

NEWS LETTER

Number 190

December 2008

CONTENTS

- NATIONAL AWARD FOR HUMAN RIGHTS 2008
- 61/2008 Case of the underage female M1
- 62/2008 Case of Mrs. Micaela Micaela Martínez López
- 63/2008 Case of Mrs. MMM and other Central-American immigrants
- 64/2008 Case of the workers in the industrial mining company, México, S.A. de C.V. (Unit Pasta de Conchos)
- 65/2008 Appeal by Mrs. Ana Rosa Baeza Berzunza
- 66/2008 Case of the minor M1
- 67/2008 Case of torture of A1 and A2
- INTERNATIONAL ISSUES

NATIONAL AWARD FOR HUMAN RIGHTS 2008

The President of the Mexican Republic, Felipe Calderón Hinojosa, on December 11 of this year gave out the National Award for Human Rights 2008 to Mrs. Esther Chávez Cano, due to her emphatic 16 year trajectory in the effective promotion and defence of fundamental guarantees. He also awarded Summa Cum Laude (post mortem) recognition to the young Fernando Martí Haik.

During the ceremony carried out in the "Adolfo López Mateos" Room of the Official Residence in Los Pinos, emphasis was put upon the fact that the Award given to Mrs. Esther Chávez Cano is a recognition of Mexican society for her effective promotion and defence of fundamental guarantees, especially women's, since she was one of the first to raise her voice and demand justice for the femicides in our country and was an example of the never ending plight against discrimination and impunity.

The National Ombudsman, José Luis Soberanes Fernández, spoke before members of the legal cabinet of the Federal Executive Branch and the Consultative Council of the CNDH, presidents of the Human Rights State Commissions, public servants and representatives of NGO's. The Ombudsman said to them that Esther Chávez Cano's work is a beacon of inspiration that allows one to envision a harmonious and law abiding society.

Moments before President Calderón Hinojosa placed the medal on the prizewinner, and gave her the diploma and a check for 250 thousand pesos, Dr. Soberanes Fernández stressed that the situation the Mexican State is in is very serious, because almost all corners of the country have been hit in diverse ways by a wave of crime that challenges and endangers national sovereignty.

"This reality", he explained, "has its main root in impunity. It puts legality in a vulnerable position, destroys trust in institutions and leads towards the moral degradation of communities. Its most atrocious manifestation is the victims who register daily in the Attorney General's statistics and investigation agencies; these numbers and the indolence with which they are dealt with make it possible to forget that they represent the sad and heartbreaking testimony of a human being."

He emphasized that an example of this abandonment and indifference are the dead and missing women of Ciudad Juárez. He pointed out that "the assassinated women in the border zone constitute a symbol of national suffering, a disgrace and an injustice; years go by and, shamefully, the vile cycle of vexations, violence and despair continue in that area."

Dr. Soberanes Fernández manifested that within that constant pain that harms women in Mexico and the world, a great yearning for justice flourished; Esther Chávez Cano, facing social and governmental inertia, has dedicated part of her life to give attention and aid, to extenuate the sorrow to the families of the missing or murdered women in Ciudad Juárez.

He also highlighted that during this occasion a Summa Cum Laude title was awarded to young Fernando Martí Haik, who after having been victim of a horrible kidnapping and death, awoke citizen's consciousness about the serious public safety issues that the country faces, giving voice to many victims of the same crimes.

"The struggle against government corruption in Fernando's case" he said, "has become a banner of a social and legal movement of a clamour to the authorities asking them to abide to the law and protect human rights."

He expressed his wish that the presentation of these acknowledgements is extended to all Mexicans who, in an anonymous way, carried out these activities seeking the respect of these fundamental rights. Esther's example, and that of the civil organizations which

have originated due to the death of Fernando, he emphasized, must bring to its cause more citizens for the construction of a dignified country, without impunity and with more justice.

RECOMMENDATIONS

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

Recommendation 61/2008

December 15, 2008

Case: Of the underage female M1

Addressee Authority: Constitutional Government of the State of Mexico

On November 13, 2007 the National Commission received the complaint of Mrs. Aline Salome Revelo Camargo, who in the document referred to the premature birth of her daughter, Rubí Revelo Camargo. She was born on November 5, 2006 after 25 weeks of gestation in the General Hospital "Gustavo Baz Prada", a dependency of the Health Institute of the State of Mexico. The minor remained in the hospital's Intensive Neonatal Care Unit for two months. Aline was admitted in an apparently normal state and without any special indication from her physicians. Afterwards, the state of her health was evaluated in several public and private hospitals. These places let the mother know that the minor had developed an illness. Due to the "extremely premature" state in which she was born, the complication should have been treated in a timely manner. The first hospital should not have administered onto her a "neonatal sieve", but as a consequence of it, her daughter developed "blindness, hyperthyroidism and the probability of mental retardation". The knowledge of the effects of the treatment gave way to the petition file 2007/4804/1/Q.

From the analysis and the evidence that makes up said file, the National Commission accredited the violation of the protection of Rubí Revelo Camargo's health. During the 60 day span where she was hospitalized and medically tended to, the paediatric physicians, neonatologists and public servants who were responsible of giving her medical attention failed to give her a complete and deliberate examination. As consequence of the inadequate public health service rendered to her she did not receive a complete analysis of the results from the neonatal sieve, which would have immediately prompted initiation of a treatment. Their neglect happened despite their knowledge of the premature status in which she was born, and without considering that all the risk factors could lead the minor to develop a premature retinal pathology.

