal for the appeal of revocation against the corresponding declaration.

Therefore, on September 11, 2008 this National Commission issued Recommendation 46/2008, addressing the President of the Directive Board of the LVIII Legislature of the H. City Council of the Sovereign and Free State of Guerrero, in order to request the investigation of the possible administrative liability of the public officers of the Constitutional City Council de Teloloapan, that omitted to answer both the request for information made by the Human Rights Defence Commission of the State of Guerrero and this National Commission and to the members of the aforementioned City Council, in order to instruct whom it was relevant to accomplish Recommendation 071/2007, issued by the State Commission on December 6, 2007.

Recommendation 47/2008

September 18, 2008

Case: Of Mr. Armando Valencia Ramos

Addressee Authority: Constitutional Government of the State of Sonora

On December 14, 2007, this National Commission received a complaint of Mrs. María del Carmen Ramos Rivera, in which she manifested that her son, Mr. Armando Valencia Ramos, who was an intern in the Social Readaptation Center of Agua Prieta, Sonora, died due to the lack of medical attention required inside the center.

She added that beginning January, 2007, her son presented a pain in the chest, back and head, and in spite that in several occasions he requested the medical attention, he was only supplied with serum. Finally, she stated that, on November 28, 2007, she was informed that, as the health condition of her relative was grave, he had been moved to the General Hospital of Health Services of Sonora in Agua Prieta, and that on November 30, 2007 he had been taken to the General Hospital of the Social Security Mexican Institute in Agua Prieta, Sonora, where she was told that he had meningitis and pneumonia, and on December 3, 2007 he was transferred to the General Hospital of the Mexican Social Security Institute in the city of Hermosillo, Sonora, where he died the following day.

For the due integration of the complaint file, information was requested to the coordinator of Attention to Complaints and Orientation to the Right Holder of the Social Security Mexican Institute, to the Warden of the Social Readaptation Center of Agua Prieta, Sonora, to the director of the General Hospital of Health Services of Sonora in Agua Prieta, and to the General Attorney of Justice of the aforesaid State, who sent diverse certificates related to the facts under investigation.

The file was entered in this National Commission with the number 2007/5191/3/Q, and from the logical judicial analysis of the gathered information it was noticed that the authorities of the Social Readaptation Center of Agua Prieta, Sonora, violated Mr. Valencia Ramos's right to health protection, since the medical attention given in that place was inadequate and the function of guaranteeing his physical and psychological integrity was not fulfilled. So, in diverse dates of the months of March, April and November of 2007 the intern went to the medical area for the incidence of fever, vomits, diarrhoea and headaches. Because of this, the medical staff appointed to the institution applied a treatment based on antipyretics and antibiotics by intravenous line.

On November 23 of the same year, when he was evaluated by a doctor of the aforesaid institution, it was mentioned that the affected one suffered from prison psychosis, and on November 28 of the same year, the nursing staff referred that he presented indifference to reality, soliloquies and lack of sphincter control, so that, on this date he was moved to the General Hospital of Health services of Sonora in Agua Prieta, where he was diagnosed neurological decay and comma.

Later on, Mr. Valencia Ramos was sent to the General Hospital of the Mexican Social Security Institute in Agua Prieta, Sonora, where he was detected with meningitis and it was decided that he required attention of the Infectology Service, and he was sent to the Zone General Hospital number 2, in Hermosillo, Sonora, where it was observed that he presented a 3-month history characterized by headache and fever, as well as comma, stiff neck and alteration to feet stimulation, calling his death on December 4, 2007 due to bacterial meningitis.

Based on the facts exposed, on September 18, 2008, this National Commission issued Recommendation 47/2008, addressing the Constitutional Governor of the State of Sonora, in order to request him to order and perform the payment for the proper concept of reparation of damage, in the terms of the considerations stated in the body of the aforesaid Recommendation; to involve the Internal Auditing Body of the State to start, according to Law, an investigation to determine the administrative liability in which the personnel of the Social Readaptation Center of Agua Prieta, Sonora, involved in the facts described may have incurred; to give instructions to whom it is relevant to perform the needed actions to, from now on, give an adequate and timely medical attention to every and each intern in the aforesaid penitentiary institution, specially in the case of those that suffer from an infectious and contagious disease and to inform the National Human Rights Commission about these situations.

