

NEWS LETTER

Number 196

June 2009

CONTENTS

- The National Commission of Human Rights issued General Recommendation No. 16 on the time limit for the resolution of initial investigations.
- 32/2009 Case of Mr. José Israel Zepeda Sojo and Mrs. Cristina Azucena Parra Sánchez.
- 33/2009 Case of Messrs. Adrián López Hernández, Saúl López Hernández and Mrs. Silvia Analuisa Sentíes Lucio
- 34/2009 Case of the detention of 22 agents attached to the Legal Police and the Coordination for Preventive, Operative and Logistics Investigation in Ciudad Juárez, Chihuahua on April 1st 2008.
- 35/2009 Case of A1.
- 36/2009 Case of Mrs. Beatriz López Leyva.
- 37/2009 Case of Mr. Jaime Hernández Chávez, in the Antúñez Community in Parácuaro, Michoacán.
- 38/2009 Case of Mr. Humberto Aguilar Cortés
- NATIONAL AFFAIRS
- INTERNATIONAL AFFAIR

THE NATIONAL COMMISSION OF HUMAN RIGHTS ISSUED GENERAL RECOMMENDATION NO. 16 ON THE TIME LIMIT FOR THE RESOLUTION OF INITIAL INVESTIGATIONS

Based on the analysis of complaints received and recommendations issued by the National Commission, current legislations on the matter, background information included within this document and logical-legal binding, the National Commission issued General Recommendation No. 16 on the time limit for the resolution of initial investigations on the 21st of May.

Analysis of received complaints made it possible for the National Commission to identify several administrative actions and omissions on the field of justice across the country. The following actions and omissions have neglected the human rights of crime victims, other affected parties and alleged perpetrators: long inactivity periods during investigations; insufficient actions to guarantee the safety of victims and witnesses; proceedings that go unreported within inquiries, and summons notified after expiration.

It should also be noted that alleged perpetrators are not usually allowed to contact relatives and even their own defending counselors. In addition, disclosure of initial investigations is often obstructed, even when required by the defense through written petitions.

On the other hand, numerous irregularities, attributable to officials attached to Public Attorney's Agencies, have been reported, such as: misplacement of evidence included within the file; deficient investigations conducted by judicial, legal or scientific police agents, which in many cases, amounts to consultation of inquiries instead of physical visits to crime scenes to gather testimony or other types of evidence and verify if the facts reported did indeed occur as stated; deficient preservation of crime scenes, and finally, unjustified delays in the pronouncement of expert witness reports. All of the above leads to delays in delivering justice and obstruction in the investigation of crimes.

The grave delays currently plaguing our country's law enforcing institutions are one of the most daunting challenges that different state and federal justice bodies must overcome. All aforementioned deficiencies are the product of administrative practices that remain as the parameters used to measure the performance of public officials; even if said parameters are against the law. In addition, since careers in civil service that could help contribute to the permanent education and training of agents and assistants attached to Public Attorney's offices are sorely missing, the aforesaid parameters stray away from institutional sense and direction.

With regards to the problem posed by constant administrative reform, the National Commission has observed that different criteria is applied during the investigation stages of a crime; a situation that fails to provide agents and assistants attached to Public Attorney's offices with clear performance guidelines to follow. As a consequence, crime victims, other affected parties and even alleged perpetrators, cannot be provided with swift, complete and impartial access to justice.

Complaints received by the National Commission deal with violations to human rights that are the result of failure to resolve the investigation stages of crimes within the time limits, as well as failure to meet the proper criteria that should be taken into consideration.

The criteria needed to resolve initial investigations within established time limits is stated in some States' codes of procedure. Yet, said criteria is extremely irregular; as irregular as considering the type of crime that shall be attributed to the potential perpetrator. In other cases, however, disparities revolve around the time when the report gets produced or is ratified. Finally, inconsistencies that require for

the final resolution to be issued within a reasonable time limit, based on previously established penalties, are dependent on the nature of the crime. In such cases, the production of inquiries or final determination of initial investigation files is required and may take anywhere from 60 natural days to 24 months before a final resolution can be reached.

In this sense, the Commission is troubled by the absence of a consistent criterion with regards to the time limits that must be applied to penal actions or, to the manner in which an investigation file must be handled. With regards to investigation files, the fact that said documents lack proof, added to the fact that proceedings may not suffice in order to determine the existence of a crime, constitute violations against the right to adequate and expeditious justice; a situation that derives on limited access to justice for crime victims or other affected parties, since they receive neither compensation nor damage repairs for the offense they may have suffered. In addition, alleged perpetrators fail to face trial within a reasonable time limit, to receive access to defense and to the right to presumption of innocence.

In order for agents attached to Public Attorney's offices to guarantee adequate access to justice, the National Commission believes it important to point out that said officers must be allowed to conduct their duties through minimal proceedings, so that: a) delays in the production of initial investigation must be avoided, so that omissions in proceedings over long periods of time can be avoided; b) all proceedings related to the investigations necessary to establish the nature of a crime and alleged perpetrator must be properly distributed and guaranteed; c) all potential evidence of a crime must be preserved, so that all investigation lines can be exhausted; d) analysis and expert valuations must be properly distributed; e) help and protection measures for crime victims and witnesses must be issued; f) access to justice for crime victims must be guaranteed through the elimination of circumstantial files in place of initial investigations; g) investigations must not be filed or archived in cases where investigation lines have not been exhausted and, h) larger investigation files must be produced by police agents in charge of such functions.

The criteria above shall allow for the resolution of cases and circumstances in which omissions committed by Public Attorney's offices imply violations to the human rights of crime victims, other affected parties and alleged perpetrators. Furthermore, concerning actions or omissions committed by officials in charge of the initial investigation of crimes, the criteria above shall help determine the degree of responsibility attributable to said officials.

Actions and omissions that delay justice on the part of public officials in charge of the investigation and prosecution of crimes imply a violation to human rights in accordance to our legal order and as established by: Article 14, Second Paragraph; Article 16, First Paragraph; Article 17, First Paragraph, and Article 20, Incises A and B, of the Political Constitution of the Mexican United States, as well as: Articles 1, 14.1, 14.2, 14.3, Incises b) and d) of the International Covenant of Economic, Social and Cultural Rights; Articles 7.5, 8.1, 8.2, Incise d), and Articles 24 and 25 of the American Convention of Human Rights; Articles 8, 10 and 11.1 of the Universal Declaration of Human Rights; Article XVIII of the American Declaration of the Rights and Duties of Man; as well as Articles 2 and 5 of the Basic Principles Relative to Judiciary Independence. All of the articles above establish that every person has the right to simple and brief procedures that protect justice against actions attributable to authorities, which may have violated any fundamental rights granted by the Constitution.

To all of the above, it should be added that the Inter-American Court of Human Rights sustains that the right to truth and access to justice go hand in hand with the system of human rights. Nonetheless, said subjects are not to be confused, since the right of access to justice does not end with proceedings and internal procedures. Rather, the right of access to justice must guarantee that all actions deemed necessary to expose the truth of the facts are conducted within a reasonable period of time; such as the right to adequate defense, which seeks to sanction probable perpetrators. In addition, the rights of crime victims must be thoroughly respected and, any and all necessary actions and proceedings must be conducted in accordance to standards set by due process.

Therefore, based on all of the above, the National Commission of Human Rights has issued General Recommendation No. 16, addressed to the Attorney General's Offices attached to each of the federal entities, the Military Justice Attorney's Office and the Attorney General's Office of the Republic, recommending the following:

FIRST. Any and all measures deemed necessary within our legal frame work must be taken, in order to establish reasonable time limits for the conclusion of initial investigations. Until said measures are set in place, manuals must be disseminated or agreements to foresee such circumstances must be reached.

