

# NEWS LETTER

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### THE NATIONAL COMMISSION OF HUMAN RIGHTS ISSUED GENERAL RECOMMENDATION NO. 15 ON THE RIGHT OF HEALTH PROTECTION

Analysis of 11,854 complaints filed before the National Commission of Human Rights (Spanish initials – CNDH) on services provided by health institutions from January 2000 to January 2009, revealed that some of the most serious and recurring problems in hospitals, clinics and medical assistance centers are: insufficient medics, specialists and nursing personnel, clearly necessary to satisfy demand on this field; inadequate training for the conduction of efficient diagnostics and provision of adequate disease treatment, and insufficient technical supervision of resident or assistants.

At the same time, other chronic obstacles affecting the public health sector are the lack of hospital infrastructure and material resources, such as insufficient beds, medication, instruments and medical equipment in general.

Victims of deficient public health services have specifically come before the CNDH to report delays in the conduction of clinical studies and diagnostics, discriminating behavior against patients, lack of attention in emergency units, mistreatment of patients, negligent surgical procedures and deficient attention for mothers and infants during childbirth procedures.

As a consequence of the analysis results, on April 23rd the National Commission of Human Rights issued General Recommendation Number 15 on the Right of Health Protection, addressed to the Holder of the Secretary of Health, the General Managers of the Mexican Institute of Social Security, the General Managers of the Institute for Safety and Social Services of Workers of the State, the General Managers of Mexican Petroleum, and to the Holders of the Secretary of National Defense and the Navy, as well as the Governors of Federative Entities and the Holder of the Federal District Government.

Based on dispositions stipulated on Article 102, Incise B, of the Mexican Constitution, in addition to the Law and Internal Rulebook of the CNDH, General Recommendations may be turned down by addressees. General Recommendations are of public in nature and issued in order to promote changes and modifications to legal dispositions and administrative practices that are contrary to fundamental rights. Also, General Recommendations seek to promote that, within their responsibilities, authorities eliminate said violations and are able to solve any irregularities included within the Recommendation.

The CNDH has proposed that the Chamber of Delegates of the Congress of the Union and State Legislatures create a budgetary item large enough to provide health institutions with improved physical infrastructure and sufficient personnel needed to cover services related to the right of health protection.

The National Commission has found constant failure to comply with 82 Official Mexican Norms issued by the Secretary of Health. Therefore, authorities are being asked to develop manuals and provide training that will comply with public policies for the promotion of health and prevention of disease. Likewise, health services must assure the supply and administration of medication and provide timely information to prevent diseases.

In addition, providers of public health services are being asked to provide their personnel with the proper training concerning Official Mexican Norms. Pertaining authorities must elaborate specific programs for the protection of vulnerable groups. Investigation on the field of health must be promoted and support services to patients infected with the HIV virus must be provided, in order to facilitate their adaptation, thus avoiding discrimination and social repercussions within their families.

Wrongful practices in health services go against the right that every person has to: longer lives and a better overall quality of life; to the preservation of health and enjoyment of health conditions; to the preservation, improvement and restauration of health, and to be provided with health and social assistance services that may properly satisfy all of the population's needs. All of the above are rights established by the current legal order.

## RECOMMENDATIONS

The following is a recap of recommendations issued by the CNDH during the month of May. A complete version can be found on the Commission's official website.

Recommendation 29/2009

May 6th 2009

Case: Of LHTC, IMA and some Central American migrants

Pertaining Authorities: Secretary of Navy and National Immigration Institute

The National Commission of Human Rights issued Recommendation 29/2009, addressed to the Secretary of Navy (Spanish initials – SEMAR) and to the National Immigration Institute (Spanish initials – INM) based on the case of 223 Central American migrants that became the victims of operations conducted by personnel attached to the both institutions and headquartered in the State of Oaxaca. The victims were chased, beaten and detained illegally. Additionally, the life of a journalist who witnessed the facts and captured them with a photographic camera was threatened. Seeking to cover up these excessive actions, authorities of both institutions presented lacking and subjective medical and factual reports.

On February 29th 2008, during a visit to migratory station Siglo XXI of the INM in Tapachula, Chiapas, one of the victims asked for personnel of the CNDH to intervene on the facts that took place one day earlier in Las Palmas, a town located in the State of Oaxaca. Seeking to avoid being discovered during a special operation, the victim jumped off a train, but was chased down by Navy officer, who repeatedly beat the victim on the right leg with a club.