Recommendation 48/2008

September 19, 2008

Case: Of VZL, ANSB, JHP, RAP and LMTP

Addressee Authority: Migration Nacional Institute

On March, 16, 2007, the immigrant VZL, Honduran, was submitted to a body revision by an element of the Auxiliary Police of Private Security Services, who, in order to perform the revision, forced him to pull down his pants and underwear up to his ankles, as well as pulling his shirt up to his neck, in a place where public officers of the Migration Station XXI Century of the Migration National Institute (INM) in Tapachula, Chiapas, as well as other immigrants and cleaning staff passed by constantly.

Likewise, on March 20, in the aforesaid Migration Station, ANSB, JHP, RAP and LMTP, all of them Cuban, were also submitted to a body revision by elements of the Auxiliary Police of Private Security Services, forcing them to pull down their shorts or trousers and the underwear up to their ankles. Besides, ANSB and RAP, were touched in the testicles by elements of the Auxiliary Police with their hands covered with a nylon bag; all this was performed in presence of staff of the INM and two women of the cleaning staff.

From the aforementioned facts it is noticed that the practice of the body revision of the immigrants was developed by elements of the Auxiliary Police of Private Security Services; as well, for this National Commission it is as worrying that these revisions constitute a

systematic and reiterative practice, as it can be seen in the statements rendered both by the staff of the Auxiliary Police of Private Security Services and the Migration Federal Officers appointed to the Migratory Station XXI Century of the INM, in Tapachula, Chiapas, the former acting with the consent and tolerance of the public officers of the Migration National Institute, as the fact that the practice is not only happening in the Migration Station of Tapachula, but also in other migration stations, as it was proved in Recommendation 64/2007.

Likewise, it could be established that the migration authority allows this kind of revision by the elements of the Auxiliary Police of Private Security Services.

From the logical-judicial analysis of the facts and the evidence that build up the complaint file number 2007/1595/5/Q, this National Commission observes that the Human Rights of ANSB, JHP, RAP and LMTP to humane treatment, to legality and judicial certainty, and to privacy and intimacy were violated, which derived in cruel, inhuman and degrading treatment.

Therefore, this National Commission, on September 19, 2008, issued Recommendation 48/2008, addressing the Commissioner of the Migration National Institute, in which it is recommended to involve the Internal Control Body of the Public Function Secretary in the INM in the facts pointed out in the chapter of observations of the current Recommendation; to involve the Under-Secretary of Citizen Protection and Security of the State of Chiapas, to develop an administrative procedure in regards of the facts stated in the chapter of observations of the current Recommendation, to determine the liability of the auxiliary policeman PAOTC; to give instructions to whom it is relevant to forbid Mr. PAOTC, from the Auxiliary Police of Private Security Services, to have any contact with the immigrants that are detained in the Migration Station XXI Century, in Tapachula, Chiapas; to give instructions to whom it is relevant to create the rules or procedure manuals that must be performed by the staff of the Migration National Institute, in regards of the body and belongings revision of immigrants that are detained in the migration stations of the INM; to give instructions to whom it may concern, according to article 59 of the Agreement by which Norms for the Function of Migration Stations of the INM are Issued, to teach formation and training courses to public officers appointed to the migration stations of the INM in the country in order to achieve that the body revisions done to foreigners detained in their facilities are developed with strict respect to their Human Rights of intimacy and privacy.

Recommendation 49/2008

September 23, 2008

Case: Discrimination for reasons of health to elements appointed to the Secretary of Defence for suffering form HIV

Addressee Authority: General Secretary Guillermo Galván Galván, Secretary of Defence

On July 27, 2007, this National Commission received the complaint presented by A1, who stated that, on May 16, 2007, by means of the official document SGB-II-5063, the General Direction of Military Justice, Under-direction of Retirements and Pensions of the Secretary of Defence, he was notified the statement of retirement of definitive source because he suffered from seropositivity to the antibodies to the human immunodeficiency virus (HIV), without the evaluation, for the action, of the appeal of disagreement that he presented against the provisional statement issued, so that he solicited the intervention of this National Commission, opening file 2007/3188/1/Q.

