

NEWS LETTER

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CONTENTS

- THE NATIONAL COMMISSION OF HUMAN RIGHTS FILES A CONTESTATION APPEAL BEFORE THE NATION'S SUPREME COURT OF JUSTICE, AGAINST THE ORGANIC LAW OF THE ATTORNEY GENERAL'S OFFICE OF THE REPUBLIC.
- 39/2009 Case of appeal of Mr. Antonio Adame Martínez
- 40/2009 Case of Appeal of Mrs. Agustina Ramírez Casarrubias
- 41/2009 Case of Messrs. Juan Ramón Castillo Grajeda, Arnulfo Anaya Cardoza and Luis Carlos Pérez Chávez
- 42/2009 Case of Minors M1 and M2
- 43/2009 Case of The case of inmates of the Social Rehabilitation Center "Licenciado Jorge A. Duarte Castillo" in Tijuana, Baja California
- 44/2009 Case of Messrs. José Luis and Carlos Guzmán Zúñiga in Ciudad Juárez, Chihuahua
- 45/2009 Case of Mrs. Georgina Vázquez López
- 46/2009 Case of students of a private school in Ocotlán de Morelos, Oaxaca
- 47/2009 Case of Mrs. Alberta Alcántara Juan, Teresa González Cornelio and Jacinta Francisco Marcial
- 48/2009 Case of Mr. Román García Hernández, at the Municipality of San Dionisio Ocotepéc, Tlacolula, in the State of Oaxaca
- 49/2009 Case of Child Care Center ABC, S.C., located in the city of Hermosillo, Sonora
- NATIONAL AFFAIRS

THE NATIONAL COMMISSION OF HUMAN RIGHTS FILES A CONTESTATION APPEAL BEFORE THE NATION'S SUPREME COURT OF JUSTICE, AGAINST THE ORGANIC LAW OF THE ATTORNEY GENERAL'S OFFICE OF THE REPUBLIC

The National Commission of Human Rights (Spanish initials – CNDH) has filed a contestation appeal against the Organic Law of the Attorney General's Office of the Republic (Spanish initials – PGR) before the Supreme Court of Justice of the Nation, based on the fact that the CNDH considers said law to be unconstitutional. The aforementioned law prevents the CNDH from gaining access to the PGR's files, thus limiting the Commission's possibility to obtain useful evidence, in addition to nullifying one way for the non-judicial protection of human rights as established by the Constitution and affecting the possibility to demand that fundamental rights are fulfilled.

The law in dispute determines that all information required by the National Commission shall be delivered by the Attorney General's Office of the Republic, as long as the latter considers that said information will not endanger ongoing investigations or the safety of persons.

The contestation appeal against this unconstitutional law was presented on June 29th, establishing that Article 5, Fraction V, subsection c) of the PGR's Organic Law contains a wide margin of discretion with regards to the First Title, along with Articles 1, 14, and 102, subsection B, of the Federal Constitution.

By denying the CNDH the right to access information that will yield evidence needed to ratify all complaint procedures, the PGR is only preventing the Commission from protecting human rights in efficient manner. Furthermore, the Commission will be unable to determine if administrative authorities are observing human rights, thus diminishing the people's possibilities to defend themselves.

This action of unconstitutional nature has been brought before the highest Court in the country due to the fact that it constitutes a violation against the human rights of all the people, since, in accordance to current Mexican law, the PGR's law will atrophy a constitutional right that contemplates the protection of all. Any limitation of the responsibilities conferred to the CNDH is akin to a direct limitation of human rights for all the people.

Likewise, the contestation appeal against this unconstitutional action does not intend to question secrecy in ongoing investigations or to compromise the safety of persons. What the contestation appeal questions is the decision surrounding the procedure to determine which parties are to be deemed qualified for the disclosure of information.

"The mighty struggle that is currently being fought in our country for the effective use of the fundamental right to public safety cannot be won through opacity; much less when human rights are violated through the directional restriction of Article 5 of the Law, concerning access to evidence needed to determine if human rights are being observed or not."

The contestation appeal against this unconstitutional action establishes that the right to obtain evidence is fundamental in nature; it is a pillar for due process, and the existence of said right is the reason for the existence of the position in charge of establishing legal truth. "Evidence, it must be added, implies a platform of fact, upon which judges must unearth truth and reality based on legal propositions that have been provided for them. Evidence goes beyond the statements provided by involved parties."

The unconstitutional action was filed under number 49/2009 and was placed under the charge of Judge Fernando Franco González-Salas, who shall be responsible for instructing procedure and proposing a sentence project before the Bench Session of the Supreme Court of Justice.

Along the same line of protecting fundamental rights that the PGR's performance might compromise, more specifically, in the case of initial investigations, the CNDH has promoted appeal 26/2008 for actions of unconstitutional nature, against Article 16 of the Federal Code for Penal Procedures. Said Article establishes that information related to initial investigations is "strictly reserved." The appeal has been instructed by Judge Olga Sánchez Cordero de García Villegas and is currently in the stage of project elaboration.

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 39/2009

July 2 2009

Case: Appeal of Mr. Antonio Adame Martínez

Responsible Authority: Board of the LXXI Congress Legislation of the State of Michoacán, Honorable Municipal Office of Jiménez, Michoacán.

On October 3rd 2008, the National Commission received a contestation appeal filed by Mr. Antonio Adame Martínez, based on the fact that the Municipal Office of Jiménez, Michoacán failed to comply with Recommendation 85/2006, issued on June 29th by the Michoacán State Commission of Human Rights and filed under number CEDH/MICH/II/2372/08/03-I.

The contestation appeal was established by the National Commission under file number CNDH/3/2008/260/RI. Analysis of all evidence gathered helped establish that the aforementioned Municipal Office is responsible for obstructing the population of the Tenancy of Caurio de Guadalupe from enjoying a healthy and decent environment, based on the fact that municipal authorities have refused to construct new drainage systems and sewers; all necessary for the protection and conservation of the environment within the Tenancy.

The facts described in the Recommendation have led to the conclusion that the right that every person has to enjoy a healthy environment were not observed. As a consequence, clear violations to the human rights to health and conservation of the environment were established, based on Article 4, Third and Fourth Paragraphs, of the Political Constitution of the Mexican United States.

Therefore, on June 2nd 2009, the National Commission addressed Recommendation 39/2009 to the Chairman of the Board of the LXXI Congress Legislation of the State of Michoacán and to all members of the Honorable Municipal Office of Jiménez, in the same federal entity. The Chairman of the Board must order the initiation of a legal investigation in order to establish the administrative responsibilities attributable to whomever may be responsible for failure to comply with Recommendation 85/2006, issued by the Michoacán State Commission of Human Rights, in addition to all municipal authorities found responsible for failing to respond to the pertaining proceedings. The National Commission must be kept properly informed of the investigation. The members of the Honorable Municipal Office of Jiménez, Michoacán must issue instructions to whom it may concern, so that the recommendation in question is fulfilled and the National Commission must be kept properly informed of the proceedings.