As the file was being integrated on April 1st 2008, the CNDH received a complaint based on the illegal retention of a Mexican journalist born in the State of Michoacán, currently residing in Minneapolis, Minnesota, United States. During the operation conducted on March 31st in the aforementioned town of Las Palmas, the journalist was detained after he had learned of the chase and consequent violence that foreign citizens were being subjected to.

After discovering the journalist taking pictures of the facts, a Navy officer promptly ordered his detention. Navy personnel demanded that he turned over his camera and pictures, but the victim refused. After establishing his nationality and activity, his life was threatened and he was charged of being a "pollero" (translator's note: a "pollero" is a person who carries migrants across the border illegally for a certain fee). The victim was then transferred to the migratory station located in Tapanatepec, where he was placed in a cell and eventually released.

Analysis of the evidence that reached the CNDH helped establish that personnel attached to the SEMAR and the INM committed violations to the victim's rights of legality, legal safety, decent treatment and, personal integrity and safety; as well as against other Central American migrants and the aforementioned journalist, who additionally, was the victim of violations to the rights of freedom of speech and information.

In its report, the SEMAR indicated that the injuries sustained by the victims occurred when they jumped off the still moving train in their efforts to avoid detention. However, the National Commission obtained testimony given by communal authorities, neighbors and the victims themselves, which helped confirm that the migrants were chased down and subjected to violent actions, which went as far as being kicked while they were lying down on the ground.

The CNDH believes that the actions committed by the pertaining authorities were disproportionate, since said actions must be proportionate to the circumstances of the facts, thus avoiding the use of excessive measures that bring unnecessary harm to persons.

The bruises presented by the victims were neither described nor certified in adequate manner by medics attached to the INM's migratory stations. Since medical certificates and exams failed to comply with characteristics established by the General Population Law, the reports presented by public officials are incomplete, subjective and have limited real evaluations which have demonstrated inconsistencies in medical activities.

Investigation of the facts for SEMAR was conducted by the Inspection and General Treasury Inspector's Office, which helped establish that excessive force had been used. Therefore, arrest warrants were issued against two corvette lieutenants, a first mate and a corporal. In the meantime the INM assured that "no violent action or aggression committed against illegal aliens was witnessed", despite the fact that the operations in question were the institution's responsibility. All of the above indicates that the INM had no control over the operation and that the institution tolerated illegal migratory check up activities conducted by Navy personnel.

The CNDH asked the Holder of the Secretary of Navy that the Inspection and General Treasury Inspector's Office to investigate all of the personnel not subjected to the entire process. An investigation of any and all administrative irregularities that the personnel involved in the violations to the rights of freedom of speech committed against the journalist must also be conducted. Personnel attached to the institution must receive proper training on the adequate techniques for the proper use of force, detention, submission, securing, persuasion and proper behavior in crowded areas, among others, so that the use of force and stress management are limited in order to assure that duties are fulfilled in accordance to the law, without taking charge of operations command.

The Commissioner of the INM was asked to instruct the Internal Control Body to conduct an investigation of all public officials involved in the facts and that Migration personnel takes charge of command in joint operations.

Recommendation 30/2009

May 7th 2009

Case: Contestation Appeal filed by Mr. Alfonso Rodríguez Catalán

Responsible Authority: Constitutional Governor's Office of the State of Morelos

On September 16th 2008, the National Commission received a contestation appeal filed by Mr. Alfonso Rodríguez Catalán, based on the fact that the Attorney General's Office of the State of Morelos failed to comply with a Recommendation issued by the Human Rights Commission of the State of Morelos, under file No. 392/2003-4.

The National Commission established the contestation appeal under file number CNDH/3/2008/252/RI. Analysis of all evidence gathered helped determine that the Attorney General's Office of the State of Morelos failed to fulfill the aforementioned recommendation. The latter is based on the fact that initial investigation DH/4<sup>o</sup>/062/05-07, filed by the Fourth Agency for Proceedings of the Sub-management Office of Human Rights against any and all parties responsible of violations committed against Mr. Alfonso Rodríguez Catalán, has yet to reach a resolution.