Also, immediate attention was not given to her in order to detect possible illnesses such as "congenital hypothyroidism", through a "thyroid profiling", as well as a physical examination of her ocular globes, which is a prime necessity in order to avoid major handicaps, and they also did not consider that her premature condition could cause retina pathology. This circumstance caused – aside from a delay in a diagnosis and opportune treatment in the ophthalmologic evaluation – the evolution of congenital hyperthyroidism and irreversible vascular retina damage, which she now suffers from. Likewise, it was noted that the "neonatal sieve" was not performed in time, and according to a report from the Department of Reproductive Health's Program for the Prevention and Control of Birth Defects, part of the State of Mexico Health Institute in the Nezahualcōyotl Sanitary Jurisdiction, the sample of the vein puncture for the study was taken outside of the established limits. These limits state that the sample be taken during three to fifteen days after birth, but the test was delivered to the aforementioned Department on March 22, 2007, four months after the mandatory time. Thus an unjustified delay in the delivery of the results can be noted, and therefore a diagnosis that confirmed or rejected the illness could not be formulated, and timely treatment could not be offered either.

Because of all that has been mentioned, it was accredited that there was deficient medical attention given to the minor Rubí Revelo Camargo on behalf of the hospital personnel and the Sanitary Jurisdiction mentioned before, due to the fact that they failed to attend the related dispositions in regards to the right of health protection foreseen in several international instruments. These instruments have been celebrated by the Federal Executive and ratified by the Republic's Senate, within the defined terms of article 133 of the Political Constitution of the Mexican United States; and they (specifically, article 12.1 and 12.2 section d) of the International Covenant on Economic, Social and Cultural Rights as well as article 10.1 and 10.2 section a) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights) establish the minimum margin required in the quality of medical services that the Mexican State must give its population in order to ensure their full effectiveness and that the highest level of health be reached by all individuals. Such precepts are ratified in the third paragraph of the fourth article in the Political Constitution of the Mexican United States, which relates to the right to the protection of health, as well as State recognition towards people's enjoyment of quality medical service, and the obligation of the State to adopt measures that create the necessary means for the full effectiveness of said right.

On December 15, 2008 the National Commission released the Recommendation 61/2008, addressed to the Constitutional Governor of the State of Mexico. It consisted in ordaining and fulfilling a reparation payment in favour of the minor Rubí Revelo Camargo, as consequence of the inadequate medical attention she received in the General Hospital "Gustavo Baz Prada" and the State of Mexico Health Institute's Nezahualcōyotl Sanitary Jurisdiction, in virtue of the considerations established in the observations chapter of this Recommendation. Also, the National Commission asks that we receive evidence of the satisfaction of the ordainment, as well as asking that the Agent of the State Court be informed of the observations contained in the present document so the Agent may consider the

prior investigation NEZA/III/5839/2007, in which the facts in the present complaint are investigated. Also, we ask that the necessary assistance with documentation be granted to the Agent for correct and timely integration to the case and that the Internal Comptroller of the State of Mexico Health Institute becomes aware of the observations contained in this document so that they may initiate an administrative investigation process of the public servants of the General Hospital "Gustavo Baz Prada" as well as the personnel of the Nezahualcōyotl Sanitary Jurisdiction who participated in the matter and were not considered in the CI/ISEM/OF/25/2007 process and that this be resolved according to the appropriate Law. The National Commission recommends that the necessary administrative measures be adopted so that the General Hospital "Gustavo Baz Prada" and the Nezahualcōyotl Sanitary Jurisdiction, both pertaining to the State of Mexico Health Institute, receive training courses on the understanding of Official Mexican Norms and that the repetition of acts like the ones that motivated the present case be avoided. Also, that in the briefest time as possible the correct authority takes necessary actions so that Rubí Revelo Camargo receives, in a permanent manner, the medical attention, treatment and rehabilitation she requires, in relation to the retina pathology and congenital hyperthyroidism she suffers from.

Recommendation 62/2008

December 17, 2008

Case: Of Misses Micaela Micaela Martínez López

Addressee Authority: Armed-Navy Secretary

On May 2, 2008, the National Commission received a complaint from Mr. Adán García López, in which he stated facts concerning the presumed violation of his sister's human rights (her name is Micaela Martínez López) and those of her minor son AMM; committed by public servants of the Armed-Navy Secretary of Mexico. The plaintiff made the claim that his sister worked for the dependency for seven years, and due to medical negligence in the treatment received from personnel of the Armed-Navy Secretary of Mexico she passed away. His nephew, AMM, was informed that his mother had passed at a time where she was not on duty and therefore AMM had not received the benefits he was entitled to, up until the time Adán García López presented the complaint. These reasons are why Adán García López petitioned the National Commission to intervene.

The Recommendation was motivated by the violations of the human right to life and the right to the protection of health, as well as the reception of adequate medical attention from the Naval Administrative Service ex corporal office worker Micaela Martínez López and from the public servants attached to the Salina Cruz and Veracruz Naval Hospitals who gave her inadequate public health services. The evidence obtained allowed us to verify the existence of a delay in the administration of medical treatment required by the afflicted. Every time that the medical personnel treated her and saw that her health did not improve, they should have ordered her immediate transfer to the Medical Naval Centre instead of her transfer to the Salina Cruz Naval Hospital. The decision was made because she could go to the open appointments held at the Veracruz Naval Hospital, despite the fact that it did not have the special treatments she required.

On every occasion that she was in the Salina Cruz Hospital, she was treated for a "probable migraine", "probable migraine headache" and "somatisation disorder". Upon her admission into Veracruz Naval Hospital she was diagnosed with a "severe headache and paralysis in the right sixth pair of the skull". At the treating physician's request she was transferred to the Naval Medical Centre in Mexico City with a diagnosis of "paralysis in the right sixth pair of the skull, severe headache and salmonella". There is nothing to suggest that in the aforementioned hospitals the specific studies needed were applied with the objective of determining the origin of her illness and she finally entered the Naval Medical Centre for "severe headache being studied, paralysis in the right sixth pair of the confusional syndrome and probable viral encephalitis", detailing as the main illness at the moment of her death to be "meningoencephalitis from cryptococcus neoformans".

