




Newsletter





Index

The voice of the president	3
Event of the Month	5
Press Releases	6
Recommendations	9
Article of the month	11
Book of the month	11



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Remarks made by Mr. Luis Raúl González Pérez, President of the National Human Rights Commission, addressing the General Recommendation No. 27 submission, "On the Right of Indigenous Peoples and Communities to Prior Consultation in the Mexican Republic".

Mexico City, August 9th, 2016

The right of indigenous peoples and communities to prior consultation, cannot yet be considered fully in force in our country. Even by being a right sustained upon different international instruments, the lack of its development by a law regulating its scopes concretely and, specifically, the characteristics and procedures to its exercise and implementation have caused, at practice, conditions favoring the observance evasion and its limited proper enforcement and effectiveness.

Prior consultation is an indigenous peoples' right to participate on situations affecting them and their rights, involving them in decision-making upon relevant issues and features. As regards to the 1st constitutional article, it is one of the rights that perhaps best exemplifies human rights interdependency and indivisibility, while influences its validity and determines other rights, such as those related to cultural identity, to free self-determination, sustainable development, ancestral property, cultural biodiversity, with indispensable guarantees in a pluralist, multicultural, inclusive and democratic society.

The State has the duty to consult with its indigenous peoples' issues that are affecting their rights and interests. This consultation, if the claim is deemed to be valid, should cover several requirements that have been established over the time in different conventional instruments, as well as by declarations of national and international authorities, just as the Inter-American Court of Human Rights or the Supreme Court of the Nation, that have establi-



shed as a whole, basic elements that will encourage effective participation, in pertinent terms and conditions, of the indigenous peoples in these processes.

This consultation cannot be approved as a mere formality or procedural requirement. As referred and detailed at the General Recommendation presented today, this consultation should accomplish at least five characteristics in order to satisfy its goal; it has to be prior, free, informed, with good will and culturally appropriate. The process that does not accomplish with these characteristics implies, by itself, a human rights violation to the people and to indigenous people and communities.

Questions concerning prior Consultation have been an area of significant focus and subject at the center for several years to this National Organism, for that reason it has made specific recommendations on this topic, in cases such as Wixárika Indigenous People, the one about soybean being genetically modified, and of the

Project "Acueducto Independencia", which led recommendations 56/2012, 23/2015 y 43/2015, respectively. In these cases, it was on their knowledge, just as others, that even though there was not a complaint before this National Commission they were analyzed to bring out this Recommendation, it is feasible to identify some authorities' practices that should be avoided, among them:

- a) The prior character of consultation is constantly disregarded. In some cases it has been shown that there are tendencies to approve the project, without consultation or involvement of the indigenous community, in neither granting nor permission of resources exploitation.
- b) Consultation is given, in several occasions, within a context of violence, threats, harassment, repression, criminalization to members and representatives of the community, violating the free character of this right.¹

¹ The InterAmerican Commission on Human Rights in its report on the situation of human rights in Mexico said: "Violence in the context of mega projects has resulted in murders, killings, harassment and threats against indigenous people in many states. The Commission was aware that indigenous leaders have been arrested in Guerrero, Oaxaca, Chiapas, Quintana Roo, Sonora, Chihuahua and Puebla, among others, in connection with their activities as opposed to other megaprojects".

- c) The information given by the authorities to these communities, in occasions, has been unclear, unprecise and incomplete, inhibiting indigenous peoples to know of possible environmental risks and the cultural impact that involves these projects under consultation development. Thus the authority has been poor of management, in some cases, by giving response to presented concerns by the affected.
- d) The good faith component is not always fulfilled, whenever authorities have come to encourage campaigns of misinformation between communities, or consultations have been formulated as a means to legitimize a tender.
- e) Some of the analyzed consultations lacked of culturally appropriate procedures. There were cases in which the authority didn't deliver suitable qualified information, and it wasn't submitted as required by the indigenous peoples' way of adopting decisions, they did not respected the indigenous decisions, or they only considered the sector favoring the project. In this sense, in some cases it was not contemplated the community's schedule to plan the assemblies, which were schedule during their festivities, and impacted their effective participation.