SECOND. The pertaining lines of action must be dictated, so that agents attached to Public Attorney's offices may, at the very least, be provided with minimal knowledge of the proper proceedings to be conducted, so that the existence of a crime can be established. In addition, said authorities must produce all elements that point to the responsible parties, so that initial investigations do not end up in files or archives for cases where all investigation lines have yet to be exhausted.

THIRD. Any and all agreements detailing the time limits and terms under which the pertaining proceedings shall be conducted, must be reached, so that initial investigations may be resolved. Additionally, accusers must be receive timely notice on the proper legal terms needed to contest a resolution, so that unjustified delivery of filed or archived investigations can be avoided.

FOURTH. In order to assure that all proceedings are conducted in accordance to the law, any and all controls deemed pertinent must be adopted, so that proceeding and conclusion stages of all initial investigations are properly supervised to: a) any and all delays in proceedings related to initial investigations must be avoided, so that omissions in said proceedings over long periods of time are not committed; b) any and all investigation procedures necessary for the establishment of a crime and the potential responsibility of the perpetrator must be properly distributed; c) any and all indications leading to a crime must be preserved, so that all investigation lines may be exhausted; d) any and all expert reports must be properly distributed and, e) any and all measures to provide crime victims and witnesses with the proper help and protection must be guaranteed.

FIFTH. Agents attached to Public Attorney's offices must be endowed with technical and scientific evaluation services and with sufficient and qualified personnel, so that said agents are provided with all evidence needed for initial investigations to find prompt and immediate resolutions.

SIXTH. Agents and assistants attached to Public Attorney's offices, police agents and expert investigators must be provided with proper training on human rights; specifically with regards to the proper protection measures that must be applied to avoid delays or omissions during the integration stages of initial investigations.

SEVENTH. Any and all measures deemed adequate must be taken in order to provide personnel attached to all Attorney's offices with training on the proper manner to handle, integrate, legally perfect and maintain all evidence. The above must be conducted through agreements, memorandums and through the dissemination of manuals and booklets that will help guide authorities on the proper use of specifically established procedures for the preservation of investigations and evidence.

EIGHTH. Any and all administrative guidelines must be issued, so that investigators attached to Public Attorney's offices may fully guarantee the human rights of accusers, victims or other affected parties whenever their integrity or lives may be in jeopardy due the nature of the crime, just as established by Article 20 of the Political Constitution of the Mexican United States.

RECOMMENDATIONS

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

Recommendation 32/2009

2 June 2009

Case: Of Mr. José Israel Zepeda Sojo and Mrs. Cristina Azucena Parra Sánchez

Responsible Authority: National Secretary of Defense, Constitutional Governor's Office of the State of Nayarit

On November 11th 2008, the National Commission received a complaint filed by Mr. José Israel Zepeda Sojo and Mrs. Cristina Azucena Parra Sánchez. The complaint stated that on November 5th, at approximately 10:00 hours, the victims left their property located in Ixtlán del Río, Nayarit, and headed for the local Red Cross Hospital. On their way, they were intercepted by personnel attached to a Base of Mix Operations (Spanish initials – BOM), comprised of public officials attached to the National Secretary of Defense (Spanish initials – SEDENA), the Federal Investigation Agency (Spanish initials – AFI) and the Judicial Police of the State of Nayarit. The victims claimed that their assailants beat and tried to intimidate them. Next, the assailants forced the victims to return to their property, where they proceeded to enter the house, despite not producing a search warrant, taking money and other valuables with them. The victims added that, before leaving, their assailants threatened to kill them should they decided to report the incident.

Motivated by the facts stated above, the National Commission opened complaint file number CNDH/2/2008/5529/Q. Legal-logical analysis conducted on the gathered evidence led to the conclusion that violations to the human rights of property inviolability, proper treatment, legality and legal safety were committed, in the form of arbitrary detention and entry into the victims' property, despite not producing an official judicial warrant.

The National Commission established that the aforementioned violations to fundamental rights were committed by public officials attached to the National Secretary of Defense, as well as personnel from the Judicial Police of the State of Nayarit. Said officials were responsible for the arbitrary detentions of Mr. José Israel Zepeda Sojo and Mrs. Cristina Azucena Parra Sánchez. Additionally, the fact that both victims were beaten constitutes a violation to: Article 14, Second Paragraph, and Article 16, First Paragraph, of the Political Constitution of the Mexican United States; Article 14.1 of the International Covenant of Civil and Political Rights; Articles 8.1 and 25 of the American Convention on Human Rights; Articles 8 and 10 of the Universal Declaration of Human Rights; Article XVIII of the American Declaration of the Rights and Duties of Man; and Articles 2 and 5 of the Basic Principles Relative to Judicial Independence, due to excessive use of public force and offenses to legality and performance in public functions, positions or commissions.

Likewise, after forcing the victims to travel back to their property, the responsible public officials entered the location with no warrant previously issued by any pertaining authority whatsoever. Said public officials proceeded to conduct a revision of the location, taking a great amount of money in cash, along with several additional objects. The responsible parties also threatened with killing the victims, should the latter decide to press charges; a confirmed violation to the right of legality that goes against Articles: 16, First Paragraph, of

the Political Constitution of the Mexican United States; 17.1. and 17.2 of the International Covenant of Civil and Political Rights; 11.1, 11.2 and 11.3 of the American Convention on Human Rights, as well as Article 12 of the Universal Declaration of Human Rights. All articles described above basically imply that all persons are protected by law and shall not be bothered while inside their property. However, in this particular case, the responsible public officials presented no warrant before judicial authorities or before the victims.

In addition, as public officials in charge of enforcing the law, the responsible parties failed to adhere to rights established by Articles: 7, 9.1, 9.3 and 10.1 of the International Covenant of Civil and Political Rights; 5, 5.1, 5.2, 7.1, 7.2 and 7.5 of the American Convention on Human Rights, which, generally speaking, point out that all persons have access to the rights of safety and personal integrity.

In consequence, on June 2nd 2009, the National Commission issued recommendation 32/2009, addressed to the Holder of the National Secretary of Defense and the Governor of the State of Nayarit.

The recommendation required for the Holder of the National Secretary of Defense to repair all damages suffered by the victims, through psychology and medical support that they may need in order to help restore their physical and psychological condition, as well as repairs to the damage suffered by the victim's property. In addition, the Attorney General for Military Justice must be properly informed about all considerations included within the recommendation, so that said considerations are taken into account by the agent of the Military Attorney's Office attached to the 13th Military Zone in Tepic; the public official responsible for opening initial investigation file 13ZM/04/2009, based on the offenses committed against José Israel Zepeda Sojo and Cristina Azucena Parra Sánchez. The Internal Inspection Unit and Treasury Inspector's Office of the Mexican Army and Air Force must initiate the pertaining administrative procedure against military personnel involved in the facts, based on the actions and omissions said personnel incurred in. Additionally, the aforementioned body must provide personnel attached to the Mexican Army in charge of enforcing the Federal Law of Firearms and Explosives, along with the permanent struggle against drug trafficking, with the proper training, so that any proceeding or performance is conducted with strict adherence to the law and respect of human rights. The respect to life and personal integrity, and security must be guaranteed; torture and degrading treatment are not to be incurred in. Finally, the recommendation petitioned for any and all instructions deemed necessary to be issued, so that, in the future, the personnel attached to SEDENA may provide opportune and prompt attention to all requirements formulated by the National Commission. Once instructions are put in place, the Commission must be properly informed.