The National Commission determined that the medical attention given to Mrs. Micaela Martínez López in the different naval hospitals where she was tended to carried a series of omissions and delays that finally lead to her death.

The above mentioned manifests that Micaela Martínez López, then corporal of the Naval Administrative Service office worker, did not receive the adequate or required studies since her first visits to the medical unit of Salina Cruz. At that place, every time she presented her symptoms, they were belittled and the investigative protocol was unfulfilled. There should have been requests for specific studies in order to determine what was bringing on her illness, and she should have been given the specialized clinical evaluation that her case required. Their incapacity to do so amounted to a delay in her diagnosis. As a consequence of this denial, she suffered from a bad evolution of the symptoms, and even though her illness was not initially deadly, it worsened into a fatal form. Therefore, her death was due to the lack of an opportune diagnosis and adequate treatment.

In regard to the composition of the clinical files under the name Micaela Martínez López, the National Commission observed that they are not adequately integrated, in either the Salina Cruz Hospital nor in the Veracruz Naval Hospital: which is why it is considered that those clinical files do not satisfy the sections disposed under 4.4, 5.1, 5.2, 5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.9, 5.10 and 5.13 of the Official Mexican Norm NOM-168-SSA1-1998 of the Clinical File. This norm indicates that the Navy Secretary, among other institutions, integrates part of the General Direction of Naval Sanitation.

The medical attention given to Mrs. Micaela Martínez López in the Naval Medical Centre in Mexico City was tardy; which was due to an initial attention given in the naval hospitals of Salina Cruz and Veracruz, which was inadequate, and thus lead to her dying March 13, 2007.

In Mrs. Micaela Martínez López's case there was deficient medical attention which in turn caused the loss of her life, due in part to the medical personnel in the naval hospitals of Salina Cruz and Veracruz, which are both dependencies of the Armed-Navy Secretary, who did not act with the adequate professionalism that their ranks needed. This conduct led to the breach in the fundamental right to life and the protection of health of the aggrieved, foreseen in the third paragraph of article four of the Political Constitution of the Mexican United States, which establishes the obligation of the State to give quality medical service, and the necessity of adoption of necessary measures to ensure the full effectiveness of this right.

In virtue of this, the National Commission considers that the medical personnel incorporated to the naval hospitals of Salina Cruz and Veracruz who tended to Mrs. Micaela Martínez López, transgressed the dispositions of the Public Servants' Administrative Responsibilities Federal Law, specifically fractions I and XXIV of article eight.

In virtue of the prior statements, it was recommended to the Navy Secretary that there be reparations of the deceased's debt damage; as well as a presentation of the facts to the Internal Control Organ of this Secretary so that the corresponding proceedings of the administrative investigation can be initiated against the personnel appointed under the naval hospitals of Salina Cruz, Oaxaca and Veracruz, Veracruz, who intervened in the factual violations described above. Also, we recommend the personnel of the Salina Cruz Hospital in Oaxaca and the Veracruz Naval Hospital take courses that teach them how to follow the requirements of the Official Mexican Norm NOM-168-SSA1-1998, in order to avoid future omissions such as those referred above in the observations chapter of this Recommendation.

Recommendation 63/2008

December 19, 2008

Case: Of Mrs. MMM and other Central-American immigrants

Addressee Authority: National Immigration Institute

The National Commission was able to establish that on the days of February 14, March 5 and 15, April 11 and December 5, 2007, 34 Guatemalan and Salvadorian migrants were detained in the migratory verification post belonging to the National Immigration Institute (INM) located by the 13th kilometre of the highway in Ocozocoautla, Chiapas-Las Choapas, Veracruz and in the place known as La Pochota, on the exit of Tuxtla Gutiérrez, Chiapas.

Also, it was established that the personnel of the INM put them into vehicles of the same institution, in groups of three to twelve people at a time, between lapses of three to twelve hours, in undignified conditions, so that they would later be put at the disposition of the Local Delegation of that Institute, in Tuxtla Gutiérrez, Chiapas.

The Commission found that the immigrants did not get a timely medical exam upon their admittance into the Local Delegation of the INM in Tuxtla Gutiérrez, Chiapas, and they were expelled without finalizing the respective migratory procedure.

Therefore it is established that in the case of Mrs. MMM and other Central-American immigrants, their rights to dignified treatment, legality, legal security and due process were violated.

As a consequence, on December 19, 2008, the National Commission sent Recommendation 63/2008, addressed to the Head of the INM, with the objective of relaying it to the Internal Control Organ of the Secretary of Public Duties in the National Immigration Institute, so that the corresponding administrative process against the Federal Migration Agents may begin, motivated by the irregularities in which they incurred while securing the aggrieved. Also, the National Commission wishes the Recommendation be relayed to the Internal Control Organ of the Secretary of Public Duties in the INM so that an administrative investigative process against the public servants who omitted to give a medical examination to the immigrants LAHL and EC, as well as against those who gave tardy medical attention to the aggrieved. Also, that the recommendation be relayed to the Internal Control Organ of the Secretary of Public Duties in the INM, so that they may initiate an administrative process for the irregularities committed during the migratory process. The aim must be that of determining the aggrieved's migratory situation, as well as the emission of necessary instructions so that the immigrants who have been secured by the Federal Migration Agents can be taken immediately to the corresponding migratory stations, in order to avoid more situations like the ones they have already endured. And lastly, that the necessary actions be taken so that the personnel in the Local Delegation of the INM in Tuxtla Gutiérrez, Chiapas, receive proper training, in order to avoid incurring in violations of migrants' human rights, as those of the present case.