The facts contained within the recommendation have led to the conclusion that public officials conducted unjustified delays in the procurement of justice. The above translates to punitive pretensions on the part of the state, based on the exercise of penal action, against Mr. Alfonso Rodríguez Catalán. As a consequence, evident transgressions to the human rights of legal safety and legality have been committed, in accordance to Article 17, Second Paragraph, and Article 21, First Paragraph, of the Political Constitution of the Mexican United States; in addition to Articles 3 and 4 of the Declaration on the Fundamental Principles of Justice for the Victims of Crime and Abuse of Power.

Therefore, on May 7th 2009, the National Commission issued Recommendation 30/2009, addressed to the Constitutional Governor of the State of Morelos, asking for instructions to be issued to whom it may concern, so that the Recommendation issued by the Human Rights Commission of the State of Morelos is fulfilled in the form of immediate resolution of initial investigation DH/4<sup>o</sup>/062/05-07. The National Commission must be kept properly informed of all proceedings. Likewise, the Attorney General's Office of the State of Morelos must initiate the pertaining initial investigation. The Secretary of the Treasury Inspector's Office of the State of Morelos must be notified, in order to initiate and determine an investigation to establish the administrative responsibilities of any and all parties guilty of delaying the resolution of said investigation, all in accordance to the law. The latter must be conducted based on the considerations included within the Observations chapter of the Recommendation and the National Commission must be kept properly informed of all proceedings.

Recommendation 31/2009

May 20th 2009

Case: Of Mr. José Carrasco Soto

Responsible Authority: Secretary of National Defense

On September 25th 2008, the National Commission received a complaint filed by Mr. José Carrasco Soto, in which he stated alleged human rights violations committed against him by public officials attached to the Secretary of National Defense. According to the complaint, on September 23rd, ten members of the Mexican Armed Forces broke into one of five properties that belong to his mother, where he was beaten in order to confess that he was in possession of weapons and drugs. The complaint also states that the victim was drugged with gas and that he had his head covered with a bag. The victim also added that he was placed under the charge of the Agent of the Public Attorney's Office of the Federation in the city of Durango, until 08:10 AM on September 24th, when he was finally able to produce his statement and was provided with certification for the injuries he had sustained.

Gathered evidence helped establish that personnel attached to the 72nd Infantry Battalion of Ciudad Lerdo, Durango, failed to comply with statutes established by Constitutional Article 16 based on the fact that, after detention, the victim was forcefully transferred into the military facilities where he was interrogated and sustained the injuries certified at 21:40 hours, on September 23rd 2008 by A4, medical captain and surgeon of the Mexican Army. Mr. Carrasco Soto remained in detention until 08:10 hours on September 24th 2008, when he was finally placed under the charge of the social representative of the Federation, also finally receiving medical certification.

Likewise, it has been established that military personnel deprived the victim of his liberty from 21:00 hours on September 23rd 2008 when, failing to present an issued warrant, they transgressed the inviolability of his house and transferred the victim to the facilities of the "LAGUNAS" Command Post in Ciudad Lerdo, where the victim remained under forceful detention for more than 11 hours; a situation that generates lack of legal safety, since the victim was subjected to illegal deprivation of liberty.

At the same time, the National Commission has also gathered enough evidence to establish violations to the right of personal integrity and safety, due to the fact that, after detention, the victim was subjected to typical actions of torture, that led to injuries that were the

result of taking beatings while at military facilities. Said injuries were corroborated through the opinion of a legal doctor on March 10th 2009, issued by the Coordination of Valuation Services of the CNDH. The doctor's report concluded that the injuries sustained by the victim are contemporary to the facts and were the product of an intentional type of mechanics, generated by third parties, while the victim remained in passive condition.

Recommendation 20/2009 was issued based on violations to the fundamental rights of personal integrity and safety, legality and legal safety, as established by Article 14, Second Paragraph, Article 16, First, Fourth and Tenth Paragraph, Article 21, First and Ninth Paragraphs and Article 22, First Paragraph, of the Political Constitution of the Mexican United States. The aforementioned violations are attributable to public officials of the Secretary of National Defense, based on consistent facts, which helped demonstrate that the aforementioned authorities broke into a property without a warrant, in addition to being guilty of arbitrary detention, illegal retention and torture.