With regards to the Constitutional Governor of the State of Nayarit, the recommendation petitioned for the Attorney General of the State of Nayarit to conduct an initial investigation against the personnel attached to the state's Judicial Police, based on the actions and omissions stated within the recommendation's observations chapters, on the grounds of offenses committed against Mr. José Israel Zepeda Sojo and Mrs. Cristina Azucena Parra Sánchez. The National Commission must be kept properly informed of said procedure, from the moment the investigation is opened, during its legal advancement and until a final resolution has been reached. In addition, the Commission must be kept informed on any and all measures to be taken in order to avoid repetition of similar actions and, so that the level of responsibility attributable to public officials involved in the case may be properly determined.

Recommendation 33/2009

2 June 2009

Case: Of Messrs. Adrián López Hernández, Saúl López Hernández and Mrs. Silvia Analuisa Senties Lucio

Responsible Authority: National Secretary of Defense

On April 11th 2008, the National Commission received a complaint filed by Alejandra Bustamante and Mima Salas, claiming that, on March 30th 2008, personnel attached to the Mexican Army broke into a property located in the Haciendas del Nogal housing estate in Ciudad Juárez, Chihuahua, without producing a proper warrant. The alleged perpetrators detained Adrián López Hernández, Saúl López Hernández and Silvia Analuisa Senties Lucio. Detainees were mistreated and several valuable objects were extracted from the property.

Based on the stated facts, the National Commission opened complaint file number CNDH/2/2008/1798/Q. Legal-logical analysis of all gathered evidence led to the conclusion that violations to the rights of legality, legal safety, personal integrity and safety were committed, based on arbitrary detention, torture and cruel treatment.

The National Commission established that the violations to the fundamental rights stated above were committed by public officials attached to the National Secretary of Defense, for no warrant was produced to justify detention of the victims. In addition, the fact that the victims were not immediately presented before the agent attached to the Public Attorney's Office of the Federation constitutes illegal retention. Attempts against the physical integrity of both male victims were committed while under the charge of personnel attached to the Mexican Army, resulting in injuries and constituting actions typical of torture. On the other hand, the female victim was subjected to cruel treatment, as she and her family were threatened threats. All of the actions described above are against Articles 14, Second Paragraph and Article 16, First and Fourth Paragraphs, of the Political Constitution of the Mexican United States.

Physical integrity studies conducted separately by personnel attached to the Attorney General's Office of the Republic, as well as by personnel attached to the National Commission helped provide evidence of torture. Additionally, personnel attached to the Commission produced specialized psychology evaluations derived from the facts above and supported by evidence provided by photographic and

video material obtained during the investigation. According to support material, the fact that the male victims were subjected to torture right after detention constitutes a violation to human rights, in accordance to Articles: 1, 2.1, 6.1 and 6.2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1, 2, 3, 6, 7, 9 and 10 of the Inter-American Convention for the Prevention and Sanctioning of Torture; Numeral 6 of the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, and 2, 3 and 5 of the Code of Conduct for Public Officials in charge of Enforcing the Law.

It was also observed that A-4, Senior Surgeon attached to the Mexican Army in charge of certifying the victims' physical condition, abstained from describing the total number of injuries found on the male victims' bodies when the pertaining certificates were released; injuries that were the result of the physical aggressions committed against both victims. Therefore, it can be ascertained that A-4 failed to provide the victims with proper medical attention. Not to mention that the conduct displayed by said medic made A-4 a passive participant of the event, constituting a violation to the Second Chapter of the Istanbul Protocol, which states that fundamental duties and performance must always go in favor of the patients' best interests. The latter means that seeking to cover up acts of punishment and torture while conducting evaluation of a patient's health is an action that goes against professional ethics, which helps to promote impunity, since medical certificates have become an ideal option to prove the existence of acts of torture.

As a consequence, on June 2nd 2009, the National Commission issued Recommendation 33/2009, addressed to the Holder of the National Secretary of Defense, petitioning that the damage suffered by the victims is repaired through psychology and medical support. The Internal Inspection Unit and Treasury Inspector's Office of the Mexican Army and Air Force must initiate the pertaining administrative procedure against the military personnel involved with the facts, based on the actions and omissions that they incurred in. Persons detained in flagrante crime must be immediately placed under the charge of legal authorities, military facilities must never be employed as detention and retention centers and the personnel attached to the XI Military Region of the Mexican Army, including all medical military personnel, must be properly trained, so that any and all proceedings and performances are conducted with strict adherence and respect to human rights. The respect to life, personal integrity and security must be insured and torture must never be incurred in.

Recommendation 34/2009

2 June 2009

Case: Of the detention of 22 agents attached to the Legal Police and the Coordination for Preventive, Operative and Logistics Investigation in Ciudad Juárez, Chihuahua on April 1st 2008

Responsible Authority: National Secretary of Defense, Attorney General's Office of the Republic

On April 1st 2008, the National Commission received a complaint filed by Mrs. Cinthia Noemí Iñiguez Ortíz, among others. The complaint was based on several human rights violations derived from the detention of several elements attached to the Investigation Agency and Legal Police of the State of Chihuahua conducted by personnel attached to the Sub-attorney's Office for the Investigation of Organized Crime (Spanish initials – SIEDO), a dependency attached to the Attorney General's Office of the Republic (Spanish initials – PGR) and the Mexican Army.

Based on the facts above, the National Commission opened complaint file number CNDH/2/2008/1417/Q. Legal-logical analysis of all evidence gathered led to the conclusion that, in this case, violations to the rights of legality and legal safety, personal integrity and safety, and personal freedom were committed, based on: arbitrary detention; illegal retention; isolation; torture, inhuman and degrading treatments. Said violations can be attributed to public officials of the Twentieth Cavalry Regiment attached to the National Secretary of the Defense (Spanish initials – SEDENA) and the PGR.

Based on all evidence gathered, the National Commission established that the performance of military personnel and to the PGR's staff members involved in the detention of the victims on April 1st 2008 failed to adhere to the law, since victims were not provided with summons as witnesses of an inquiry being conducted by SIEDO, before detention. It should be noted that the victims were summoned on February 5th 2008, while the petition for the intervention of armed forces was not notified until March 31st, thus indicating that legal authorities failed to include motive on the summons sent to the commander in charge of the Chihuahua Joint Operation.

Likewise, evidence gathered on the file indicates that personnel attached to the Mexican Army and PGR violated the rights to legality and legal safety, as established by Articles 14, Second Paragraph; 16, First Paragraph, and 21, First Paragraph, of the Political Constitution of the Mexican United States (Spanish initials – CPEUM), also contravening Articles 9.1 of the International Covenant of Civil and Political Rights, as well as Articles 7.1, 7.2 and 7.3, of the American Convention of Human Rights. All of the articles above establish that all individuals have the right to personal freedom and safety and that none shall be subjected to arbitrary detention or imprisonment nor deprived of their liberty, unless established by law and in accordance to a procedure previously established by the law.

At the same time, retention of the victims at the facilities of the Twentieth Cavalry Battalion over a period of 32 hours constitutes unlawful and excessive conduct on the part of the public officials in charge of the procedure. Also, by being aware of the situation, the agent attached to the Public Attorney's Office in Ciudad Juárez incurred in a conduct that, in addition to constituting an offense against the Federal Law of Administrative Responsibilities for Public Officials, constitutes an action which falls outside the parameters of the legal framework that regulates the performance of the personnel of the Mexican Army involved in the facts. The Social Representative

of the Nation became a contributor to the aforementioned actions, thus violating individual rights to legality and legal safety. As witnesses and not as potential criminals, victims should have been placed under the charge of the Public Attorney immediately and not 32 hours after detention and, should have never been forced to spend all that time in retention at military facilities. The latter constitutes illegal retention and was proven through the legal statements yielded by all 22 victims. On the other hand, the fact that victims remained in retention at the aforementioned military facilities until 17:30 hours on April 2nd 2008, before finally being brought before the Social Representative of the Federation, constitutes a violation to fundamental rights as established in Articles 14, Second Paragraph, and 16, First and Fourth Paragraphs, of the Political Constitution of the Mexican United States.