Recommendation 64/2008

December 19, 2008

Case: Of the workers in the industrial mining company, México, S.A. de C.V. (Unit Pasta de Conchos)

Addressee Authority: Attorney General's Office

On February 19, 2006 there was an explosion in San Juan Sabinas, Coahuila, at the mine called Pasta de Conchos, where 65 workers remained trapped. The National Commission obtained information of this situation and on July 17 2006 it sent the Recommendation 26/2006, addressed to the Secretary of Labour and Social Prevision so that, amongst other actions, they would coordinate civilian protection duties on behalf of the three levels of Government. At that point, only the bodies of Misters Felipe de Jesús Torres Reyna and José Manuel Peña Saucedo had been rescued, leaving 63 more to go.

On August 20, 2007, family members of the miners who lost their lives in the facts referred above presented a complaint to the National Commission, detailing acts committed by several dependencies, which presumably violated Human Rights. Amongst those cited was the Republic's Attorney General's Office, as on April 4, 2007, the Industria Minera México, S. A. de C. V. suspended the rescue of the bodies of their family members, with no authority impeding it, and 18 months after the events which caused the loss of their relatives' lives, the preliminary investigation had not concluded.

The National Commission opened the complaint file 2007/3552/2/Q on August 21, 2007. After analyzing and evaluating the certificates that conform it, the Commission warns that there were in fact violations to the rights to legality and legal security, as well as the undue exercise of public duties and deficient integration of a preliminary investigation, that are attributable to the public servants of the Republic's Attorney General's Office, in regards to the deficiencies observed relating to the way they conformed the previous inquiry 20/UEIDCSPCAJ/2007. The Agent from the Public Federal Ministry omitted to pronounce legal and factual statements on the topics that were formulated by the official expert-technicians of his own institution, so that he could solicit the intervention of experts in the subject of mining that could produce the necessary evidence that would have allowed him to determine the causes of the explosion that occurred on February 19, 2006. Moreover, there was no petition for the intervention of the experts proposed by the expert-technicians on matters relating to arson and explosions; even when it was clear that the investigation demanded that the causes of the explosion be determined. Nevertheless, the Social Representative incurred in administrative liability because it failed to resolve the petition. In order to reach the historic truth of the facts its obligation is precisely that of determining which diligences it must practice and why, or which not to practice and state its legal and factual reasons and motivation, and it failed to do so. Also, the possibility of requiring the emission of the solicited judgments went without assessment by the official expert-technicians.

In virtue of the aforementioned, the National Commission warned that the violations to the fundamental rights mentioned above are accountable to the Agent from the Federal Investigative Public Ministry appointed to the Carboniferous Zone of Sabinas, Coahuila. Violations are also accounted to the Federation's Social Representative appointed to the XII Committee of the Specialized Investigation of Felonies Committed by Public Servants; to the Justice Administration Unit and the Agent from the Public Federal Ministry appointed to the General Board for Control of Preliminary Inquiries, Sub-attorney of Regional Control in Criminal Procedures and Immunity in Coahuila, and the Director of Expert-Technicians' Services of the same Attorney's office previously mentioned. Violations are attributed to the first three because they failed to pronounce themselves according to Law regarding the applications presented by the expert-technicians of the Republic's Attorney General's Office. The latter person omitted to give a reply to the petition made by the Agent from the Public Federal Ministry on March 14, 2007, even when it is obligated to attend to all the requests made by the Social Representative.

The public servants responsible for the integration of the preliminary inquiry 20/UEIDCSPCAJ/2007 did not act with the necessary diligence their duties required them to. They failed to observe the dispositions foreseen in: the article 4, fraction I, clause A, sub-clause c), fraction V; article 53 fraction IV and article 69 of the Charter of the Attorney General's Office. This document refers substantially to the fact that in the Federation's Public Ministry, there is an obligation to act with the diligence that will allow the search for justice in an expedient, thorough and proper manner. Thus the rights to legality and legal security were violated, and this, in turn, translated into attitudes that favour the impunity of those who are likely to be responsible. The ex Delegate and the Legal Director of the Federal Labour Delegation in the State of Chihuahua, were administratively sanctioned by the Public Duties Secretary because they were considered administratively responsible for the facts that arose in Pasta de Conchos's Mine 8.

The National Commission also warns that the Head of the Specialized Investigation of Felonies Committed by Public Servants and Against the Justice Administration Unit, and the Chief of the Public Prosecutor Specialized Unit (in charge of the Revision and Dictum Prosecution in the General Attorney's Office), incurred in undue exercise of their public duty when they authorized the proposal of a reserve consultation of the preliminary inquiry for 20/UEIDCSPCAJ/2007 (elaborated by the Agent of the Public Federal Ministry). They erroneously considered that there were no dictums that objectively determined the causes of the accident that occurred in Pasta de Conchos' Mine 8. The National Commission considers that this assessment is without basis, because in said inquiry there are several dictums on the subject of mining. Some of these include: the visual inspection made inside the mine by the ministerial personnel; the dictum based on the study carried out by the International Mine Security Experts Panel and the Consult Mining Council known as the Scientific and Technological Consult Forum, A. C.; the dictum made by the Mexican Geological Service, as well as the pronouncement made on January 25, 2007, by the own Republic's Attorney General's Office's arson and explosions expert-technicians.