Therefore, the Secretary of National Defense has been recommended that the damage suffered by Mr. José Carrasco Soto must be repaired. The Inspection Unit and Treasury Inspector's Office of the Mexican Army and Air Force must be properly informed, so that an administrative investigation procedure against the military personnel that intervened in the facts is initiated. Additionally, the Agent of the Military Public Attorney's Office responsible for initial investigation 10ZM/52/2008-11, originally conducted against the military personnel involved in the detention of Mr. José Carrasco Soto, must be properly informed of the contents of this Recommendation. Likewise, military personnel must be properly instructed, in order to bring any and all persons detained on the grounds of flagrantly delictive actions before the pertaining ministerial authority and must assure that military facilities are not used as detention and retention centers. In addition, military personnel attached to the 72nd Infantry Battalion in Ciudad Lerdo, Durango, under the Mexican Army's Directive for the Integral Fight Against Drug Trafficking 2007-2012, including military medical personnel, must receive proper training, so that any and actions or procedures are conducted with strict adherence to the law and respect to human rights. The respect to life and personal integrity and safety must be guaranteed and torture, cruel and/or degrading treatment must not occur.

## NATIONAL AFFAIRS

### Universal Periodical Review

Seeking to promote the new mechanism called Universal Periodical Review (UPR), established by the U.N.'s Human Rights Council, the CNDH initiated a series of round tables that seek to check on the conditions of human rights in each country and follow up on recommendations formulated to the Mexican State. Specialists, scholars and members of civil society came together during this series; all seeking to propose and point out measures and actions meant to fulfill the aforesaid recommendations, in addition to discussing aspects that the UPR may fail to observe.

In this regard, the round table The Rights of Indigenous Peoples and Poverty was conducted from May 13-15 in San Cristóbal de las Casas, Chiapas. The goal of the event was to analyze the current state of the rights of Indigenous Peoples in México, including progress and road blocks in this area. The following topics were analyzed:

- Favorable government policies for the country's indigenous population;
- Government Policies on Indigenous Tongues;
- Participation of NGO's in the defense of the rights of indigenous people;
- Harmonizing international instruments with federal and state legislations;
- Discrimination based on gender and ethnic origin

Likewise, a Round Table on The Rights of Persons with Disabilities was held on May 20th in México City. Officials of several different dependencies of the Federal Government that relate to the subject of challenged persons participated in the event, along with representatives of Non-Government Organizations for persons with disabilities. Some of the guests who took part in the round table were: Dr. José Javier Osorio Salcido, Technical Secretary of the National Council for Persons with Disabilities (Spanish initials – CONADIS); Engineer Perla Patricia Bustamante Corona, President of the National Council for the Prevention of Discrimination (Spanish initials – CONAPRED); Dr. Luis Guillermo Ibarra Ibarra, General Manager of the National Rehabilitation Institute (Spanish initials – INR), as well as representatives of the DIF National System, the National Institute of Statistics and Geography (Spanish initials – INEGI), the Secretary of Public Education (Spanish initials – SEP), the Secretary of Work and Social Prevision (Spanish initials – STPS), the Mexican Institute of Social Security (Spanish initials – IMSS), the United Nations High Commissioner of Human Rights (Spanish initials – OACNUDH) and several Organizations of the Organized Civil Society.

Finally, the round table Migration, Public Safety and Penitentiaries was conducted on May 27-28, at Hermosillo, Sonora.

The aforesaid event was a joint effort organized with the collaboration of the Human Rights Commission of the State of Sonora. Some of the participants were: Mrs. Liliana Valiña, Joint Representative in México for the United Nations High Commissioner of Human Rights; Mr. Jorge Bustamante, Representative of the Frontera Norte College and Special Reporter on the Human Rights of Migrants before the United Nations. Ambassador Carmen Moreno Toscano, Consultant at the Mexican Center for Strategic Analysis and Negotiation; Dr. Tonatiuh García Castillo, Coordinator of Migratory Regulation for the National Migration Institute; Prof. Jorge Sáenz

Félix, President of the Human Rights Commission of the State of Sonora, as well as Mr. Francisco Figueroa Souquet, Attorney at Law and Executive Secretary of Public Safety in the State of Sonora.

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