To the National Human Rights Commission, this can't, nor could be a minor problem. Consultation is a tool seeking to ensure respect of indigenous peoples and communities, by raising its participation on decisions-making taken in the social context of which they are part, in a way that they can preserve their cultural identity and achieve real sustainable development.

Right to prior consultation is, if not the most important of the mechanisms, inherent to the respect and protection of the human

rights of indigenous peoples', one of the guidelines that sustain the Convention 169 of the International Labor Organization (ILO), the most important international legal instrument on indigenous issues and which content the Mexican State is forced to fulfill and enforce. Even though efforts to achieve its real effectiveness have been several, these have not been sufficient.

That is why, under the International Day of the World's Indigenous Peoples, the National Human Rights Commission, submits this General Recommendation that proposes the incorporation of the right to prior consultation under the Mexican legal system, through specific law development on it, both at federal and at local level, sustained on the highest protection standards, both national and international, as the path to acquire suitable and effective validity to this right.

Although there are two States, San Luis Potosí and Durango, that already count with a specific law on prior consultation, it is required a review of it in accordance with the content of this General Recommendation, in order to enable the protection of the standards that have been at the federal and local levels to other entities, in order that the national legislation on this matter, be as uniform as possible.

To the National Commission, it is essential to clarify that is desirable a prior, free and informed consultation to be progressively binding. The prior consultation process initiates with the premise of reaching an agreement binding the parts for its fulfillment. Authorities can't unilaterally acquit themselves from agreements resulting from a consultation process. Likewise, it must be remembered that projects are submitted by authorities to consultation should be enacted as consultation process result and not thereto previous manner, in order to ensure State projects implementation, could only be deemed viable once consultation process has been ful-

filled and in the light of its result.

In this regard, it is relevant to refer, like the Recommendation does, the criteria established by the First Chamber of the National Supreme Court of Justice, in the protection under review no. 631/2012, where it is stated that, although it is desirable in a consultation process to reach an agreement, facing the refusal of the peoples consulted should be weighed "social interests involved, this is, both to the concerned as benefited from the work, being corresponding authorities able to enact, within extent of their powers, needed actions to compensate or reduce infringements derived from projects' operations"², it is important to mention that the Inter-American Court of Human Rights has sustained similar sense criteria, in cases such as *Saramaka vs. Surinam*.

Mexico has a commitment and a debt with its indigenous peoples and communities, whose fulfillment has to be brought by recognition, protection and validity of their rights, both individual as collective. To fulfill and to have a genuine right to prior consultation, by the legal framework creation that gives base and certainty to its exercise, brings us closer to that multicultural nation with consciousness in its indigenous identity contained in the constitutional article 2.

The Fourth General Visitor will proceed with some relevant aspects taken into consideration for the General Recommendation development and will give lecture to the recommendatory points, in turn, do not hesitate to contact us for further questions on the submitted document.

Thank you very much.

<http://www.cndh.org.mx/sites/all/doc/Participacion/20160809.pdf>

² First Chamber of the National Supreme Court of Justice in the Amparo Review 631/2012, solved the May 8, 2013, p. 87.

At the framework of the International Day of Indigenous Peoples, the CNDH submitted General Recommendation 27 "On the Right to Prior Consultation, free, informed, culturally suitable and of good faith of Indigenous Peoples and Communities in the Mexican Republic"

CGCP/215/16

Mexico City, August 9th, 2016

The National Human Rights Commission (CNDH) submitted the General Recommendation no. 27 "On the Right to Prior Consultation, free, informed, culturally suitable and of good faith of Indigenous Peoples and Communities in the Mexican Republic", that proposes the incorporation of the cited right within the Mexican legal system, by specific lawmaking upon it, both in federal and local level, sustained by the highest quality standards of protection, both national and international, in order for this prerogative to acquire its appropriate validity and effectiveness.

http://www.cndh.org.mx/sites/all/doc/Comunicados/2016/Com_2016_215.pdf



THE NATIONAL HUMAN RIGHTS COMMISSION, PRESENT AT THE XXXI OLYMPIC GAMES IN RIO DE JANEIRO, BRAZIL, THROUGH ITS NATIONAL PREVENTION CAMPAIGN ON HUMAN TRAFFICKING