Following this line of logic, the National Commission considers that the public servants attached to the Republic's Attorney General's Office in charge of the inquiry's compilation and submission did not partake in the duties required of them regarding the accreditation of the felony, the reparation of the initial damages and the additional damages they caused. They also incurred in a Human Rights violation, because of the clear lack of observation of the Political Constitution of the Mexican United States, concerning the second paragraph of article 14, the first paragraph of article 16, the first paragraph of article 21 and the second paragraph of section A of article 102. The cited paragraphs establish that the investigation and prosecution of crimes is the jurisdiction of the Public Ministry and it is obliged to seek and present the evidence that accounts for the responsibility of those accused and enforce trials that are in complete regularity with the standards so that the administration of justice may be prompt and expedient.

The Head of the Specialized Investigation of Felonies Committed by Public Servants and Against the Justice Administration Unit and the Chief of the Public Prosecutor Specialized Unit, in charge of the Revision and Dictum Prosecution in the General Attorney's Office, are to be found in the same circumstance. They incurred in an undue exercise of public duties upon consenting to the omissions of the personnel in charge of the conformation of the preliminary investigation 20/UEIDCSPCAJ/2007.

Likewise, the public servants of the Republic's General Attorney's Office did not fulfil the obligations imposed to them by articles 7 and 8, fractions I and XXIV of the Public Servants' Administrative Responsibilities Federal Law. This law establishes principles which must be defended: legality, honour, loyalty, unbiased behaviour, and efficiency must all be observed when carrying out duties, on commission, or when they are in command. Breach of these conducts will lead to a procedure and the sanctions will be according to the nature of the infraction. The precept points out, in its fraction I, that the public servants must carry out, with the maximum diligence, the service which is commended to them and must abstain from any duty or commission that causes a suspension or deficiency in the first service or that involves abuse or undue exercise of a job, duty or commission. Fraction XXIV foresees that it is an obligation to abstain from any act or commission which ends in a legal disposition related to the public service as being unfulfilled.

As a consequence, the National Organism sent Recommendation 64/2008, on December 19 2008, addressed to the Republic's General Attorney's Office, fundamentally pointing out the following items:

That instructions be given to the proper authority, so that the preliminary investigation 20/UEIDCSPCAJ/2007 is extracted from the archive. We ask that the technical dictums solicited by the General Attorney's own technical-experts be carried out, as well as the required duties that enable the referential investigation. Also, that in due course it is determined by corresponding Law, the legal implications of the omissions recalled in the observations chapter of the present document, and that a certificate is sent when these conditions are fully accredited.

That instructions be given so that the present document be passed to the Head of the Internal Control Organ in the Republic's General Attorney's Office, so that an administrative responsibility procedure be initiated against the public servants who intervened from the beginning of the integration of the 20/UEIDCSPCAJ/2007 preliminary inquiry. Also, if it is considered that a felony took place, that a procedural preliminary inquiry be initiated, and that when the opportunity arises, the certificates that accredit its total fulfilment be sent to the National Commission.

Recommendation 65/2008

December 22, 2008

Case: Appeal by Mrs. Ana Rosa Baeza Berzunza

Addressee Authority: Honourable Constitutional City Hall of Calkiní, Campeche

On December 19, 2007, the Human Rights Commission from the State of Campeche sent the National Commission the appeal petitioned by Mrs. Ana Rosa Baeza Berzunza, which was received on December 27 of the same year. In the appeal, she manifested that on November 29, 2007 she received the notification that the file "005/2007/VG" was to be archived and labelled as an accepted Recommendation unsatisfactorily fulfilled. She did not agree with this situation because the environmental contamination produced during the festivities in the Craftworks and Culture Fair and the Carnival, which are celebrated in the municipality of Calkiní, Campeche, continued to affect her.

From the analysis carried out from the evidence gathered by the National Organism, on April 13, 2007, the Human Rights Commission from the State of Campeche had possession of the file 005/2007/VG. This file was brought about by a complaint presented by Mrs. Ana Rosa Baeza Berzunza against the Honourable Constitutional City Hall of Calkiní, Campeche because it failed to fulfil a minute (from June 30, 2006). Aimed at guarantying the respect for her fundamental rights during the Craftworks and Culture Fair, as well as the Carnival of that municipality, she asked on that date, as well as on May 16, 2007, to that Honourable City Hall of Calkiní, Campeche, a report regarding the facts narrated by the plaintiff. She received no response.

For this reason, on July 12, 2007, the personnel of the Local Organism carried out field research in the private dwelling of the aggrieved, in which the neighbours testified that the authorities of the H. City Hall of Calkiní, Campeche did not comply with what they agreed to with the aggrieved within the minute from June 30, 2006. As a consequence, once the reporting tasks were concluded, the resolution project of July 31, 2007 was notified to the H. City Hall of Calkiní, Campeche, and to the plaintiff, on August 2 of that year.

On August 23, 2007, the Human Rights Commission of the State of Campeche received the file HC/PM/0155/2007, dated 6 of August, 2007 and subscribed by the Municipal Presidency. This file explains that the Recommendation was accepted. On October 9, 2007 the agreement of the conclusion of the file 055/2007-VG was sent, noting that the accepted Recommendation had not been completely fulfilled, upon consideration that its first two points were satisfied, but not the third. The plaintiff was informed of this situation on November 29, 2007.

Due to the aforementioned, on December 18, 2007 Mrs. Ana Rosa Baeza Berzunza presented an appeal to challenge the Local Organism, which was sent to the National Commission on December 17, 2007 and was received on the 27th of that month and year.

From the logical and legal analysis that was carried out with the proof that forms part of the appeal, the National Commission considers that the damages expressed by Mrs. Ana Rosa Baeza Berzunza have legal basis because of the violation to the right of enjoyment of a healthy and ecologically sound environment, which is consecrated in article 8, fraction VI of The General Law of Ecological Equilibrium and Protection of the Environment, when the legal dispositions relative to the prevention and control of noise and odour contamination failed to be applied during the Craftworks and Culture Fair, as well as during the municipal carnival of Calkiní, Campeche.