It is important to note that when the victims' testimony was gathered for the integration of the inquiry – all victims described the manner in which they had been detained and retained at the military facilities facing isolation and, in some cases, torture – the agent attached to the Public Attorney's Office of the Federation should have taken any and all necessary measures for the case and issued instructions to whom it might have concerned, in order to assure that the pertaining initial investigation was conducted. Moreover, the public official in question should have reported the facts to his military colleague, so that the aforementioned investigation could be conducted. Nonetheless, the agent in question failed to adhere to Articles 21, First and Second Paragraphs, and 102, Section A, of the Political Constitution of the Mexican United States, also failing to present a detailed report to his military counterpart.

In addition to examinations conducted by personnel attached to the National Commission, medical reports issued by personnel attached to the PGR indicated that some of the victims were subjected to typical actions of torture; a situation that would agree with some of the theories usually contemplated by Article 3 of the Federal Law for the Prevention and Sanction of Torture. The situation must be thoroughly and immediately investigated by the pertaining legal authority, so that impunity is not allowed.

The National Commission believes that the personnel attached to the Mexican Army who participated in the aggression, detention and retention of the victims, committed violations to the following Articles: 14, Second Paragraph, 16, First, Ninth and Tenth Paragraphs, 19 Fourth Paragraph, 20, Section A, Fraction II, 21, Ninth Paragraph and 22, First Paragraph of the CPEUM; 1, 2, 6, Second Paragraph, 8, 9, 10 and 12 of the Inter-American Convention for the Prevention and Sanction of Torture; and 2, 3 and 5 of the Code of Conduct for Officials in charge of Enforcing the Law. Additionally, as law enforcing public officials, the performance of the perpetrators constitutes a violation to rights contemplated in international treaties, such as: Articles 7, 9.1, 9.3, 9.5 and 10.1 of the International Covenant of Civil and Political Rights; Articles 5, 5.1, 7.1, 7.2, 7.5 and 8.2 of the American Convention on Human Rights, which, generally speaking, point out that all persons have the right to personal integrity and safety.

It should be added that the actions of the personnel attached to the National Commission and to the Judicial Power of the Federation were deliberately derailed during the integration of the case, so that the facts could not be established. Said behavior exposed unwillingness to cooperate with both Institutions in the task of protecting and defending fundamental rights; a situation that generates legal uncertainty that affects the victims and, furthermore, a situation that implies a conduct of deliberate obstruction on the part of the aforementioned authorities.

As a consequence, on June 1st 2009, the National Commission issued Recommendation 34/2009, addressed to the Holder of the National Secretary of Defense, so that any and all pertaining proceedings necessary to repair the physical, psychology and medical damages suffered by the victims. The pertaining administrative procedure against the military personnel involved in the facts must be initiated. The Attorney General for Military Justice must open the pertaining initial investigation. Any and all measures deemed necessary must be taken in order to guarantee that similar actions are never repeated. Instructions must be issued so that military facilities are never put to use as detention and retention centers. And, finally, a directive must be issued so that all military personnel respects the work conducted by Institutions in charge of the defense of human rights and to make certain that they receive the support they need in order to conduct their duties in the best possible manner.

The Attorney General of the Republic was petitioned to issue any and all instructions deemed necessary in order to repair the damage suffered by the victims, through all of the psychology and medical support, and rehabilitation that they may require. The Agent of the Public Attorney's Office of the Federation must open the pertaining initial investigation, so that any crime actions committed against the victims may be established. The Recommendation must be presented before the PGR's Internal Control Body, in order to initiate an administrative investigation procedure against the personnel attached to the Institution involved in the facts. Instructions must be issued to whom it may concern, so that the PGR's Internal Control Body may initiate and determine an administrative investigation procedure against public officials responsible of hindering and obstructing the investigation work conducted by the National Commission. Finally, instructions must be issued to whom it may concern, so that assistant investigators attached to the Public Attorney's Office of the Federation are properly trained in order to insure that any and all actions or performances are practiced with strict adherence to the law and to the respect of human rights, as demanded by their legislation.

Recommendation 35/2009

3 June 2009

Case: Of A1

Responsible Authority: General Manager of the Security and Social Services Institute for Workers of the State

On July 22nd and 23rd 2008, the National Commission received a complaint filed by A1, who claimed that he underwent an appendectomy, performed by a medic attached to the Hospital of the Security and Social Services Institute for Workers of the State (Spanish initials – ISSSTE) in Celaya, Guanajuato, on June 5th 2007. When the anesthesiologist sedated him, A1 experienced sharp pain and fainted, regaining consciousness at the hospital's Recovery Area. When A1 informed the aforementioned area's staff that he could not feel his legs, their reply was that everything was fine and that A1 should not worry. The victim added that he spent ten hours in the Recovery Area, but that the problem with his legs went unresolved for the next ten days. Furthermore, A1 pointed out that it was not until he had been transferred to the Institute's Regional Hospital in León, Guanajuato for an MRI, that he was diagnosed with lumbar cone damage, as the result of inadvertent lumbar puncture created by peridural block. A1 was also told that, basically, nothing could be done and that he would probably never walk again.

Based on the initial diagnostic, the victim sought the opinion of private bone marrow experts. A1 was told that the original diagnostic was correct and informed that the person responsible for his condition was the anesthesiologist who punctured his bone marrow during the anesthetic procedure, leading the victim to present his case before the local jurisdiction's Public Attorney's Agency number 5 in Celaya, Guanajuato. After opening initial investigation number 941, the Agency presented the case before the First Investigation Agency of the Public Attorney's Office of the Federation, where the investigation was filed under number PGR/GTO/CEL/4662/2008-I; an investigation that is still ongoing.

Motivated by the facts above, the National Commission opened complaint file CNDH/1/2008/3822/Q. Based on the legal-logical analysis on all evidence gathered, the National Commission was able to establish that violations against the right to the protection of health and physical integrity were committed by the medical staff in charge of A1 at the ISSSTE's Hospital Clinic in Celaya, Guanajuato.

Seeking to gather more evidence on the case, the National Commission opened the pertaining investigation, obtaining the following results:

On July 5 2007, A1 was admitted into the ISSSTE Clinic in Celaya, Guanajuato, where, based on previous clinical and laboratory tests, the victim was examined and diagnosed with appendicitis. A1 was transferred into an operating room, where he underwent an appendectomy under peridural block.

On July 5th 2007, anesthesiologists working on the afternoon shift prescribed the victim with 5 mgs sc/DU of nalbuphia and observed that A1 was recovering. On the same day, doctor SP2, a medic attached to the Anesthetic Services of the ISSSTE Hospital Clinic in Celaya, Guanajuato, ordered "Aldrete 9, patient can be released into a room, where he shall remain under watch." At the same time and on the same date, nurses attached to the hospital's staff indicated that "the patient is received under effects of block. No motion of inferior limbs. Permeable c/V. Admitted at floor with no pain." At 08:50 hours on July 6th 2007, while examining the patient, anesthesiologist SP1 indicated that A1's legs were still not moving, but that his feet had regained motion. In addition, the victim was reported to show reaction in abdominal and pelvic muscles and that he had also displayed sphincter control. Doctor SP1 told the patient that his problem was related to irritation and prescribed him with an anti-edema, making a note to ask for the results of an electromyography and internal medicine examinations later. The next day, doctor SP1 asked Anesthetic Services for the results of the patient's examination.