Recommendation 40/2009

July 7 2009

Case: Appeal of Mrs. Agustina Ramírez Casarrubias

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

On May 8th 2008, the Commission for the Defense of Human Rights of the State of Guerrero established a complaint filed by Mr. Luis García Román, under file number CODDEHUM-VG/102/2008-II. In general, the complaint claims that several public officials attached to the General Hospital of Ayutla de los Libres, Guerrero, provided inadequate services to Mr. García Román's wife, Mrs. Agustina Ramírez Casarrubias, who had undergone a Cesarean section on April 3rd 2008. Although personnel attached to the aforementioned hospital reported no complications during or after the surgical procedure, Mrs. Ramírez Casarrubias suffered from fever, bleeding and other health related issues four days after undergoing the procedure; symptoms that, according to medics, were under control. Given the fact that the patient's health continued to deteriorate, Mrs. Ramírez Casarrubias underwent an exploratory laparotomy on April 14th 2008. However, since his wife's health was far from improving and continued to deteriorate still, Mr. García Román requested to speak directly with the hospital's General Manager. Nonetheless, he was denied and he failed to receive any explanation whatsoever from any of the hospital's personnel.

On April 18th 2008, Mrs. Ramírez was transferred to the General Hospital "Dr. Raymundo Abarca Alarcón", in Chilpancingo, Guerrero. After undergoing thorough examination, the patient was informed that her uterus had been perforated and that she suffered from a severe infection. Her grave health condition demanded for a new surgical procedure, performed on April 23rd and, since the infection suffered by Mrs. Ramírez had extended to her womb, uterus and appendix, all three organs were removed.

On December 23rd 2008, the Commission for the Defense of Human Rights of the State of Guerrero issued Recommendation 91/2008, addressed to the Secretary of Health of the State, petitioning for the initiation of administrative procedures against all health public officials involved in the case and for all damages suffered by the victim to be fully repaired. The Recommendation was partially accepted, since the authority in question refused to repair all damages suffered by Mrs. Ramírez Casarrubias. As a consequence, Mr. Luis García Román filed a contestation appeal against the refusal, filed under number CNDH/2/2009/76/RI.

Evidence gathered by the National Commission has helped prove that the violations reported by the victim's husband were properly established. Recommendation 91/2008 was produced and established correctly by the local Commission, since personnel attached to the General Hospital of Ayutla de los Libres in charge of Mrs. Agustina Ramírez Casarrubias violated the victim's right to health protection. Medical negligence, failure to provide the victim with adequate medical attention and proper information on her health condition are the reasons that led to the removal of the victim's womb, uterus and appendix. Therefore, the aforementioned public officials are responsible for violations against: Article 4, Third Paragraph, of the Political Constitution of the Mexican United States; Article 1 of the Political Constitution of the Free and Sovereign State of Guerrero; Articles 1 and 2, Fractions I and V of the General Health Law, and Article 2 of the 159th Health Law of the State of Guerrero, which generally speaking, establish that all persons are entitled to the right to of health protection.

As the contestation appeal was being filed, the holder of Secretary of Health of the State of Guerrero determined that the Recommendation issued by the local Commission before the National Commission would be partially accepted. In this regard, it should be noted that said procedure does not exist within any applicable legislation, since Article 46 of the Law of the National Commission of Human Rights, Article 136 of the Commission's Internal Rulebook and Article 134, First Paragraph, of the Internal Rulebook of the Commission for the Defense of Human Rights in the State of Guerrero establish that the addressee must confirm if the Recommendation will be accepted in its entirety. In other words, the addressee must issue a clear and concise pronouncement with no legal possibility to declare that only one part of the Recommendation will be accepted, as was the case with the aforementioned public official. Moreover, since the response offered by the responsible authority fails to comply with the articles mentioned above, the National Commission understands that the Recommendation has not been accepted. In addition, the holder of the State's Secretary of Health stated that "the public officials in charge of Mrs. Ramírez never failed to provide her with adequate attention.". This statement indicates that the public official in question passed judgment in favor of the probable responsible parties and freed them from all responsibilities, without presenting any proof whatsoever of the beginning, development or conclusion of the pertaining administrative procedure; a procedure indispensable for a final determination, as established by the law.

As a consequence, the National Commission issued Recommendation 40/2009, addressed to the Constitutional Governor of the State of Guerrero, on July 7th 2009. The Recommendation requires that Recommendation 91/2008, issued on December 23rd 2008 by the Commission for the Defense of Human Rights in the State of Guerrero, is fulfilled. Instructions must be issued to whom it may concern so that all damages suffered by the victim are repaired. The pertaining administrative procedures must be initiated, health public officials in the state of Guerrero must be properly trained on the existence and observance of Mexican Official Norms and honorable, quality services, especially with regards to the contents of Official Mexican Norm NOM-007-SSA2-1993: Attention for Women and Newborns during Pregnancy, Childbirth and Delivery.

Recommendation 41/2009

July 7th 2009

Case: Of Messrs. Juan Ramón Castillo Grajeda, Arnulfo Anaya Cardoza and Luis Carlos Pérez Chávez

Responsible Authority: Secretary of National Defense

On January 16th 2009, the National Commission received complaints filed by Mrs. Herlinda Villalobos Ramírez, Edith Julieta Espinoza Espinoza and Socorro Grajeda Palacios, claiming alleged human rights violations derived from the detention of Messrs. Juan Ramón Castillo Grajeda, Arnulfo Anaya Cardoza and Luis Carlos Pérez Chávez, in Chihuahua, Chihuahua, conducted by personnel of the Mexican Army.

Based on the facts, the National Commission opened complaint file number CNDH/2/2009/384/Q. Legal-logical analysis of evidence gathered led to the conclusion that violations committed to the rights of legality and legal justice, personal integrity and safety, consisting in arbitrary detention, illegal retention and cruel treatment. The aforementioned violations are attributable to public officials attached to the 23rd Infantry Battalion of the Secretary of National Defense (Spanish initials – SEDENA).

Based on all evidence gathered, the National Commission has established that the performance of the military personnel involved in the victims' detention on January 15th 2009, failed to comply with the law, since the victims were not detained while committing a crime. Therefore, the detentions constitute a violation to: Articles 7 and 8, Fractions V, XVIII, XIX and XXIV, of the Federal Law of Administrative Responsibilities for Public Officials, related to Articles 2 and 3 of the Mexican Army and Air Force Disciplinary Law. In addition, by failing to place the victims under the charge of the agent attached to the Public Attorney's Office of the Federation right

after detention, the aforementioned public officials failed to adhere to the principles of legality, efficacy and professionalism demanded by their position.

Furthermore, the fact that the victims were illegally retained for 36 hours at the facilities of the 5th Military Zone in Chihuahua, Chihuahua, helped establish that the responsible public officials were guilty of abuse; a conduct that, in addition to being sanctioned by the Federal Law of Administrative Responsibilities for Public Officials, is outside the parameters of the legal framework responsible for regulating the performance of the personnel attached to the Mexican Army involved in the facts. The latter constitutes a violation to the individual rights of legality and legal safety, since the victims were considered to be probable criminals, indicating that they should have been immediately brought before the Public Attorney's Office and not 36 hours after detention, while remaining in retention at military facilities. Said action constitutes illegal retention and is further proven by the statements offered by witnesses, in addition to the written reports released by the military officials themselves. Messrs. Juan Ramón Castillo Grajeda, Arnulfo Anaya Cardoza and Luis Carlos Pérez Chávez remained in retention at the aforementioned military facilities until 13:40 hours on January 17th 2009, when they were finally taken before the Social Representative of the Federation; the authority responsible for the elaboration of the pertaining initial inquiry.

In addition, Mr. Luis Carlos Pérez Chávez was subjected to actions typical of cruel treatment; a situation that must be properly investigated by the pertaining ministerial authority so that said action does not lead to impunity. The actions committed against Mr. Pérez Chávez were established by evaluations conducted by personnel attached to the National Commission, along with visual evidence of the injuries sustained by the victim and the medical certificates produced by medical forensic personnel attached to the Attorney General's Office of the Republic.