It did not go unnoticed that before the Recommendation was sent by the Local Organism, there was there was precedent on the issue. The precedent caused the celebration of a minute from June 30, 2006 between the plaintiff, the Secretary, the Legal Advisor to the Honourable Constitutional City Hall of Calkiní, Campeche, and the authority who would later fail to certify the completion of sections of the minute and who failed to fulfil the agreement made on September 21, 2007, with Mrs. Ana Rosa Baeza Berzunza.

The National Commission estimates that the Recommendation sent by the Human Rights Commission from the State of Campeche has been unsatisfactorily fulfilled, and therefore formulates the following recommendation to the Honourable Constitutional City Hall of Calkiní, Campeche:

With the objective of resolving the problems established by Mrs. Ana Rosa Baeza Berzunza, in relation to the referred festivities, we recommend that the dispositions of the minute dated June 30, 2006, which were written on behalf of the Honourable Constitutional City Hall of the municipality of Calkiní, Campeche be complied with. Likewise, we recommend that the agreement made on September 21, 2007 be carried out by the same Honourable Constitutional City Hall of the municipality Calkiní, Campeche so as to prevent future damages to the plaintiff. Thirdly, it is recommended that the procedure to be followed should comply with the Law, as laid out in the Political Constitution of the State of Campeche, in chapter XVII. Forth, that the administrative rules be sent by that Honourable Constitutional City Hall of the municipality of Calkiní, Campeche, so that during future public events, it be verified onsite that the Human Rights of the population are guaranteed.

Recommendation 66/2008

December 22, 2008

Case: Of the minor M1

Addressee Authority: Constitutional Government of the State of Coahuila and the Mexican Social Security Institute (IMSS)

On May 26, 2008 the National Commission received a written complaint from Q1, who manifested that on October 1, 2007, Q1 took their three year old daughter to a Social Security ADIS Day-care, located in the State of Coahuila. Upon returning to the house, the parent realized the girl was bleeding, so she was taken to the Emergency Unit of the Clinic Number 1, of the Mexican Social Security Institute. There, the parent was told that she had not been raped, but had been fondled, which is why the parent went the next day to the State of Coahuila's General Attorney's Office to denounce the female worker of that day-care that was pointed out by the child as being the person responsible for the act. The denunciation has been unsuccessful because the required people have not been subpoenaed.

From the analysis of the facts and proof in the file, there is enough compelling evidence to certify the minor suffered from violations to her right to integrity, her right to legality, legal security and the due procurement of justice from the State of Coahuila's General Attorney's Office. This is because it is the SP1 who is responsible for the conformation of the preliminary inquiry SG7-489/2007 but has omitted to carry out the required and pertinent tasks which would allow the quick and expedite clarification of the denounced facts, but nevertheless has ceased to act continuously in the prosecution and perfection of the preliminary legal investigation, leading to a delay in over a year of said preliminary inquiry.

Also, it was noted that the Mexican Social Security Institute, upon giving its report, clarified that the ADIS Child Day-care is a participation-based day-care, where employees are not considered part of the Institute's personnel. Also, they pointed out that the Head of Internal Affairs, Complaints and Responsibilities of the State of Coahuila had informed that the day-care had a unique neighbourhood-community scheme, whose proprietor is a private individual and that is why there is no jurisdiction that allows the acknowledgment of the reported facts.

It is our understanding that it is the duty of the Mexican Social Security Institute to make sure that minors have access to a quality service regarding daycares, and the mere signing of an agreement does not suffice. Because the institution is the main entity obliged to

give day-care services, the fact that it was not providing the service directly makes it co-responsible for the damages that are caused due to the inefficient service given by private entities.

This is why the National Commission gave the Governor of the State of Coahuila and the Director General of the Mexican Social Security Institute the following recommendations:

To the Governor of the State of Coahuila:

That relevant measures be dictated in order to guarantee the medical and psychological attention that the minor requires, so that she may overcome the problems she faces, and that the National Commission be informed, as well, of the actions taken to that effect. That the State of Coahuila's General Attorney's Office pass instructions to the Public Ministry Agent responsible for the application for the preliminary inquiry SG7-489/2007 so that all the necessary tasks can be taken care of in order to determine as briefly as possible, and according to the Law, that investigation; and that the National Commission be informed of the Human Rights actions taken to that effect. We also recommend that the Responsibilities Area of the State of Coahuila's General Attorney's Office be looked into so that there may be, according to Law, an initiation and determination of the administrative procedure of responsibility against the Public Ministry Agent who incurred in the delay of the preliminary inquiry SG7-489/2007, as well as the conducts determined in the observations chapter of the present document; and that the National Commission be informed of the results regarding Human Rights. Also, that the necessary directives be sent to the Public Ministry Agents of that General Attorney's Office so that in any case regarding minor's abuse they are able to assume their responsibilities, informing their superiors of the acts so that they can immediately attend, prevent and protect the victims, safeguarding their integrity and thus avoiding delaying the procedure regarding duties vital to the speedy explanation of the facts, as happened in the present case.

To the Director General of the Mexican Social Security Institute:

That the pertinent principles be dictated in order to guarantee that in the replacement of the day-care services, the benefactors are insured the best conditions available regarding price, quality, opportunity and other pertinent circumstances; that necessary measures be adopted in order to guarantee that the replacement personnel who work in the daycares have technical or professional formation which ensures their performance when offering their services.