Likewise, on August 1, this National Organism received the complaint presented by A2, in which he stated to be part of the Infantry Platoon in Nuevo Casas Grandes, Chihuahua, and that on April 9, 2006 in the Central Military Hospital he was informed that he was HIV positive, so that on June 17 of the same year the procedure of retirement for uselessness was started and, by agreement of the secretary of the trade, on May 18, 2007 the definitive statement of source of retirement was issued, so that the intervention of this National Commission was required, opening file 2007/3126/1/Q.

As well, on February 29, 2008 this National Commission received the complaint of A3, in which he pointed out that the Secretary of Defence, on March 14, 2007, by means of the official document SGB-I-6161, issued the provisional statement of his retirement, because he suffered from HIV, which acquired the character of definitive when there was no appeal, which, he considers, attempts against his right to health protection, as well as his right to life, because that decision left him in complete economical desertion; besides, in the future he would not receive medical attention for his disease, so that he solicited the intervention of this National Organism, opening file CNDH/1/2008/1146/Q.

From the investigation practiced in complaint file 2007/3188/1/Q and its relatives 2007/3126/1/Q and CNDH/1/2008/1146/Q, it was noticed that the acting of the Secretary of Defence, regarding the procedure of retirement and deregistration of the ones affected derived from the disease they suffer from, violated the Human Rights to equality and no discrimination.

Therefore, on September 23, 2008, this National Organism issued Recommendation 49/2008, addressing the Secretary of Defence, in which it is requested to give instructions to repair the moral and material damage caused to A1, A2 and A3, as a consequence of the institutional liability in which the institution incurred, in the terms of consideration stated in the body of the aforesaid Recommendation, informing this National Commission about the actions performed. Likewise, to develop the necessary actions so that the procedures of retirement started by this Secretary against A1, A2 y A3 are ineffectual, with the duty of performing a clinical evaluation by means of which the degree of development of the disease that these people suffer is reported, making tests that allow to consider their physical and mental abilities, in order to decide on their reassignment. Besides, it is requested to continue providing them the corresponding

benefits of social security, particularly the service of public health; as well it is requested to train the personnel of this Secretary in order to comply the interpretation of the highest court of the country in the application of judicial norms, so that an effective protection of the Human Rights is achieved. Finally, it is requested to adopt preventive measures to avoid the repetition of discrimination acts, like the ones that are the origin of the aforesaid Recommendation.

Recommendation 50/2008

September 26, 2008

Case: Of the homicide of Mr. Bradley Roland Will, Graphic Reporter of Indymedia

Addressee Authority: General Attorney's Office of the Republic, Constitutional Government of the State of Oaxaca, H. City Council of the State of Oaxaca

On October 27, 2006, Mr. Bradley Roland Will, graphic reporter of the company Indymedia, was killed, so that, on October 28 of the same year, personnel of this National Commission travelled to the city of Oaxaca, Oaxaca, to gather the respective information and documents, related to the integration of the preliminary investigation 1247/C.R./2006, that was opened in the Justice General Attorney's Office of the State of Oaxaca due to the facts.

From the analysis of the facts and evidence that integrate the complaint file 2006/4886/5/Q, it was proved that public officers of the Justice General Attorney's Office of the State of Oaxaca, who participated in the integration of the preliminary investigation 1247/C.R./2006, as well as public officers of the General Attorney's Office of the Republic in charge of integrating the investigation 11/FEADP/07, filed in the Special Attorney's Office for the Attention of Crimes Committed against Journalists, violated the fundamental rights to legality, to judicial certainty and to access to justice as well as to access to information.

From the preliminary investigation 1247/C.R./2006, it is noticed that the Public Prosecutor incurred in irregularities and omissions during his acting, since he did not involve the forensics expert nor moved immediately to the crime scene for the removal, preservation and packing of proof, besides to not giving the measures to preserve the place; he neither performed the chain of custody of the blanket in which the body of the journalist was wrapped in, and omitted to provide Prosecutor's attestation and preserve it; he performed deficiently the eye inspection of the crime scene, as well as the description of the T-shirt that Mr. Bradley Roland Will wore.

Likewise, he omitted to interrogate the witnesses in detail, as well as to summon other people involved in the facts, despite they had been mentioned in some testimonies and journalistic notes, as well as in images shown by T.V. stations in broadcasted videos.