The National Commission believes that the personnel attached to the Mexican Army who participated in the detention and retention of the victims and in the cruel treatment suffered by Mr. Pérez Chávez, have violated the following Articles: 14, Second Paragraph; 16, First, Fifth and Eleventh Paragraphs; 19, Fourth Paragraph; 20, Subsection A, Fraction II; 21, Ninth Paragraph, and 22, First Paragraph, of the Political Constitution of the Mexican United States; 1, 2, 6, Second Paragraph; 8, 9, 10, and 12 of the Inter-American Convention for the Prevention and Sanction of Torture; 2, 3, and 5 of the Conduct Code for Law Enforcing Officials. Moreover, as public officials in charge of enforcing the law, perpetrators violated rights established by international treaties, such as the ones mentioned in the following Articles: 7, 9.1, 9.3, 9.5, and 10.1 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 generally speaking, establish that all persons are entitled to the right to safety and personal integrity.

As a consequence, the National Commission issued Recommendation 41/2009 on July 7th 2009, addressed to the Secretary of National Defense. The Recommendation requires that any and all necessary proceedings are conducted, so that the physical, psychological and medical damage suffered by the victims is fully repaired. The pertaining administrative investigation procedure against the military personnel involved in the facts must be initiated, so that the proceeding initial inquiry may be opened. Any and all measures deemed necessary must be put in place, so that similar actions may never occur again and instructions must be issued so that military facilities are never employed as detention and retention centers.

Recommendation 42/2009

July 7th 2009

Case: Of minors M1 and M2

Responsible Authority: Mexican Institute of Social Security

The National Commission of Human Rights issued Recommendation 42/2009, addressed to Daniel Karam Toumen, General Manager of the Mexican Institute of Social Security (Spanish initials – IMSS), based on the cases of two minors who contracted the HIV-AIDS virus through blood transfusions conducted at the Medical Center "La Raza" in the Federal District, during the months of May and April 2008.

The complaint, presented by Q1, parent of 13 year old M1, indicated that the minor was admitted into the "La Raza's" Pediatric Haematology Area on April 18th 2008, due to serious aplastic anaemia. From the 11th to the 18th of April 2008, the victim received several transfusions, contracting the HIV-AIDS virus in the process; a situation confirmed by Q1, after being officially informed almost a month after the transfusion was conducted.

On July 21st 2008, the CNDH received a complaint filed by Q2, who claimed that on March 2008, 10 year old M2 was admitted into "La Raza's" Pediatric Haemathology Area, due to acute myeloblastic leukaemia, requiring a blood transfusion that, some time later, led to contraction of the HIV-AIDS virus.

On July 9th 2008, the National Commission received a circumstantial act produced by personnel attached to the Commission of Human Rights of the State of México. The act stated that the state's Commission had received a phone call from a person claiming that a close relative, a minor who had been admitted into the same hospital, had been infected with the HIV-AIDS virus. The caller claimed to be aware of similar cases and mentioned that public officials attached to IMSS had not taken urgent measures to solve the problem.

Based on Articles 85 and 125, Fraction VII, of the Commission's Internal Rulebook, the CNDH issued an agreement that included all three complaint files, under number CNDH/1/2008/3476/Q, since all three files referred to similar cases.

Legal-logical analysis of the facts and evidence yielded by the investigation conducted by the National Commission produced elements that helped establish violations to the rights of honorable treatment, non-discrimination and to health protection and privacy; rights established by Article 1, Third Paragraph, and Article 4, Third Paragraph, of the Political Constitution of the Mexican United States.

The aforementioned infections were the result of several incorrect actions and omissions committed by public officials in charge of providing minors M1 and M2 with medical attention, in addition to personnel attached to the Apheresis and Transfusions Services of the UMAE attached to the National Medical Center "La Raza". All personnel involved failed to observe the contents of Chapter 17, Subsection 17.11 of NOM-003-SSA2-1993, for "the use of human blood and its components for therapeutic purposes".

Dates and hours of initiation and termination of the transfusion process were not recorded and neither were the name of the medic who ordered the procedure nor the names of the health staff in charge of applying the transfusion. Moreover, personnel in charge of the procedure failed to observe dispositions established by Chapter 15 of the aforementioned Official Mexican Norm, which states that all units to be applied in halogenic transfusions and its components must feature written tags (among other requisites) that read, "results of diseases transmissible through transfusion detected." In case that units present no results, a tag with the legend "pending result. Not to be transfused", must be written.

Inspection visits conducted by personnel attached to the National Commission from the 23rd to the 27th of June 2008 and ascertained on Act 08-AF-093158-V, helped to confirm that the staff attached to the "La Raza" hospital's Apheresis Area still failed to comply with dispositions established by the aforementioned Norm, since they continued to operate without a sanitary license issued by the Secretary of Health, as established by applicable law.

At the same time, CNDH inspectors detected that one of the platelet count units listed ready for transfusion had already expired. Therefore, the CNDH considered that the public officials in charge of the facilities failed to observe Articles 46 and 47, Third Paragraph, of the General Health Law.

On the other hand, on June 28th 2008, personnel attached to the aforementioned hospital's Emergency Area publicly exhibited minor M1 as a patient infected with HIV-AIDS, as a tag stuck to the victim's bed (number 21) announced that the child was under treatment for HIV. Said action that is a violation to the right of privacy and confidentiality in the treatment for patients infected with the HIV virus. As a consequence, the victim's dignity was exposed to several disrespectful acts, based on stigma and discrimination.

For all of the above above, the CNDH issued Recommendation 42/2009, requiring for the General Manager of IMSS to issue instructions to whom it may concern, so that minors M1 and M2, and their their parents, receive full compensation for all damages suffered as the result of the infection. Damage repairs must include any and all psychological and medical support that the victims may require for life, in order to help reestablish their physical and psychological conditions as much as possible.

The Attorney General's Office of the Republic and the Holder of the Internal Control Body of IMSS must be informed of all observations contained within the Recommendation, so that based on the facts, they may order the initiation of an initial inquiry along with an administrative investigation. The Recommendation also requires that any and all measures deemed necessary are taken in order to confirm that no additional infections were detected among other persons subjected to blood transfusion procedures. The pertaining administrative measures must be taken in order to guarantee that actions such as the ones which led to this Recommendation never occur again.

Training and proper evaluation of public officials attached to the Medical Center "La Raza" of IMSS must be established, so that they are aware of the rights awarded to persons infected with the HIV-AIDS virus. Any and all acts of discrimination that violate the privacy of patients infected with HIV, such as placing tags on their beds, must be avoided.

Recommendation 43/2009

July 10th 2009

Case: Of inmates of the Social Rehabilitation Center "Licenciado Jorge A. Duarte Castillo" in Tijuana, Baja California

Responsible Authority: Federal Secretary of Public Safety, Constitutional Governor's Office of the State of Baja California, Honorable Municipal Office of Tijuana, Baja California

On the 14th and 17th of September 2008, several inmates of the Social Rehabilitation Center "Licenciado Jorge A. Duarte Castillo" in Tijuana, Baja California, participated in several serious riots. The first riot was motivated by the death of inmate Israel Márquez Blanco, whose death, according to evidence found, was the result of physical aggression suffered at the hands of security staff member's SP1, SP2 and SP3, an action that prompted the population to protest. The second riot occurred when inmates saw themselves forced to demand food and drinkable water, as visitors were not allowed to bring food to inmates. The situation prompted the population of the female area to protest by yelling, thumping on cell bars, ripping out washstands in common areas, and running up to the ceiling, all with the support of the male population. Seeking to restore order inside the premises, penitentiary authorities asked for the support of

different bodies. The institution known at the time as the Federal Preventive Police heeded the call, along with personnel from the Secretary of Public Safety of the State of Baja California and the Municipal Police of Tijuana. When authorities were finally able to control the situation, 23 inmates were reported dead, most as the result of injuries derived from the use of firearms, among many more injuries sustained by the rehabilitation's center population.