Recommendation 67/2008

December 22, 2008

Case: Of torture of A1 and A2

Addressee Authority: National Defence Secretary

On March 18, 2008 the National Commission received a complaint submitted by Q1, which noted that at approximately 18:00 of March 17, 2008, this person was informed that their home had been robbed, which is why this person moved their company's property, accompanied by A1 and they observed that there were several people from the Mexican Army. They were told they had to press charges through a Public Ministry Agent, which is why A1 went in the public servants' van, after which A1 was taken to an unknown location. On March 19, 2008, Q1 stated to personnel of the National Commission that A1 was detained in the Republic's General Attorney installations in the Delegation of Torreón, Coahuila. Q1 stated that interviewing him, Q1 could tell A1 was suffering from lesions.

While putting together the facts of the case, it was observed that A1 was detained when in the company of A2, which is why on July 15, 2008, the personnel of the National Commission interviewed A2, who manifested that at approximately 11:00 am of March 17 of that year he was apprehended by public servants of the Mexican Army, who took A2 to a military barrack located in Torreón, Coahuila, where A2 was beaten, and at approximately at 16:00 hours on March 18, 2008 was put to the disposition of the Agent of the Federal Public Ministry of that same location.

Of the logical and legal analysis carried out in conjunction of the evidences of what was alleged to the National Commission, there was a consistent accreditation of the violations to the right of legality, to the right of legal security, to personal freedom and personal integrity, accompanied by acts of torture, arbitrary detention and illegal retention. These acts were attributed to the public servants of the 33rd Infantry Battalion of the Sixth Military Base in Torreón, Coahuila, in aggravation of A1 and A2. Proof was obtained through information derived from the public servants ascribed to said Battalion, as well as the testimonies and declarations. The allegations made to the National Organism, allowed the organism to note that the performance of the aforementioned Battalion's personnel did not comply with the Law, and it was noted that the argument that A2 had a suspicious attitude was made several times. This argument does not constitute an element that facilitates the public servants' to carry out their detention, because this circumstance is based solely in a presumption. This makes it probable that the reason why there is a difference between the aggrieved's accounts of what occurred and what was described by the public servants of the Mexican Army, is because it did not happen in the way the latter describes it. This constitutes a matter contrary to the disposition of article 16, paragraph one of the Political Constitution of the Mexican United States.

Likewise, established facts prove that between the time A1 and A2 were detained by the 33rd Infantry Battalion and the time they were put to the disposition of the Federal Public Ministry Agent, over 20 hours lapsed. This is a violation to the right of legality and legal security, consecrated in article 16, paragraph four, of the Political Constitution of the Mexican United States.

It is the view of the National Commission that the elements of the Mexican Army who participated in the detention and retention of the aggrieved, did not observe the content of article 16 of the Political Constitution of the Mexican United States and with their conduct they possibly transgressed precepts 7 and 8 of the Federal Law on the Administrative Responsibilities of Public Servants, in correlation with articles 2 and 3 of the Discipline Act for the Mexican Army and Air Force.

On the other hand, the proven elements accredit violations to the right to physical integrity of A1 and A2, motivated by the suffering they were subjected to on behalf of the cited Infantry Battalion. This was established in accordance to the content of the records in the allegation, thus the National Organism considers that the lesions inflicted upon A1 and A2 are not a result of manoeuvres intended to submit them, but rather, reflect an attempt against the physical integrity of the aggrieved and they constitute lesions caused by the excessive use of force and characteristic of torture, as prescribed in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the Inter-American Convention to Prevent and Punish Torture. It was also noticed that the Chief medical Surgeon M1, upon giving an integral dictum, abstained from describing the lesions which were presented on A1's body surface as a consequence of the physical suffering A1 was subjected to. This constitutes a crime against humanity, which implies an attempt against the right of all humans to have their physical and psychological integrity respected, as well as their dignity. Due to this, a recommendation was addressed to the Secretary of National Defence.

To the Secretary of National Defence, we request that instructions be given so that reparation for the damages caused to A1 and A2 may be awarded. These should entail psychological and medical support as well as the necessary rehabilitation, so that their physical and psychological conditions may be re-established to the shape in which they were before the violation to their Human Rights. This institution must be informed on the results of this. Also, that they pass instructions to the correct authority so that aid is given as soon as possible to the victims and witnesses of the facts narrated in the chapters of observations in the present document. Security measures should be taken in order to avoid that any sort of intimidation or punishment be carried out against them. The Military Justice's General Attorney should receive the detailed findings of the observations' chapter of this document so that they are taken into consideration by the Public Ministry's Agent when heading the preliminary inquiry initiated against the personnel of the 33rd Infantry Battalion of Torreón, Coahuila. This inquiry is motivated by the remission of the document AP/PGR/COAH/TORR/AGII-II/181/2008, against those who result responsible for the conducts committed against A1 and A2. This document was initiated by the Federal Public Ministry's Agent and subscribed under the Second Meeting of the Second Investigative Agency. The National Commission must be informed of the ministerial investigation procedures during its legal integration, perfection and resolution, as well as the measures that are to be carried out so that non-repetition can be guaranteed. The Director of the General Inspection and Comptroller of the Mexican Army and Air Force must also receive instructions from the Secretary of the National Defence so that an administrative investigation procedure initiates regarding the personnel of the 33rd Infantry Battalion Torreón, Coahuila. The procedure should consider the observations chapter of the present document. The National Commission recommends to be kept updated from the beginning of this investigation until the conclusion of said procedure, as well as during the emission of a resolution. Also, the Military Justice's General Attorney should be notified of the considerations presented in the observations chapter of this document so that a preliminary inquiry against the Sanitation Platoon commander of the 33rd's Infantry Battalion of the Sixth Military Zone in Torreón, Coahuila be carried out. This institution is to be informed from its initiation until a determination is reached. Likewise, we recommend to the Head of General Inspection and Comptroller of the Mexican Army and Air Force that an administrative investigation procedure be held against the Sanitation Platoon commander of the 33rd's Infantry Battalion of the Sixth Military Zone in Torreón, Coahuila, regarding the consideration(s) exposed in the observations chapter of the present document, and that the National Commission be informed from its initiation until the conclusion of the procedure, as well as the emitted resolution. In order to guarantee the impartiality and objectiveness of the military-medical personnel's certification of someone's physical state, courses must be programmed. Their objective must be to verify the fulfilment of the legal and ethical duty derived from following norms that establish medical revision procedures, and that they do not abstain from describing the lesions they observe. They are also obliged to denounce before the Public Ministry Agent the cases where they presume torture or abuse. There must also be, for the elements of the Mexican Army, training courses and evaluation of their capacity to implement operatives that allow the fulfilment the National Coordination System of Public Security. These must guarantee respect for life, physical integrity, dignity, liberty, a person's property and that prioritize the use of non violent measures, within the framework of Human Rights. The corresponding measures should be sent to the authority who can guarantee those detained in operatives that require the Mexican Army to intervene, are not taken to their locations, but rather, that they are put to the disposition of a competent authority immediately.