He neither inquired deeper in the investigation of the facts that the witnesses referred, regarding the fact that there were people shooting from a house in Juarez Avenue; he did not develop an interrogation to the two people that were presented as alleged material perpetrators of the homicide regarding their participation, the number of elements of the Municipal Police that arrived to the crime scene, the fire gun that they had and the time they remained there. He did not perform actions that tend to investigate the name of the individuals that were along with them and who appeared in diverse photographs and videos that were made public in the different written and T.V. media.

On November 15, 2006, in the report that she presented regarding the investigation performed, the former Justice General Attorney of the State of Oaxaca stated the version that the shots that killed the reporter were made at a short distance by people who were near the reporter or during his way to the Cruz Roja, without any action practiced by the ministerial authority to gather more data that allowed the location and further presentation of those people located in the crime scene, concretely, near the affected one, and thus, to gather the corresponding testimonies and, if that was the case, to add elements to the investigation to reinforce or prove wrong the version in which the killer was near the journalist when the facts took place.

In the same press conference, it was mentioned that expert examinations in audiometry, audiology, sound tests and sound studies to the video recorded by Bradley Roland Will's camera had been developed; however, in the certificates of the preliminary investigation 1247/C.R./2006, the referred expert testimonies added do not appear, nor the sound tests that, as it was pointed out, were done to the video.

Likewise, it is considered that there were deficiencies in the acting of the public officers who participated in the different testimonies rendered in the preliminary investigation 1247/C.R./2006, as well as in the acting of the forensic doctors that signed the body's exterior medical certificate, the autopsy certificate, the ballistic certificates, the comparative forensics, forensics, mechanics of injuries, facts and victim-aggressor position certificates.

On the other hand, in regards to the expert's examinations that have been practiced for the integration of the preliminary investigation 11/FEADP/07, on behalf of the Special Attorney's Office for the Attention of Crimes Committed against Journalists of the General Attorney's Office of the Republic, it is noticed that these have been done in an isolated way, that is, the group of pieces of evidence and proof gathered by each expert in particular has not been taken into account and there is no visible, complete, detailed, and coordinated analysis of the corresponding proof. A decisive conclusion has neither been offered about the way in which the facts happened, mainly, about the circumstances in which Mr. Bradley Roland Will received the second shot and the distance in which the shots that killed him were made.

Likewise, the Social Representative of the Federation has evaded requesting the practice of the audio tests of the shots to help establishing the cadence and sequence of them, which would allow having elements to determine the number of shots that were made in the crime scene, their sequence and which were made in short, medium and long distance.

Though the acting of the Public Prosecutor of the Federation, in charge of integrating the preliminary investigation 11/FEADP/07, filed in the Special Attorney's Office for the Attention of Crimes Committed against Journalists of the General Attorney's Office of the Republic has been regular, no respective result has been issued to date, the probable perpetrator or perpetrators of the injuries that caused the death of Mr. Bradley Roland Will have not been identified, nor the motive and the causes that originated the aggression.

On the other hand, it is also noticeable the delay and denial of the Mayor of Santa Lucía del Camino, Oaxaca, to provide the information that may allow this National Commission developing the investigation of the case, since there was no response to the request of information formulated by this National Commission.

Therefore, on September 26, this National Commission issued Recommendation 50/2008, which was addressed to the General Attorney of the Republic in order to give instructions to the Public Prosecutor of the Federation who integrates the preliminary investigation 11/FEADP/07, to speed the investigation and perform the necessary actions to guarantee the integral analysis of the evidence, proof and elements of proof that are included in the aforesaid investigation, as well as the contents of the Recommendation, besides considering those that have been added by experts from the International Forensic Program of Physicians for Human Rights, those proposed by this National Commission, and those that allow determining clearly, objectively, integrally and collectively, the mechanics and dynamics of the injuries that caused the death of Mr. Bradley Roland Will. As well, to involve the head of the Internal Control Organ in the General Attorney's Office of the Republic, in order to determine the start of the corresponding administrative procedure, related to the public officers of that federal department that could have incurred in delay and omission to investigate the facts that caused the death of Mr. Bradley Roland Will.