The facts above led to the opening initial investigations 250/2008/201/AP and 256/2008/201/AP, currently under the responsibility of the Sub-Attorney's Office against Organized Delinquency (intentional homicide) of the Attorney General's Office of the State of Baja California, located in Tijuana. Said investigations are to be conducted against whomever is found responsible for homicide, injuries and other related crimes.

In addition, initial investigation 248/2008/201/AP was opened on September 14th 2008, as the result of the death of inmate Israel Márquez Blanco. Said investigation is being conducted against SP1, SP2 and SP3, member, Commander and Sub-commander, respectively, of the Immediate Reaction Group attached to the rehabilitation center. Under criminal prosecution act 900/2008, the initial investigation led the Office of the Sixth Penal Judge of Baja California to dictate formal sentence against SP1. Furthermore, detention orders were issued against SP2 and SP3 as co-participants and accessories to intentional homicide and torture. However, to this day, said detention orders have not been fulfilled.

The facts described in the Recommendation led to the conclusion that the inmates of the social rehabilitation center were the victims of violations against the rights to personal integrity and safety, life, legality and legal justice, honorable treatment and social rehabilitation. The above is supported by the fact that authorities in charge of the penitentiary and the bodies that participated on the facts that occurred on the 14th and 17th of September, namely, the institution formerly known as the Federal Preventive Police, the state's Secretary of Public Safety and the Tijuana Municipal Police, failed to observe the physical and mental integrity of the victims. In addition, the responsible public officials failed to provide the victims with adequate conditions for their social rehabilitation at the aforementioned state institution.

Therefore, on June 10th 2009, the National Commission issued Recommendation 43/2009, addressed to the Secretary of Federal Public Safety and to the Constitutional Governor of the State of Baja California, in addition to the Holder of the XIX Municipal Office of Tijuana. The Recommendation requires for instructions to be issued to whom it may concern so that payment is made in order to repair all proceeding damages. A peremptory deadline must be set for the release of procedure manuals for the attention of contingencies or riots in rehabilitation centers in order to guarantee that an unrestricted respect of human rights is observed by personnel attached to said institutions. In addition, personnel attached to detention centers must receive thorough training on human rights. The pertaining internal control bodies must be authorized, so that any and all legal inquiries are initiated and determined to help establish the administrative responsibilities attributable to any and all public officials who participated in the operations in question. The holder of the Secretary of Public Safety has been requested to make certain that an initial investigation to help establish the participation in the facts of personnel attached to the institution known at the time as the Federal Preventive Police is opened at the Public Attorney's Office of the Federation. The Constitutional Governor of the State of Baja California has been requested to initiate all pertaining procedures, so that the overpopulation currently plaguing the social rehabilitation center in question can be diminished. Article 32 of the Law for the Execution of Sanctions and Security Measures for the State of Baja California, which establishes that facilities destined for housing and labor of inmates must satisfy the minimal security demands, space and hygiene, must be observed. Finally, instructions must be issued to whom it may concern, so that sufficient Security and Custody personnel is assigned to help assure that all of the rehabilitation center's surveillance needs are fully covered.

Recommendation 44/2009

July 14th 2009

Case: Of Messrs. José Luis and Carlos Guzmán Zúñiga in Ciudad Juárez, Chihuahua

Responsible Authority: Secretary of National Defense

On November 19th 2008, the National Commission received a complaint filed by Mr. Javier Antonio Guzmán Márquez and Mrs. Gloria Zúñiga. The complaint claimed alleged human rights violations derived from the detention and disappearance of their two sons, José Luis and Carlos Guzmán Zúñiga on November 14th 2008,, attributable to personnel attached to the Mexican Army in Ciudad Juárez, in the State of Chihuahua.

Based on the facts, the National Commission opened complaint file number CNDH/2/2008/5624/Q. Legal-logical analysis of all evidence gathered led to the conclusion that violations to the rights of property inviolability, freedom and personal integrity and safety, honorable treatment, legality and legal justice were committed in this case, against José Luis and Carlos Guzmán Zúñiga. Said violations, which consisted in breaking an entering without a warrant, arbitrary detention, illegal retention, illegal privation of liberty and forced or involuntary disappearance, are all attributable to public officials attached to the Secretary of National Defense and stationed in Ciudad Juárez.

The National Commission has requested the Secretary of National Defense to provide information related to the facts filed in the complaint. In response, the Command Center of the Chihuahua Joint Operation located in Ciudad Juárez, claimed that personnel attached to said command center did not intervene or participate on the facts. Furthermore, the Command Center denied any

knowledge about the disappearance of the victims. Nonetheless, a report issued by the Federal Secretary of Public Safety established that personnel attached to the Secretary of National Defense was present during the operation that led to the eventual detention of the victims. Said report stated that, during the operation conducted on November 14th 2008, personnel attached to the Mexican Army broke into the victims' property, while personnel attached to the Federal Secretary of Public Safety remained on the outside and secured the facility.

Evidence gathered and integrated to the file has helped to establish that the personnel of the Mexican Army violated the victims' right to property inviolability when they broke into the victims' residence. Said action constitutes a violation against Article 16, First Paragraph, of the Political Constitution of the Mexican United States, which establishes that no person, their family, property, papers or possessions may be disturbed, unless a warrant issued by the pertaining authority may establish and motivate the legal cause for such procedure.

Therefore, it has been established that the performance of the military personnel involved in the facts that occurred on November 14th 2008, failed to observe the law, since the victims were not detained while committing a crime. Said performance constitutes a violation against Articles 7 and 8, Fractions V, XVIII, XIX and XXIV, of the Federal Law of Responsibilities for Public Officials, with regards to Articles 2 and 3 of the Disciplinary Law for the Mexican Army and Air Force. The fact that the victims were not taken before any pertaining authority qualified to establish their legal situation after detention, qualifies them as missing persons. Said situation establishes that the responsible parties failed to comply with the principles of legality, efficacy and professionalism, generating a conduct that resulted in violations to the individual rights to legality and legal safety.

Furthermore, testimony offered by material witnesses coincides, as all witnesses provided a description of the circumstances, manner, time and place related to the performance of the military personnel involved in the detention of José Luis and Carlos Guzmán Zúñiga. Witnesses who claimed to have known them for more than 25 years stated that they have not heard from the victims since the facts took place and have no knowledge of their whereabouts. The location where the victims were transported after the military personnel placed them on official vehicles remained unknown by the time that this Recommendation was issued.

The investigation conducted by the National Commission helped to confirm that the victims presented no previous record that could lead to confirmation of death, confinement in some federal or local penitentiary or that they may have been placed under the charge of any justice institution in our country after detention. This has been confirmed by the Attorney General's Office of the Republic, the holders of Attorney General's Offices, the holders of the penitentiary systems of all 31 federal entities across the Mexican Republic and the Federal District, as well as by the Manager of the Legal Affairs and Human Rights Unit of the Decentralized Prevention and Social Rehabilitation Body of the Federal Secretary of Public Safety, just as indicated in the documents that comprise the complaint file.