It should be noted that, at 11:30 hours on June 6th 2007, doctor SP3 of the Hospital's Internal Medicine Services, said that the patient was recovering from an appendectomy with no complications. Doctor SP3 added that the patient presented decrease in sensibility, paresthesia, anesthesia and that he had complained about feeling a rash over his entire body, which led the doctor to believe that the patient would recover favorably. Doctor SP3 acknowledged that A1 presented no cardio-pulmonar complications, though he admitted that the patient's condition was delicate. Doctor SP3 also decided to remain as a lateral consultant and determined that he would be on charge of general surgery.

At the same time, on July 6th 2007 and after examination of the victim, medical personnel attached to the Hospital's General Surgery Services indicated that they had found peristhalsis OK, reserved sensibility and no motion on inferior limbs. Therefore, it was decided that Anesthetics and Neurology would have to examine the patient. A1 was placed under the care of surrogate doctor SP4, a specialist in Neuro-conduction and Electromyography, who established that: the neuro-conduction and electromyography studies were abnormal, leading to the single conclusion that the patient displayed signs of irritation, most likely at a medular level. Finally, on June 9th 2007, medics in charge of the victim at the Celaya ISSSTE Hospital, referred the patient for further examination at the ISSSTE Regional Hospital's Neurology Service in León, Guanajuato.

A1 was admitted into Neurology Services at the Regional Hospital on July 10th 2007, where doctor SP7 reported having found a "5 day old medical report, initiated after the anesthetic block for the appendectomy had been applied on the patient.", in addition to physical exploration, with paraparesis in lower limbs, hyposthesis for pronounced pain on the left side and generalized lack of reflexes. Doctor SP7 declared that the victim had sustained an injury to the medular cone and proceeded to prescribe methylprednisolone, anti-heurithics and rehabilitation. In addition, Doctor SP7 explained the seriousness of the case to the patient and his direct relatives, including a reserved prognostication that would depend on the evolution of his condition.

For that reason, on July 17th 2007, an MRI was conducted on the victim's bone marrow at Aranda de la Parra Hospital in León, Guanajuato. The MRI reported "multi-directional thickening of intervertebral discs L4-L5, conditioning minimal compression at that precise level...medular cone and the roots that comprise iso-intense and homogeneous ponytail in the exploration."

On July 24th 2007, the victim was examined outside the institution's parameters by doctor SP4: a specialist in Physio-rehabilitation and Electromyography. Doctor SP4 diagnosed the victim with flaccid paraplexia, recommending physical therapy through ascending massage, muscular re-education, passive mobilization of both pelvic limbs and electro-stimulation of thigh muscles.

All of the above led to the conclusion that the victim's rights were violated, as established by: Articles 1, 2, Fraction V: 19, 21, 23, 27, Fraction III, 33, Fractions I, II and III; 34, Fraction II; 37 and 51, of the General Health Law, and Article 48 of the Rulebook of the General Health Law with regards to Services in Medical Attention.

As a consequence, the National Commission believes that the public officials responsible for providing the victim with medical attention failed to comply with Articles 4, Third Paragraph, of the Political Constitution of the Mexican United States, as well as Article 32 of the General Health Law. In addition, it has been established that the performance of the aforementioned public officials failed to comply with obligations established by Article 8, Fractions I and XXIV, of the Federal Law of Administrative Responsibilities for Public Officials. The Articles above clearly state that public officials must prove services and refrain from committing actions or omissions that may lead to suspension or deficiency, as well as implying failure to comply with any law, regulation or administrative disposition related to functions in public service.

Finally, in accordance to the non-jurisdictional system for the protection of human rights, the possibility that, when established, a violation to such rights attributable to a public official attached to the State, any Recommendation produced against the public institution in question must include the measures that may proceed in order to obtain the effective restitution of the victims' fundamental rights. In addition, any and all damages that may have derived from such violations must be repaired. Therefore, it has been established that the damages suffered by the victim in this case must be fully repaired, in accordance to: Articles 113, Second Paragraph of the Political Constitution of the Mexican United States; 44, Second Paragraph, of the Law of the National Commission of Human Rights; 1915, 1917 and 1918, of the Civil Federal Code, as well as Articles 1, 2 and 9, of the Federal Law of Hereditary Responsibilities of the State.

In light of all of the above, the National Commission issued Recommendation 35/2009, addressed to the General Manager of ISSSTE, recommending the following:

FIRST. Any and all measures deemed necessary must be taken in order to cover the expenses necessary to repair the damage suffered by Mr. A1, in consequence of the institutional responsibility derived from the inadequate medical attention provided to the victim. The above must be in accordance to the considerations proposed in the Recommendation's observations chapter and as established by all applicable laws. The National Commission must receive proof to establish that this point has been fulfilled.

SECOND. Instructions must be issued to whom it may concern, so that Mr. A1 can be provided with the medical assistance and psychotherapy that he may require for life. Additionally, Mr. A1 must be immediately provided with the adequate means that he shall need in order to permanently continue receiving all the physical therapy that he may require, as the result of the considerations included in the Recommendation's observations chapter.

THIRD. The Internal Control Body of the Security and Social Services Institute for Workers of the State must be thoroughly informed of the facts stated in the Recommendation, so that the pertaining administrative investigation procedure may be initiated against the public officials in charge of Mr. A1 and in accordance to the law. The National Commission must be kept informed of the proceedings from the beginning and until a final resolution has been reached.

FOURTH. Instructions must be issued to whom it may concern, so that the members of the medical and infirmary staff attached to ISSSTE receive proper training on the contents of Official Mexican Norms NOM-168-SSA1-1998 and NOM-170-SSA1-1998, with regards to the proper handling of the medical file and the practice of anesthetics, so that they may never incur in future omissions, as mentioned in the Recommendation's observation chapter.

FIFTH. The Social Representative of the Federation must be provided with the necessary elements in order to properly integrate the initial investigation, so that the victim is provided with access to swift, complete and impartial justice, as established by the Political Constitution of the Mexican United States.

Recommendation 36/2009

12 June 2009

Case: Of Mrs. Beatriz López Leyva

Responsible Authority: Attorney General's Office of the Republic, Constitutional Governor's Office of the State of Oaxaca, Holder of the Great Commission of the Honorable Congress of the State of Oaxaca

The National Commission of Human Rights issued Recommendation 36/2009, addressed to the Governor's Office and the Congress of the State of Oaxaca, in addition to the Attorney General's Office of the Republic. The Recommendation was based on the fact that Mrs. Beatriz López Leyva was not provided with proper preventive measures, after an attempt was made against her life in 2005. As a result of such failure, Mrs. López Leyva was shot to death at her home in the Municipality of San Pedro Jiyacán, Oaxaca, on April 6th. The National Commission believes that investigation of this particular case has been insufficient.

The CNDH has concluded that violations to the fundamental rights of personal integrity, legality, legal safety and access to justice were committed against the victim and her direct family, in accordance to Articles: 14, Second Paragraph; 16, First Paragraph; 17, Second Paragraph; 20, Section C; 21, First Paragraph, and 102, Section A, Second Paragraph of the Political Constitution of the Mexican United States.

Evidence gathered by investigations conducted by the National Commission have helped establish that, by not adhering to the legal framework that regulates public functions during the investigation of the attempts made on Mrs. López Leyva's life, public officials attached to the Attorney General's Office of the State of Oaxaca failed to fulfill their obligations.