Likewise it was requested to the Governor of the State of Oaxaca to involve the head of the Secretary of Internal Control of the government of the State of Oaxaca, to determine the start of the liability administrative procedure to the ministerial and police staff that participated in the integration of the preliminary investigation 1247/C.R./2006, for the omissions and deficiencies described in the chapter of observations, and to involve the Justice General Attorney of the State of Oaxaca, to perform the corresponding intervention to the Public Prosecutor to determine his probable penal liability; as well, to involve the head of the Secretary of Internal Control of the government of the State of Oaxaca to instruct a liability administrative procedure to the expert staff that participated in the diverse testimonies rendered in the aforementioned investigation and to involve the Public Prosecutor to determine his probable penal liability.

Finally, it was requested to the President of the High Commission of the H. City Council of the State of Oaxaca to give the pertinent instructions to whom it may concern, to instruct to the former Mayor of Santa Lucía del Camino, Oaxaca, the corresponding liability administrative procedure for the omission in providing the required information to this National Commission and delay its labor in the defense of the human rights.

## NATIONAL ISSUES

Mobile Office of the National Commission in Morelia, Michoacán.

A squad of 15 people, with Adjunct Visitors, lawyers, doctors and psychologists, as well as a mobile office of the National Human Rights Commission is since last September 16 in Morelia, Michoacán working directly with the victims and relatives of the attack occurred in that place during the night of the "Cry for Independence".

The purpose is to supply any direct help possible to the revision of the state of health of the victims that remain in the hospitals of that city, as well as – by means of a roll of affected people – to allow the relatives of the victims having services of judicial orientation that help guarantee their right to the access to justice.

Preliminary estimations based on the visits developed yesterday and today by medical staff of the CNDH and of the Human Rights Commission of the State of Michoacán, point out that, besides two people with penetration injuries in the abdomen that are already receiving intensive care attention, several others will require long treatments of reconstructive surgery and rehabilitation, because they suffered from mutilating injuries or injuries that compromise some function. The visited patients are in three public hospitals of the capital of Michoacán.

The staff of the CNDH and of the local commission also offers the services of psychological assistance to those who present symptoms of posttraumatic stress syndrome (PSS), either because they were injured during the explosion or because they were in the surroundings of the place.

## INTERNATIONAL ISSUES

Second Meeting of the Rector Council of the FIO

Last September 8, the Second Meeting of the Rector Council of the Ombudsman Ibero-American Federation (FIO) was held in the city of Nuevo Vallarta, Nayarit.

Since the Executive Secretary of the National Human Rights Commission is the one who is in charge as the Technical Secretary of the FIO, it coordinated and supported the meeting and the points to discuss were as follows:

1. To Define and Approve the annual/biannual Work Program of the FIO.
  2. Homologation Project of the informatics systems of the Ombudsman's Offices of Central America.
  3. Nets, their nature and participation in the Assemblies and Congresses of the Federation.
- As well, the details for the General Assembly and the XIII Congress of the FIO (November 20 and 21, 2008), such as content, insurance were determined.
- Participants.
  - Petition of the Women's Net of the FIO to participate in the Congress FIO 2008.
2. Special Fund for Ombudsman and National Institutions for the Human Rights in Latin America and the Caribbean (Special Fund).
    - Presentation of advances respective to the Settlement.
  3. Report of the agreements reached in the meeting FIO-ColdH.
    - Dictionary of DDHH.
    - Revision and Implementation of the Agreement FIO-ColdH.
    - DDHH Observatory, its creation and training activities.
  4. Office of the Children and Youth Defender of Cordoba, Argentina.
    - Application of incorporation to the FIO.
    - To know the opinion of Defender Eduardo R. Mondino.
    - Resolution.
  5. Initiative of the Ombudsman of Paraguay in regards to the communication of the High Commissioner of the Human Rights about Durban.
  6. Proposal of the Ombudsman of Paraguay to meet with members of the Chilean Parliament to promote the Institution of the Ombudsman in that country.
  7. Consequences and possible actions of the FIO caused by the Decision of the European Parliament known as the Return Directive.
  8. Petition of the Ombudsman of Peru.
    - Treatment.
    - Late Resolution.
  9. Possible Actions of the FIO about the 60th Anniversary of the Declaration of the Human Rights, and also the roll of the INDH which integrate the FIO regarding that.

## DIRECTORY

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