The National Commission has established that no evidence can help confirm that Messrs. José Luis and Carlos Guzmán Zúñiga are currently held under detention in any legally recognized institution, detention or retention center, recognized by the Mexican legal system.

The National Commission believes that the members of the Mexican Army involved in the detention and disappearance of the victims violated the following Articles: 1, First Paragraph, 14, Second Paragraph and 16, First Paragraph, of the Political Constitution of the Mexican United States; 9.1, 17.1 and 17.2 of the International Covenant of Civil and Political Rights; 5 and 7 of the American Convention on Human Rights; as well as XXV of the American Declaration of the Rights and Duties of Man; 1 and 2 of the Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance; 9 of the Universal Declaration of Human Rights; 1, 2 and 7 of the Code of Conduct for Law Enforcing Officials; I, II and IX of the Inter-American Convention on Forced Disappearance of Persons and 215-A, of the Federal Penal Code. In general terms, the Articles above establish that all States must observe the integrity, freedom and safety of all persons, in addition to taking all measures needed to eradicate any and all forced disappearances. Said crime is an outrage to human dignity, for it excludes victims from the protection of the law and causes grave suffering to victims, as well as their relatives.

As a consequence, the National Commission issued Recommendation 44/2009 on July 14th 2009, addressed to the holder of the Secretary of National Defense. The Recommendation petitions for all necessary proceedings to be conducted, so that Messrs. José Luis and Carlos Guzmán Zúñiga are presented alive and well immediately. Should the victims have committed any illegal action, they must be immediately presented before the pertaining authority, so that they may make full use to the right to legal defense, as established by the Political Constitution of the Mexican United States. Otherwise, the National Commission must be informed of the fate that both persons met. Any and all proceedings deemed necessary in order to repair the damage suffered by the victims and their direct relatives must be conducted; especially if the victims are not currently alive. The pertaining administrative investigation procedure against the military personnel involved in the facts must be initiated. The Military Attorney's Office must be properly instructed, so that the proceeding initial investigation may be opened. Any and all measures deemed pertinent must be taken, in order to guarantee that any similar situations may be avoided in the future. Instructions must be issued, in order to insure that military facilities are never used as detention and retention centers.

Recommendation 45/2009
July 16th 2009
Case: Of Mrs. Georgina Vázquez López
Responsible Authority: Secretary of National Defense

On March 6th 2009, the National Commission received a complaint filed by Mrs. María Elena Vázquez López, who claimed that her sister, Georgina Vázquez López, had been the victim of human rights violations attributable to public officials attached to the Secretary of National Defense. The complaint stated that, on October 10th 2008, the victim underwent surgery at the Central Military Hospital in the Federal District, to extract a temporary arterial and venal malformation. After the seven hour procedure, one of the surgeons in charge of the procedure noted that a failure in the absorption system had caused the patient great loss of blood. The medic also said that he had found an enema which forced him to extract a part of the victim's brain, just to close the wound. He also predicted that the situation would affect the patient's locomotor system and added that Mrs. Georgina Vázquez López would most likely lose all motion on the right side of her body. On March 12th 2009, Mrs. María Elena Vázquez López stated that her sister, Mrs. Georgina Vázquez López, had perished.

The National Commission has concluded that the medical attention provided to Mrs. Georgina Vázquez López at the Central Military Hospital presented a series of failures and delays that led to her eventual death. Evidence gathered within the complaint file has helped to establish that the medical attention provided to the victim at the aforementioned Hospital was inadequate, since the conditions and functionality of the surgery equipment used during the procedure to extirpate a cerebral arterial and venal malformation were not verified; specifically the suction or inhalation system, which presented failures during the surgical procedure, filling the operation area with blood and making visibility impossible for the surgeon. Said situation led to blocks in the development of an adequate surgical procedure.

Furthermore, at the moment that the malformation was extracted, the surgeon in charge of the procedure was unable to keep the bleeding under control. As a consequence, Mrs. Georgina Vázquez López bled profusely for 10 minutes; a period of time that led to an almost total loss of circulating volume, since the procedure to put a ligature on the nutritional arteries was not immediately conducted. The end result was that the patient suffered a cerebral edema and neurological damage.

The Recommendation was issued due to violations to the human right of health protection, in addition to the fact that public officials attached to the Central Military Hospital failed to provide Mrs. Georgina Vázquez López with adequate medical attention. The performance of said public officials was a violation to a fundamental right established in Articles: 4, Third Paragraph, of the Political Constitution of the Mexican United States; 1, 2, Fractions I, II and V, 3, 23, 24, 27, Fraction III, 33, Fractions I and II, 34, Fraction II, 37, 51 and 89 of the General Health Law; 6, 7, 8, 9, 10, Fraction I, 21 and 48, of the General Health Rulebook for the Provision of Medical Attention and Services; 1, 2, Fraction X, and 16, Fraction XXI, of the Social Security Law for the Mexican Armed Forces; Articles 12.1 and 12.2, Subsection d), of the International Covenant of Economic, Social and Cultural Rights; 12.2 of the Convention on the Elimination of all Forms of Discrimination against Women, and 10.1, and 10.2, Subsection d), of the Additional Protocol of the American Convention on Human Rights in Economic, Social and Cultural Rights.

Therefore, the holder of the Secretary of National Defense was recommended to repair all damages to the direct relatives of the late Mrs. Georgina Vázquez López. The Attorney General's Office for Military Justice must open the pertaining initial investigation and the Inspection Unit and General Treasury Inspector's Office of the Mexican Army and Air Force must initiate the pertaining administrative procedure against the personnel attached to the Central Military Hospital involved in the facts.

Recommendation 46/2009
July 16th 2009
Case: Of students of a private school in Ocotlán de Morelos, Oaxaca
Responsible Authority: Constitutional Governor's Office of the State of Oaxaca

The National Commission of Human Rights issued Recommendation 46/2009, addressed to the Governor's Office of Oaxaca, based on the case of three minors who were the victims of child pornography at a private school located in Ocotlán, Oaxaca. The fact, which took place on May 29th 2008, was reported by the victims' parents before the Special Attorney's Office for Sexual Crimes and Crimes against Women of the Attorney General's Office of the State of Oaxaca. However, despite the fact that inquests have already concluded, said authority has yet to conduct the pertaining inquiries.

The fact that the case has already echoed in public opinion means that it already transcends the interests of the State of Oaxaca. For this reason, the CNDH opened complaint file CNDH/1/2008/4907/Q on October 7th 2008, requiring for the Commission for the Defense of Human Rights in the State of Oaxaca to present all files gathered for this case.

Legal-logical analysis of the evidence gathered within the complaint file has led the CNDH to establish violations against the right to due protection to the victims of crime, derived from failure to provide the victims and their families with medical and psychological attention, in addition to protecting their physical integrity. Said violations are attributable to public officials attached to the Attorney General's Office of the State of Oaxaca.

By telling the victims and their parents that they had nothing to worry about, since nothing serious had happened and that they were making too much out of the situation because they were "stressed out", the psychological expert in charge of the case failed to evaluate the patients and their parents adequately.