The first attempt took place on July 22nd 2005 and the Public Attorney's Office suspended investigations for more than three years. Furthermore, the aforementioned authority failed to provide the victim with proper preventive protection measures, thus failing to reconstitute her rights in accordance to Constitutional Article 20, Section B, current at the time; a situation that placed the victim in a total defenseless state.

On April 30th 2009, the Social Federal Representative ordered a penal action against the alleged material perpetrator of Mrs. López Leyva's assassination. This determination will finally be conducted in accordance to judicial procedure, which recognizes the pertaining penal cause on which the National Commission has no competence to pronounce, as established by Articles: 102, Section B, Third Paragraph of the Mexican Constitution; 7, Fraction II, 8, Final Part, of the Law of the National Commission of Human Rights, as well as Article 2, Fraction IX, of the Commission's Internal Rulebook.

However, it can be ascertained that a breakdown of all written evidence that comprises initial investigation PGR/OAX/OAX/V/209/2009, must be obtained, so that a new investigation is initiated and integrated into the file. Among other things, the new inquiry should concentrate on the involvement of any "third parties" in the facts. As a consequence and, with no prejudgment on the probable responsibilities that the new inquiry might uncover, the agent attached to the Public Attorney's Office of the Federation is recommended to fulfill his/her constitutional and legal duties of safeguarding the victims' rights to legality, legal safety and access to justice, by exhausting all investigation lines that may help identify and locate the perpetrators responsible for planning and conducting the assassination.

Public officials in San Pedro Jicayán have been found responsible for violations to the victim's rights to legal safety, based on insufficient protection of persons, a right recognized by Constitutional Articles 17, and 21, Ninth Paragraph. The situation derived from unlawful performance in public services, since no evidence to prove that said officials provided Mrs. López Leyva with the protection that her physical integrity and safety demanded was produced.

The CNDH's investigation was obstructed and refused by the Municipal Syndicate in San Pedro Jicayán, located in the Jamiltepec District in Oaxaca, since the Syndicate failed to produce the information required by the Commission. Regardless of the legal consequences that said actions may generate, said actions constitute a direct refusal and rejection against the protection and defense of human rights, in accordance to the CNDH's Law and other applicable laws. Moreover, the Syndicate has also refused granting preventive measures to the victim's direct relatives, despite the fact that their personal safety and integrity must be guaranteed.

As part of Recommendation 36/2009, the CNDH requires for the Attorney General's Office of the Republic to integrate initial investigation PGR/OAX/OAX/V/209/2009 and exhaust all investigation lines. In addition, thorough analysis of previous attempts against the life of Mrs. López Leyva must be conducted. The physical integrity of the victim's direct relatives must be protected and the use of their rights must be guaranteed, as established by Constitutional Article 20, so that any and all actions that may damage them and prove difficult or impossible to repair can be avoided.

The Government of the State of Oaxaca is required to authorize the Secretary of the Treasury Inspector's Office, in addition to the agent attached to the Jurisdictional Public Attorney's Office, to conduct an investigation against the public officials involved in the integration of all pertaining inquiries derived from the murder of Mrs. López Leyva and the attempts made against the lives of her direct relatives. In addition, all victims and witnesses must be provided with specialized medical and psychologic attention.

The Congress of the State of Oaxaca has been required to initiate an administrative procedure against the Municipal Head and Leader of the San Pedro Jicayán Syndicate, located in the Jamiltepec District in Oaxaca, based on actions and omissions attributable to his duties and functions and for obstructing the work of the CNDH. At the same time, the Municipal Office of San Pedro Jicayán is required to adopt any and all preventive measures deemed necessary to guarantee the personal integrity and safety of the victim's direct relatives.

Recommendation 37/2009

12 June 2009

Case: Of Mr. Jaime Hernández Chávez, in the Antúñez Community in Parácuaro, Michoacán

Responsible Authority: Holder of the National Secretary of Defense

On January 18th 2008, the National Commission received a complaint filed by Mrs. Marbella Hernández Chávez, reporting alleged violations to human rights, derived from the detention of Mr. Jaime Hernández Chávez in the community of Antúñez, Parácuaro Municipality, Michoacán, attributable to personnel attached to the Mexican Army.

Based on the facts included in the complaint, the National Commission opened complaint file number CNDH/2/2008/366/Q. Legal-logical analysis conducted on evidence gathered on the file led to the conclusion that violations to the human rights of legality and legal safety, personal integrity and security, and personal liberty, consisting of arbitrary detention, illegal retention and torture were committed and can be attributed to public officials attached to the 90th Infantry Battalion of the National Secretary of Defense (Spanish initials – SEDENA).

Evidence gathered and integrated to the file helped to establish that personnel of the Mexican Army broke into the victim's home arbitrarily, thus violating the right of inviolability of a person's property. Said action constitutes a violation to the First Paragraph of Article 16, of the Political Constitution of the Mexican United States, which clearly establishes that no person's integrity, family, home, papers or possessions may be bothered in the safety of their property, unless a warrant written by the pertaining authority is presented to justify and establish the legal reasons for said procedure. And, in this case, the public officials attached to SEDENA failed to produce a warrant when they entered the victim's property.

In addition to the above and based on gathered evidence, the National Commission established that the performance of the military personnel involved in the detention of the victim on January 17th 2008 was illegal, since he was not detained under criminal charges. The situation constitutes a violation to Articles 7 and 8, Fractions V, XVIII, XIX and XXIV, of the Federal Law of Administrative Responsibilities for Public Officials, with regards to Articles 2 and 3 of the Law of Discipline for the Mexican Army and Armed Forces, due to the fact that the victim was not presented before the pertaining agent of the Public Attorney's Office of the Federation right after detention. In fact, the victim was retained for approximately 10 hours, not to mention that the personnel involved in the detention failed to observe the principles of legality, efficacy and professionalism demanded by their position.

Likewise, the excesses committed by the public officials in question was established due to the fact that the victim was illegally retained for 10 hours at the facilities of the 43rd Military Zone in Apatzingán; a conduct contrary to the Federal Law of Administrative Responsibilities for Public Officials and an action outside the parameters of the legal framework that regulates the performance of personnel attached to the Mexican Army involved in the facts. The above constitutes violations to the individual rights of legality and legal safety because, as the potential perpetrator of a crime, the victim should have been placed under the charge of the Public Attorney's Office immediately and should not have been retained in a military facility for 10 hours after detention. The latter constitutes a case of illegal retention, proven by statements rendered by material witnesses. Mr. Jaime Hernández Chávez was retained in the aforementioned military facility until 20:00 hours on January 17th 2008, when he was finally placed under the charge of the Social Representative of the Federation, who, in turn, was finally able to open the pertaining initial investigation.

In addition, the results of medical examinations of the victim's injuries conducted by personnel attached to the Commission, as well as the certified reports presented by forensics personnel attached to the PGR, established that the victim was subjected to maneuvers typical of torture. Since the situation coincides with some of the the most typical theories included in Article 3 of the Federal Law for the Prevention and Sanction of Torture, the case must be properly investigated by the pertaining legal authority, so that no impunity is allowed.