INTERNATIONAL ISSUES

LX Anniversary of the Universal Declaration of Human Rights

This past December 5, 2008, there was an International Session dedicated to the LX Anniversary of the Universal Declaration of Human Rights in the National Auschwitz Museum – Birkenau, in Cracovia, Poland. Dr. José Luis Soberanes Fernández participated collaterally in a discussion on the freedom of faith, where he noted that it is in the poorest states where the presence of religious sects have succeeded the most.

He also manifested that amongst the challenges Mexico faces, there is that of overcoming and eradication of religious intolerance, "as a pure manifestation of a rejection of the catholic population towards other groups", as well as attending to the new threats to the religious liberty, which is presented with conflicts of social and economic origins, that are expressed as religious intolerance issues. Faced with these facts, it was noted that the National Human Rights Commission has intensified its work in favour of the respect for tolerance and for religious freedom.

"In its most violent manifestations", he said, "religious intolerance problems are presented basically in Chiapas, Oaxaca and Guerrero, where the "ejido" authorities and, specially, the local caciques use violent means to try to control the minority groups if these do not cooperate economically or if they don't participate in religious parties or when they try to propagate the faith they profess".

Upon indicating that Mexico is a considerable catholic country (80%) and that the threats that religious liberty faces are not related with a rivalry amongst believers and non-believers, but rather between the new religious realities of a sectarian character, he highlighted that in the National Human Rights Commission (CNDH) it has been observed that there are those who are considered as simply unimportant small groups, or those who defame and slander them, which has lead to an increasing propagation of intolerance.

He made reference to the General Recommendation Number 5, of the CNDH, which was sent with the objective of making education authorities abstain from sanctioning students who for religious reasons refuse to give honours to the flag and to sing the National Hymn during civic ceremonies. The CNDH, he said, "recognizes that the education authorities have the obligation of instilling civic education in students; however the states who have sanctioned Jehovah witnesses have tried to condition their right to religious liberty and education".

Before the Ombudsmen of several countries and representative authorities of the Republic of Poland and the European Commission, the Mexican Ombudsman carried out a historical account in order to better comprehend the situation of religious liberty in México, and in a similar way, an account of the rest of the Latin-American countries. He highlighted there were three big periods relating to the topic of religious liberty and the Church-State relationship: during colonial times, during the newly independent México and during the Liberal Reform.

He explained that in the colonial era the Spanish State in the "Indias" was a missionary State, not just out of convenience but also out of conviction, because the kings in Castilla felt an evangelizing calling. In that period the Counter-reform was developing, so that the evangelization aimed to renew the Church and avoiding the advance of protestant doctrines. A confessional state reigned and, consequently, religious intolerance was absolute towards all things not catholic.

"The Spanish domination in our homeland, he added, was concluded in the midst of an intense debate where the relation of the Spanish State with the Catholic Church, that was never clear or precise, was being deeply revised".

He said that the independence of México brought about new and severe ecclesiastical problems, aside from those inherited from the previous period. He detailed that the separation of the internal society from the metropolis implied a separation of the local Church with the Holy See. He detailed that, notwithstanding, the independence brought with it the establishment of a liberal and relatively democratic State, which implied a larger degree of religious tolerance.

He exposed that in the post-revolutionary Mexico the religious liberty had several phases. The Political Constitution of 1917, in its original redaction adopted an antireligious posture which bordered on violations of human rights. Amongst its precepts were prohibitions regarding the establishment of monastic orders, as well as the non-recognition of the legal personality of all religious groups.

Nevertheless, the Mexican government did not adopt an antireligious policy, until the second half of the 1920's decade, through the persecution against Catholicism, known as the Cristero War which ended with a series of agreements between the Catholic hierarchy and the federal government. These agreements did not derogate the constitutional dispositions on the subject, but they ceased to be applied. This situation of relative simulation came to an end with the adoption of the constitutional reforms of 1992.

In the aforementioned encounter, there was a review of history and considerations on the modern challenges related to human rights, from the perspective of several cultures and traditions.

Dr. Soberanes Fernández participated in several of the cultural activities and met various high-profile persons, among them Israel's Ombudsman, Micha Lindenstrauss, and the metropolitan cardinal from de Cracovia, Stanislaw Dziwisz.

DIRECTORY

President
José Luis Soberanes Fernández
First General Visitor
Raúl Plascencia Villanueva
Second General Visitor
Susana Thalía Pedroza de la Llave
Third General Visitor
Andrés Calero Aguilar
Fourth General Visitor
Mauricio Ibarra Romo
Fifth General Visitor
Mauricio Farah Gebara
Executive Secretary
Javier Moctezuma Barragán
Technical Secretary of the Consulting Council
Jesús Naimé Libién