No resolution has been obtained from the inspection that the Public Education Institute of the State was supposed to conduct at the private school in question on January 23rd 2009. In addition, the Institute failed to produce the information required by the National Commission, leading the CNDH to suspect that the Institute failed to perform the proceedings needed for the investigation and resolution of the case.

Threats reported against the victims' parents have led the CNDH to require for the Federal Secretary of Public Safety to adopt any and all preventive measures needed in order to protect the physical integrity of the minors and their direct families.

In Recommendation 46/2009, the CNDH has petitioned for Governor of the State of Oaxaca to make certain that the damages suffered by the minors and their families are fully repaired, including psychological assistance. The victims and material witnesses must receive the proper assistance, in order to guarantee that social stigmatization suffered by child victims and their families can be eliminated. In addition, the full recovery and social reintegration into society must be facilitated for the victims. The greater interests of minors must be protected, and any and all acts of intimidation or reprisals against the victims, their families and material witnesses, must be avoided.

The General Visitation of the Attorney General's Office of the State of Oaxaca must make certain that the delays of the agent of the Public Attorney's Office are resolved. Said authority must take the situation into consideration when the complaint filed against him is taken into account. The performance of the psychologist must also be taken into account and, should inquiries prove her guilty of a crime, the social representative must be granted with the power to make full use of their responsibilities.

The Governor of Oaxaca has also been required to authorize the Internal Control Body of the Public Education Institute of the State of Oaxaca, so that the public officials that failed to intervene in timely and responsible manner in this case are properly investigated. Guidelines must be issued to public officials attached to the Institute, so that they may assume their responsibilities to inform and collaborate with the prevention and attention of all kinds of abuse and, depending on the case, report said abuse to the pertaining legal authorities.

The investigation of the private school where the facts occurred must be determined at once and in full accordance with the law. Should said investigation yield any irregularities, the aforementioned institution must not continue to provide its services. Authorities must be properly instructed, so that they may attend any and all petitions for information required by the National Commission and investigations conducted by the CNDH must not be obstructed.

Recommendation 47/2009

July 17th 2009

Cases: Mrs. Alberta Alcántara Juan, Teresa González Cornelio and Jacinta Francisco Marcial

Responsible Authority: Attorney General's Office of the Republic

The National Commission of Human Rights has resolved that, through testimony from "eyes and ears" and false witnesses, public officials attached to the Attorney General's Office of the Republic found alleged evidence which proved that Mrs. Jacinta Francisco Marcial, Alberta Alcántara Juan and Teresa González Cornelio were responsible for the abduction of six Federal Investigation Agents. For this reason, the three women have been subjected to due process and are currently waiting for a final resolution.

The CNDH considers that the violations against the fundamental rights to legality, legal safety and justice were committed against Jacinta Francisco Marcial, Alberta Alcántara Juan and Teresa González Cornelio, through the irregular performances of the agent of the Public Attorney's Office and several members attached to the defunct Federal Investigation Agency (Spanish initials – AFI) of the PGR.

Recommendation 47/2009 requires for Eduardo Medina Mora Icaza, Attorney General of the Republic, to authorize the PGR's Internal Control Body and the Special Attorney's Office for Attention to Crimes Committed by Public Officials to conduct an investigation of the personnel involved in this case. The pertaining initial investigation must be opened, based on the fact that the case is about grave irregularities that transcend the result of the final verdict in penal process 48/2006, conducted against the victims by the Court of the Fourth District of the State of Querétaro. In addition, the Attorney General has been required to submit a copy of this Recommendation to the agent of the Federal Public Attorney's Office in charge of the criminal prosecution, so that the document may be analyzed and taken into consideration at the moment that a final verdict is dictated.

The National Commission is not against the prevention, investigation and pursuit of crimes committed by pertaining authorities. In order to prevent that said crimes are not observed, the State must fulfill all of its legal duties. In addition, crimes must be investigated in thorough manner, so that perpetrators can be properly sanctioned. Therefore, this Recommendation does not include any pronouncement with regards to the different performances of jurisdictional bodies familiar with criminal prosecution act 48/2006. The

CNDH has nothing but the deepest respect for said institutions, for establishing the guilt or innocence of the victims is no part of the Commission's competence. The latter is an action that lies entirely within the power of the jurisdictional body responsible for the pertaining criminal prosecution, which is still pending resolution.

The complaint pertaining to this case was brought before the Commission on March 2009, based on facts that took place on March 26th 2006 at the township of Santiago Mexquititlán, in the Amealco de Bonfil Municipality, Querétaro. On that date, federal agents attached to the PGR conducted a deficient and irregular operation that resulted in damages to the properties of several different merchants, who immediately demanded compensation. Only one of the six agents involved in the facts remained with the merchants, as the five remaining agents claimed to have left in order to raise 70 thousand Pesos to compensate for the damages.

At the time, the report presented by the AFI agents before the agent of the Federal Public Attorney's Office claimed that they had been retained illegally by the merchants and other members of their community. However, the agents failed to properly identify themselves; they did not present any personal information nor did they fill out the proper entries at the aforementioned Public Attorney's Office, thus failing to provide any data whatsoever that could help locate them at any moment during the procedure. This irregularity, attributable to the agent of the Public Attorney's Office in charge of the case, has placed the victims in a defenseless state, since a face to face meeting between the processed parties and the accuser has become impossible and, since the accuser filed several charges against the victims, the possibility for the latter to establish the appropriate defense to help prove their innocence has been nullified.

Three federal agents who claimed having been retained by Jacinta Francisco Marcial, Alberta Alcántara Juan and Teresa González Cornelio, are the same three public officials who have been commissioned to investigate the alleged retention or abduction; a situation that makes it impossible to establish an impartial search of the historic and legal truth behind the facts. In addition, written evidence of the inquiries does not expose the reasons and basis for assigning the three agents to the case, despite the fact that they had been directly involved in the facts.

Although the federal agents reported to have been retained by a group of 80 to 100 persons, the agent of the Public Attorney's Office in charge of the investigation did not order the proceedings needed to locate the agents, so that they could render testimony to help establish proper responsibilities in facts deemed illegal.

As they rendered testimony during the legal proceedings, the police agents stated that, in addition to the three victims, another three or four persons participated directly in their retention. The aforementioned agents provided physical descriptions of the latter, as well as descriptions of the clothes they wore and added that they would be able to identify the remaining three or four perpetrators on sight. Nonetheless, at no time did the social representative adopt the measures needed to verify the identification of the alleged perpetrators nor did the authority conduct any valuation determinations, such as spoken portraits or pictures, all necessary to issue the pertaining warrant.

Since the situation is against the fundamental rights to legality and legal safety, the National Commission finds the performance of the agent of the Public Attorney's Office inadmissible. The social representative failed to properly order or instruct the AFI agents to identify and locate the 15 persons that they had allegedly given money to, in spite of the fact that the testimony of the said persons was also necessary. In addition, inquiries made by the agents in charge of the investigation were based solely on three photographs; one shot of each of the three victims. According to the agents themselves, reports were gathered from alleged witnesses that refused to give their names or offer any information whatsoever that could help identify them.

The fact that the agent attached to the Public Attorney's Office was aware of the retention suffered by the AFI agents should not be overlooked. Even so, criminal prosecution act 48/2006 offers no proof whatsoever that the aforementioned agent established the facts or reasons for agreeing to set free the persons accused of a crime as grave as illegal privation of freedom.