The National Commission believes that the personnel of the Mexican Army involved in the detention, retention and torture of the victim, violated the following Articles: 14, Second Paragraph; 16, First, Fifth, Ninth and Eleventh Paragraphs; 19, Fourth Paragraph; 20, Section A, Fraction II, 21, Ninth Paragraph, and 22, First Paragraph of the CPEUM; 1, 2, 6, Second Paragraph, 8, 9, 10 and 11, of the Inter-American Convention for the Prevention and Sanction of Torture and, 2, 3 and 5, of the Conduct Code for Officials in Charge of Enforcing the Law. In addition, as public officials in charge of enforcing the law, the aforementioned military personnel violated rights established by international treaties, such as Articles 7, 9.1, 9.3 and 9.5 of the International Covenant of Civil and Political Rights, 5, 5.1, 5.2, 7.1, 7.2, 7.5 and 8.2 of the American Convention on Human Rights, which basically, indicate that all persons have the right to personal safety and integrity.

As a consequence, on June 12th 2009, the National Commission issued Recommendation 37/2009, addressed to the Holder of the National Secretary of Defense, so that any and all pertaining proceedings necessary to repair the physical, psychologic and medical damages suffered by the victim are fully repaired. An administrative investigation process against the military personnel involved in the facts must be initiated. The Attorney General for Military Justice must be granted with the necessary authority to open the pertaining initial investigation, so that similar actions never occur again. And, finally, instructions must be issued so that military facilities are not employed as detention and retention centers.

Recommendation 38/2009
15 June 2009
Case: Of Mr. Humberto Aguilar Cortés
Responsible Authority: National Secretary of Defense

On September 22nd 2008, the National Commission received a written complaint filed by Mrs. Fe Montaña Salgado, who claimed that, on September 21st 2008, her husband, Humberto Aguilar Cortés, was detained by personnel attached to the Mexican Army, while circulating on the streets of the municipal head of Ario de Rosales, Michoacán. Mrs. Montaña Salgado added that she learned that her husband had been taken into the Attorney General's Office of the Republic's (Spanish initials – PGR) facilities at the city of Morelia on the same day and that he had been accused of being in possession of a firearm and drugs. She added that personnel attached to the Human Rights Commission of the State of Michoacán arrived at the PGR's facilities to present evidence on the injuries that Mr. Aguilar Cortés had sustained.

Based on the facts above, the National Commission opened complaint file CNDH/2/2008/4691/Q. Legal-logical analysis of all evidence gathered led to the conclusion that Mr. Humberto Aguilar Cortés' rights to legality, legal safety, personal integrity and safety were violated through actions such as arbitrary detention, illegal retention, torture and cruel treatment.

The National Commission established that the violations to the aforementioned fundamental rights were attributable to public officials attached to the National Secretary of Defense, since no warrant was issued to justify detention of the victim. Additionally, the victim was not placed under the charge of the agent attached to the Public Attorney's Office immediately after detention, since he was detained at 15:00 hours but was not presented before the aforementioned authority until 22:30 hours, on September 21st 2008. Moreover, while under the charge of personnel attached to the Mexican Army, the victim was sustained to physical abuse which produced injuries typical of torture, thus the performance of the military personnel involved in the facts violated Articles 14, Second Paragraph, and Article 16, First and Fifth Paragraphs, of the Political Constitution of the Mexican United States.

Said actions of torture were established by a physical examination on the victim, conducted separately by personnel from the Attorney General's Office of the Republic in addition to a medic attached to the Social Rehabilitation Center in Charo, Michoacán, and personnel attached to the Coordination of Valuation Services of the National Commission. The above was supported by specialized psychologic evaluation conducted by personnel of the National Commission, which led to the conclusion that the victim was subjected to abuse, as established by Articles: 1, 2.1, 6.1 and 6.2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1, 2, 3, 6, Second Paragraph, 7, 8, 9, 10 and 12 of the Inter-American Convention for the Prevention and Sanction of Torture; Numeral 6 of the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, and Articles 2, 3 and 5 of the Conduct Code for Public Officials in charge of Law Enforcement.

It was also observed that the certificate issued by A-4, a medic attached to the Secretary of Public Safety of the State Government of Michoacán asked by personnel attached to the Mexican Army to certify the victim's physical condition, reported no injuries on the victim's body; a situation that the National Commission finds most irregular and quite contradictory to certificates produced separately by the PGR and by the medic from the Social Rehabilitation Center responsible of certifying the victim's physical condition at the moment he was admitted into the institution and the Coordination of Valuation Services of the National Commission of Human Rights. Therefore, violations to the principles of legality and legal safety have been established, since medic A-4 was not only a passive participant in the facts, but he also violated a part included in the Second Chapter of the Istanbul Protocol, titled "Pertinent Ethical Codes", by not recognizing the injuries sustained by the victim, thus contributing to impunity.

In consequence, on June 15th 2009, the National Commission issued Recommendation 38/2009, addressed to the Holder of the National Secretary of Defense and the Constitutional Governor of the State of Michoacán.

The Holder of the National Secretary of Defense was required to repair all damages suffered by the victim through psychologic and medical support. The Inspection Unit and the General Treasury Inspector's Office of the Mexican Army and Air Force must initiate the pertaining administrative investigation process against the military personnel involved in the facts, based on all actions and omissions that they incurred in. Any and all persons detained in flagrante crime must be placed under the charge of the pertaining legal authority immediately after detention and military facilities shall never be used as detention and retention centers. In addition, all personnel attached to the 21st S-2 Military Zone in Morelia, Michoacán, including military medical personnel, must be properly trained, so that all duties and performances are conducted with strict adherence to the law and respect for human rights. The respect to life and to personal integrity and safety must be guaranteed and torture must never be allowed.

The Constitutional Governor of the State of Michoacán was required to open the initial investigation, in addition to the pertaining administrative procedure against the doctor attached to the Secretary of Public Safety of the State of Michoacán, based on illegal actions committed against Mr. Humberto Aguilar Cortés. And, finally, the Governor of Michoacán was required to provide medical experts attached to official State institutions with proper training, so that all duties or performances are conducted with strict adherence to the law and respect for human rights. The respect to life and to personal integrity and safety must be guaranteed; medics must be able to detect possible cases of torture, cruel or degrading treatment.

NATIONAL AFFAIRS

Special Report on kidnapping cases against Migrants

On June 15th 2009, the National Commission of Human Rights presented the results of an investigation conducted from September 2008 to February 2009. Said results led to the conclusion that during that period, at least 198 illegal migrants were kidnapped on Mexican soil and a total of 9,758 persons were deprived of their liberty. Such illegal actions, which usually go unpunished, present signs of extreme cruelty and are committed by organized crime and authorities alike, produced an approximate profit of 25 million USD for organized delinquent gangs, as ransom obtained from the rescue of the victims.

During the period when the investigation was conducted, Visitors from the National Commission went to migratory stations, shelters and migrant houses where most persons who belong to such vulnerable group usually transit or concentrate. And, as the investigation was conducted, the National Secretary of Defense released 410 immigrants victimized by circumstantial kidnappings.