Based on all of the above, the CNDH has concluded that the federal agents, the operational supervisor and the agent of the Federal Public Attorney's Office involved in the facts failed to observe obligations established in: the Political Constitution of the Mexican United States; the Organic Law of the PGR, current during the period that the facts occurred; the International Covenant of Civil and Political Rights; the American Convention on Human Rights; the Universal Declaration of Human Rights; the American Declaration of the Rights and Duties of Men, and the Basic Principles Related to Independence from the Judiciary.

In the Recommendation, the CNDH also requires for the PGR to continue issuing three copies of the pertaining initial investigation, so that inquires can be perfected. Orders must be issued to the Federal Ministerial Police, so that an investigation of the fact that led to the alleged abduction of the federal agents can be properly conducted. Once that results have been obtained, the initial investigation must be determined and the National Commission must be properly informed of any resolution to be adopted. In addition, the contents of this Recommendation must be shared with the agent of the Public Attorney's Office of the Federation attached to the Court of the Fourth District of Querétaro, so that criminal prosecution act 48/2006 is determined and included at the moment that the final verdict is dictated.

According to Constitutional Article 102, this Recommendation is public in nature and has been issued in order to make a statement concerning irregular conduct attributable to public officials responsible for executing powers expressly conferred to them by the law. In

addition, any and all necessary sanctions must be applied so that the irregularity in question must be solved, based on the results yielded by the pertaining investigation conducted in accordance to the pertaining responsibilities of each authority.

Recommendations issued by the National Commission do not seek to discredit institutions in any possible way nor do they constitute an affront or offense against said institutions or their holders. Quite the contrary; Recommendations must be conceived as indispensable instruments that will help strengthen democratic societies and states, through the legitimacy that fulfilling said Recommendations will provide for authorities and public officials alike in the public eye; a type of legitimacy that becomes progressively stronger every time that we can make certain that these and those submit their performances to the law and to the criteria of justice that must coexist with the respect and observance of human rights.

According to Article 46 of the Law of the CNDH, the PGR has a 15 business day period to confirm that the Recommendation is accepted. After said period has concluded, the PGR will have an additional 15 business day period to present proof that the Recommendation has been fulfilled. Failure to do so will indicate that the Recommendation has not been accepted, allowing for the National Commission to disclose the situation to the public.

Recommendation 48/2009

July 23rd 2009

Case: Mr. Román García Hernández, at the Municipality of San Dionisio Ocotepec, Tlacolula, in the State of Oaxaca

Responsible Authority: Secretary of National Defense

On February 27th 2009, at approximately 18:15 hours, personnel attached to the 44th Military Zone of the Mexican Army, stationed in Mihuatlán, Oaxaca, detained Mr. Román García Hernández on the road that leads to the ranches known as Las Flores and La Laguna, in the Municipality of San Dionisio Ocotepec, Tlacolula, in the State of Oaxaca. Mr. García Hernández's detention was based on alleged crimes against health, since the military personnel in charge of the procedure claimed to have found a pile of green herb that weighed approximately 90 kilograms and fit the characteristics of marihuana, during a revision of the victim's vehicle; a station wagon with license plates from the State of Tamaulipas. For said reason, Mr. Román García Hernández was placed under the charge of the Public Attorney's Office of the Federation at 00:10 hours, on February 28th 2009. Initial investigation PGR/OAX/OAX/III/07-D/2009 was opened and established before the Judge of the Fifth District of the city of Oaxaca.

The victim was subjected to grave suffering during detention, leading Mrs. Silvia García Pérez, his wife, to press charges against SPM01, SPM02, SPM03, members of the Mexican Army, in addition to whomever may be found responsible, before an agent of the Municipal Charter's Public Attorney's Office. The report led to the opening of initial investigation 270(HC)/09, which was eventually turned in under number 1770/SC/2009, due to a matter of competence, before the Sub-delegation of the Office for "A" Penal Procedures attached to the Delegation of the Attorney General's Office of the State of Oaxaca. Initial investigation PGR/OAX/OAX/III/07-D/2009 was then broken down by the agent of the Public Attorney's Office of the Federation, based on the injuries found on Mr. Román García Hernández, at the moment he was presented before the aforementioned agent.

The agent of the Public Attorney's Office of the Federation, in charge of the Second Investigation Agency of the Attorney General's Office of the Republic for the State of Oaxaca, issued the aforementioned breakdown to the military social representative attached to the 44th Military Zone (Mihuatlán, Oaxaca). Based on the fact that Alba Gabriela Cruz Ramos, attorney at law and member of the "Liberation Committee 25th of November", an organization based in Oaxaca, had reported the three members of the Mexican Army responsible for having beaten and tortured Mr. Román García Hernández, the aforementioned military social representative proceeded to open initial investigation number 44ZM/02/2009; an investigation that is still currently ongoing.

Legal-logical analysis of evidence gathered on complaint file number CNDH/4/2009/989/Q, have established the existence of violations against the human rights to legality, legal safety, personal integrity and safety, as well as honorable treatment, in the form of arbitrary detention, illegal retention and torture, in accordance by Articles: 1, First and Third Paragraph; 14, Second Paragraph; 16, First and Fifth Paragraph, and 22, First Paragraph, of the Political Constitution of the Mexican United States, all attributable to members of the Mexican Army.

In this sense, the physical pain that the victim endured has been recorded, along with his statements and testimony rendered by his wife and other witnesses. More evidence gathered includes an evaluation of the injuries sustained by the victim, a medical certificate issued by medical forensic personnel attached to the Attorney General's Office of the State of Oaxaca, the medical file produced at General Hospital "Dr. Aurelio Valdivieso" attached to the Secretary of Health of the aforesaid state and the specialized medical diagnostic, issued by the Coordination of Valuation Services of the National Commission. All of the aforementioned records have helped establish that the victim's physical integrity suffered alterations and that the injuries he sustained injuries are derived from typical actions of torture. Said actions were committed by the military personnel responsible for detaining and interrogating the victim, who was beaten, threatened and forced to confess the crimes that had been attributed to him.

All of the above helps to demonstrate the irregular performances of the military personnel involved in the victim's detention and does not agree with the written reports presented by said military personnel before the Public Attorney's Office of the Federation nor with the report presented before the National Commission. Said reports do coincide on the fact that the body of Mr. Román García Hernández

presented evidence of serious external and internal physical violence, not to mention the fact that he had to spend twenty six days on intensive care in a hospital.

According to terms included in General Recommendation Number 10, issued by the National Commission, the practice of torture is one of the most reprehensible actions and, since torture is one of humanity's most pressing international concerns, its practice constitutes a crime against all humanity. In our country, Articles 14, 16, 19, Seventh Paragraph, and 22, First Paragraph of the Political Constitution of the Mexican United States refer to the practice of torture, establishing that actions such as isolation, intimidation, mistreatment or torture are strictly forbidden. At the federal level, torture is expressly forbidden by the Federal Law for the Prevention and Sanction of Torture, whereas, in all States of the Mexican Republic where specific punishments are applied to perpetrators, the practice of torture is strictly forbidden in different laws or penal codes.

Based on the above, the CNDH issued Recommendation 48/2009, addressed to the holder of the Secretary of National Defense, requiring that instructions are issued, so that Mr. Román García Hernández is fully compensated for all damages suffered. The victim must be provided with all the psychological, medical and rehabilitation support that he may require, so that his physical and psychological conditions may be fully restored and the National Commission must be kept fully informed of the results. The Attorney General for Military Justice must be instructed to take all considerations included within the Recommendation into consideration, in order to integrate initial investigation 44ZM/002/2009 against the military personnel involved in the facts, until a final determination may be reached, in accordance to the law and based on the actions committed against Mr. Román García Hernández. The National Commission must be kept properly informed until a final determination has been reached. In addition, the Commission must be kept properly informed of any and all measures that are to be taken in order to guarantee that actions such as the ones included in this document never occur again. The Inspection Unit and Treasury Inspector's Office of the Mexican Army and Air Force must be properly instructed, in order to determine the initiation of the pertaining administrative investigation process against the military personnel involved in the facts, based on failures established within this document. From the beginning and until the investigation has reached a final resolution, the National Commission must be kept properly informed. All military personnel must be properly instructed, so any and all detainees are immediately put under the charge of the pertaining ministerial authority. Persons secured and in the custody of personnel of the Mexican Army must never be subjected to torture and cruel and/or degrading treatment. Once that all of the above has been accomplished, the National Commission must be fully informed.

Finally, instructions must be issued in order to develop a control strategy for the performance of all public officials attached to the Secretary of National Defense, in order to prevent torture adequately in accordance to General Recommendation 10/2005, issued by the National Commission. In this case, any and all necessary conditions must be established, so that the appropriate sanctions may be imposed. Compensation of material and immaterial damages must be guaranteed, so that actions such as the ones that led to this Recommendation may never occur again.

Recommendation 49/2009

July 31st 2009

Case: Child Care Center ABC, S.C., located in the city of Hermosillo, Sonora

Responsible Authority: Mexican Institute of Social Security, Constitutional Governor's Office of the State of Sonora, Municipal Office of Hermosillo Sonora

With regards to addressees of Recommendation 49/2009, issued on the case of Child Care Center ABC in Hermosillo, Sonora – where 49 children died, in addition to countless children and adults who were seriously injured, including seven minors that have are not fully healed yet – the National Commission of Human Rights brought ten recommended points to the attention of the Mexican Institute of Social Security, four to the Governor of the State of Sonora and five to the Municipal Office of Hermosillo, respectively. Addressees are required to investigate the crimes committed within their respective jurisdiction, so that perpetrators are properly identified and charged with the pertaining legal sanctions.

The CNDH has required for the IMSS to conduct an immediate evaluation of the physical and legal conditions under which surrogate child care centers across the country operate, in addition to those which operate under the Institute's direct services. Child care center operations must be verified, in order to determine if they shall continue providing their services or face suspension, should they do not meet safety regulations. Public officials attached to the Management Office of Economic and Social Benefits on a national scale must be properly trained in the subject of the public service in surrogate child care centers and verify all current contracts of such institutions, favoring Child Care Center ABC, so that the pertaining authority is provided with the proper information needed to determine if contracts must be suspended or cancelled.

The National Commission has petitioned for the General Manager of the IMSS to continue providing the injured minors and employees of the aforementioned child care center with surgical attention, hospitalization, pharmaceutical, psychological support and rehabilitation for life. Parents or guardians of the deceased and injured minors must be provided with psychological attention, as well as with proper compensation for all expenses generated by sending their children to medical centers – domestic and abroad – including travel and food. Additionally, all uninjured minors must be subjected to physical and psychological evaluation.

The Governor of the State of Sonora has been required to instruct the General Treasury Inspector's Office of the State to conduct an investigation of the public officials involved in the facts. Any and all agreements produced between the Coordination for Civil Protection and all Municipal Offices in the State of Sonora and pertaining federal areas must be observed. Outlines must be dictated, so that all properties surrogate or owned by any and all bodies attached to the Public State Administration are subjected to periodical physical and legal evaluations, in order to prove that all applicable laws pertaining to civil protection and construction are properly observed.

The Municipal Office of Hermosillo has been petitioned to assure that this Recommendation is made known to the Municipal Treasury Inspector's Office, so that it may be taken into consideration at the moment that responsibilities are properly attributed. The Municipal Unit for Civil Protection must be properly instructed to produce a Municipal Risk Atlas. The Municipal General Management for Urban Development must be properly instructed, in order to corroborate that civil protection and construction manuals for the Municipality of Hermosillo, Sonora are fully observed and fulfilled in all properties surrogate or owned by the city's Municipal Office. The Civil Protection Unit must develop and execute a training program, so that public officials attached to said institution are able to identify any and all risks that may put a person's life or integrity in danger.

During the facts that took place on June 5, public officials of the IMSS failed to observe legal dispositions related to: The Basis for the Surrogation of Child Care Services within the Community Neighbors' Scheme; Official Mexican Norm NOM-167-SSA-1997, for the Provision of Social Assistance Services for Minors and the Elderly; Official Mexican Norm NOM-002-STPS-2000, Safety, Prevention, Protection and Fire Fighting Conditions for Workplaces; the Norm that Establishes Dispositions for the Operation of the IMSS Child Care Services, in addition to the Law for the Protection of the Rights of Children and Adolescents.

The National Commission believes that the violations committed by public officials attached to the Mexican Institute of Social Security (Spanish initials – IMSS) relate to the rights to life, physical and psychic integrity, health, legality and legal safety; all derived from unlawful performances in public service.

The CNDH has also established violations to the fundamental rights to legality and legal safety, attributable to authorities attached to the Municipal Hall of Hermosillo, Sonora, based on the fact that said authorities failed to observe dispositions established by the Law for Civil Protection in the State of Sonora, the Municipal Rulebook for Civil Protection, Prevention of Fires and Civil Safety for the Municipality of Hermosillo, Sonora, as well as the Law of Responsibilities for Public Servants of the State and Municipal Offices in Sonora.

Analysis of evidence gathered for this case has led the National Commission to establish that authorities attached to the Treasury Department of the Governor's Office of the State of Sonora failed to observe Official Mexican Norm NOM-002-STPS-2000, Safety, Prevention, Protection and Fire Fight in Work Centers, in addition to the Municipal Rulebook for Civil Protection and the Construction Manual of the Municipality of Hermosillo.

Addressed authorities will be granted fifteen business days to notify that the Recommendation has been accepted and fifteen additional business days to present proof before the Commission that the document is being fulfilled. Failure to provide proof will indicate that the Recommendation has not been accepted, in which case, the National Commission will be free to make the case known to the public.

NATIONAL AFFAIRS

CLARIFICATION

With regards to statements made by the General Manager for Human Rights of the Secretary of National Defense, published on July 24th 2009 in some media outlets, the National Commission of Human Rights wishes to express that the institution shall continue to fulfill its Constitutional mandate. Without betraying the Ombudsman's calling as society's protector, Recommendations issued on violations to fundamental rights shall always be legally founded. The National Commission considers that the struggle against organized crime must not turn into actions that violate the law.

In response to the claim that the CNDH is being utilized as a tool by organized crime to discredit the Mexican Army, the National Commission must stress that, according to the institution's Constitutional mandate, the defense of persons must be conducted regardless of their good conduct and the existence of any previous criminal record. The CNDH estimates that the prestige of the Mexican Army is not dependent on what delinquents may or may not say.

With regards to complaints filed before the National Commission, only two out of every 100 are opened by alleged delinquents. Therefore, the CNDH does not investigate the persons who file a complaint nor their legal counselors; the Commission does not discriminate those who seek the institution's assistance based on subjective criteria. Rather, the CNDH conducts thorough investigations concerning each and every single complaint, making certain that said complaints are resolved in accordance to the institution's laws and Constitutional mandate.

The CNDH shall continue performing as it has always done, fulfilling the institution's Constitutional Mandate, always with the law close at hand.

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