The importance of the report lies in the fact that the paper offers an approach of the heights that kidnappings of migrants in México has reached since, to this day, there is no statistical reference of this problem and no official numbers are available. Some relevant data yielded by the investigation, based on the information provided by migrants are:

- 67% kidnapped migrants are from Honduras, 18 from El Salvador and 13% from Guatemala. The rest are from Nicaragua, Ecuador, Brazil, Chile, Costa Rica and Peru.
- 5,416 migrants (55%) were kidnapped in the south, 981 (11.8%) in the north and 124 (1.2%) in the central part of the country. It was not possible to ascertain the region where 3,237 (32%) of the victims were kidnapped.
- The states where most persons were kidnapped are: Veracruz, 2,944; Tabasco, 2,378; Tamaulipas, 912; Puebla, 92; Oaxaca, 52; Sonora, 45; Chiapas, 42; Coahuila, 17; San Luis Potosí, 15; State of México, 6; Guanajuato, Nuevo León and Tlaxcala, 5 cases each; Chihuahua, 2 and the Federal District with 1.
- With regards to the profile of perpetrators 9,194 migrants were sequestered by organized gangs, 35 were kidnapped by authorities, 56 were the victims of delinquents and authorities alike and 6 cases were the work of one single perpetrator. Perpetrators could not be identified in 467 cases.
- Information obtained indicates that 5,723 migrants were kidnapped by "polleros", 3,000 victims were abducted by different gangs of unspecific and unidentified kidnappers, 427 were kidnapped by impostors claiming to be "zetas", while 44 were abducted by perpetrators claiming to be "maras". Information was not available for 564 additional cases.
- 6,555 of all kidnapped migrants were imprisoned in safe houses that were in bad hygienic conditions, whereas 2,448 were retained at warehouses. Other retention facilities were camps, yards, hotels and even vehicles.
- With regards to the way victims were treated by their captors, the lives of victims and/or their direct relatives were seriously threatened in nine of every 10 cases (8,478). If victims refused to pay the ransom, they would be threatened with firearms or other kinds of weapons. Based on the investigation, it is possible to calculate that 1,456 migrants at least, were beaten with fists, feet, weapons, clubs, sticks and other objects.
- 157 cases of kidnapped women were recorded. Four were pregnant, two were murdered by the kidnappers, while others were raped and one was forced to remain with her captors as the leading "woman" of the gang.

The investigation was conducted with support from the Human Mobility Migrants Area of the Pastoral Dimension and the Network for National Records of Offenses against Migrants, comprised of organizations such as: Belén Shelter, Tapachula, Chiapas; Belén Posada del Migrante Shelter, Saltillo, Coahuila; Hogar de la Misericordia Shelter, Arriaga, Chiapas; Hermanos del Camino Shelter, Ixtepec, Oaxaca; Parroquial Guadalupano Shelter, Tierra Blanca, Veracruz; Betania House, Mexicali, Baja California; Cáritas, Christian Charity House, San Luis Potosí, San Luis Potosí; Crucified Christ Parrish, Tenosique, Tabasco; Migrants House, Tijuana, Baja California, and Nazaret Migrants House, Nuevo Laredo, Tamaulipas.

The investigation shed some light on a justice system that seeks to prevent, investigate, prosecute and punish the kidnapping of migrants, in addition to exposing the evident lack of interest displayed by authorities to prevent this sort of crime, protect the victims, repair the damages and avoid the repetition of kidnapping of migrants.

Therefore, the holders of institutions attached to the National System of Public Safety of the Three Powers in Government were recommended to work in coordinated fashion in order to fight the kidnapping of migrants. Public safety and justice institutions must provide victims with an effective access to justice, regardless of their migratory condition. Attention provided to said victims must be strengthened and protection services must expand in order to cover migrants victimized by kidnapping. Perpetrators must be sanctioned for their crimes and all damages sustained by the victims must be fully repaired.

As part of the responsibilities attributable to the National Center for the Prevention of Crime and Citizen Participation of the National Center of Public Safety, migrants should be considered as a vulnerable group and be included in all public safety programs developed by the Three Powers of Government. In addition, public opinion must be kept informed of the results obtained in the combat against violations to the human rights of illegal migrants.

The National Migration Institute has been required to establish guidelines so that migrants who become crime victims can report such offenses and receive full protection from the State. Protected migrants must be informed of the migratory regularization process, so that the victims of crime or human rights violations may have access to justice and damage repair. Guidelines based on international human rights instruments with regards to access to justice must be implemented, so that the demands of said instruments with regards to the protection of crime victims are fulfilled. And finally, all kidnapping victims must be provided with the means to be present at all penal and administrative proceedings.

The Institute has also been required to promote adjustments to Article 67 of the General Population Law and Article 201 of the Institute's own Rulebook, in order to avoid that the contents of said ordinances can become discriminatory and violate the rights of foreigners; especially with regards to kidnapping victims, since their migratory situation prevents them from gaining proper access to justice.

INTERNATIONAL AFFAIRS

IX World Conference of the International Ombudsman Institute and Celebration of the Bicentennial of the Swedish Ombudsman

From June 8 – 12, 2009, personnel attached to the National Commission of Human Rights participated in the IX World Conference of the International Ombudsman Institute (Spanish initials – IIO) and Celebration of the Bicentennial of the Swedish Ombudsman, in representation of Dr. José Luis Soberanes Fernández, President of the CNDH and Regional Vice-president for Latin America and the Caribbean before the IIO.

During the event, where the Annual Meeting of the Board of the IIO took place, the Regional Report for Latin America and the Caribbean was presented by the Regional Vice-presidency, currently under the CNDH's charge.

Mr. Kofi Annan, former Secretary General of the United Nations, and Mrs. Navanethem Pillay, High Commissioner of Human Rights, were among the attendants present at the IX World Conference.

During the event and in representation of the Mexican Ombudsman, the Executive Secretary of the CNDH presented the Workshop titled The Ombudsman as Defender of Human Rights. Some of the attendants present at the Workshop were: Mrs. Riitta-Leena Paulino, Finnish Ombudsman; Professor Victor Ayeni, a scholar from London, England and, Mr. Thomas Hammarberg, Commissioner of Human Rights for the European Council.

In addition to meetings among regional chapters and to the General Assembly, several Ombudsman workshops were conducted during the event. The IIO's new rulebook and structure were approved and the CNDH's term at the helm of the IIO's Regional Vice-presidency came to an end. Mrs. Arlene Brock, Bermudan Ombudsman, was named as new Regional Vice-president for Latin America and the Caribbean, while Mrs. Lynette Stephenson, Ombudsman for Trinidad and Tobago, was named as Head of the Caribbean Section for the Latin America and Caribbean Region and, finally, Dr. José Luis Soberanes Fernández, current President of the National Commission of Human Rights of México, was named as Head of the Latin American Section for the Latin America and Caribbean region.

In addition, during the Meeting of the Board of the IIO, Austria was chosen as the new seat for the institution's facilities, where the General Secretariat will move and begin its operations by September 1st 2009. It was also decided that the next Meeting of the Board will be conducted on November 9 and 10, 2009, at Vienna, Austria.

Finally, the Celebration of the Bicentennial of the Parliamentary Swedish Ombudsman was conducted on June 12th. In our times, the Swedish Ombudsman has become a symbol for defenders of the people, Human Rights Commission and for all Ombudspersons in general.

Follow up on Recommendations on the Universal Periodic Examination

As a status "A" National Human Rights Institution credited by the International Coordination Committee (Spanish initials – CIC), the CNDH participated in the 11th Session of the Human Rights Council, held on June 11th. The event was conducted in order for the Human Rights Council to adopt the report of the Work Force in charge of examining the Mexican State, during the 4th Session of the Universal Periodic Examination; an event held on February 11 and Feb. 14, 2009, in Geneva, Switzerland.

Participation was achieved through a Pronouncement made by the National Commission of Human Rights of México; an effort to fulfill the objectives that each and every National Human Rights Institutions must accomplish in order to collaborate with the system implemented by the United Nations for the promotion and respect of the human rights of all persons.

Through its Pronouncement, the CNDH referred to the institution's commitment to follow up on recommendations and subjects not included within said documents, such as the rights of persons with disabilities and the right to a healthy environment.

DIRECTORY

President

José Luis Soberanes Fernández

First General Visitor

Raúl Plascencia Villanueva

Second General Visitor

Mauricio Ignacio Ibarra Romo

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 for the Consulting Council

Luis García López Guerrero