CGCP/212/16
August 4th, 2016

The CNDH, the Government of Rio de Janeiro and 27 Million join to exchange good practices and experiences upon the fight against human trafficking and to promote the National Prevention Campaign on Human Trafficking “Freedom without deception or false promises” among Brazilian society and hundreds of thousands of visitors that will enjoy

the XXXI Olympic Games of Rio de Janeiro. In order to make society go far beyond appearances, to prioritize self-care, and to promote useful information to save lives.

During the World Day against Human Trafficking and upon the permanent actions carried out by the CNDH in prevention of these crimes, was launched in Rio de Janeiro, Brazil, the National Prevention Campaign on Human Trafficking “Freedom without deception or false promises”,

which the National Human Rights Commission has implemented since October 2015, and was adopted to be used by the Brazilian government within the XXXI Olympic Games framework.

http://www.cndh.org.mx/sites/all/doc/Comunicados/2016/Com_2016_212.pdf



THE CNDH ISSUED AN STATEMENT ABOUT THE PROFILE OF THE PRISON PERSONNEL IN THE MEXICAN REPUBLIC.

CGCP/214/16
August 7th, 2016

The National Human Rights Commission (CNDH) issued an statement about the profile of the prison personnel in the Mexican Republic, by which it recognizes the significance in stablishing and standardizing the civil and professional profile of those who work at penitentiaries and those that will be incorporated to that task, where their roles founds social service of great importance that should help people deprived of their liberty to have a dignified life.

In order to optimize the Penitentiary System, the CNDH suggested seven key issues and highlighted the meaning to meet what it has been laid down in the national and international law regarding the general profile that should be covered by public servants working at detention centers in order to ensure their professional performance, mainly in terms of the minimum knowledge that they need, their technical capabilities, specific skills, attributes and values, requiring as transversal elements the promotion, protection, respect and guarantee of human rights.



http://www.cndh.org.mx/sites/all/doc/Comunicados/2016/Com_2016_214.pdf

AT THE INTERNATIONAL YOUTH'S DAY, THE CNDH CALLS UPON TO DEVELOP A NATIONAL POLICY TO PROVIDE BETTER LIFE CONDITIONS TO YOUNG PEOPLE

CGCP/217/16
August 12th, 2016

The United Nations General Assembly issued in 1999 the resolution 54/120, by which it was stated on August 12th the International Youth Day, within the recommendations framework carried out at the World Conference of Ministers Responsible for Youth.

In this regard it is emphasized that young people are individuals full of rights that merit and demand recognition, protection, respect and defense through the generation of policies with youth perspective considering social, economic, political and cultural focuses, allowing the transformation of their reality and suitable environment to develop their adult personality, based upon values and with sense of responsibility.

The lack of appropriate information, their uncertain future,

as well as social stereotypes, are some factors placing young people in a vulnerable and dependent position against adults, thus limits their development.

The Mexican State is obliged to recognize young people as strategic actors for the development of our country; to provide them with inclusive opportunities allowing them to get their first working experience; to create actions contributing to develop their potential; to regulate mechanisms of integration, development, use and systematization of the information and to ensure them a harmo-

nized, healthy and violence free social and familiar environment.

It is necessary to encourage a General Law enactment on Youth Rights, in which besides recognizing them as individuals full of rights, foresees their active participation within decisions-making upon situations that are affecting them.

http://www.cndh.org.mx/sites/all/doc/Comunicados/2016/Com_2016_217.pdf



THE CNDH REQUESTS TO THE MINISTRY OF PUBLIC EDUCATION THE APPLICATION OF PRECAUTIONARY MEASURES FOR THE HUMAN RIGHT TO EDUCATION OF CHILDREN IN CHIAPAS, GUERRERO, MICHOACAN, OAXACA AND MEXICO CITY, AND TO PROVIDE AS A PRIORITY THE BEST INTEREST OF CHILDHOOD

CGCP/219/16

August 21st, 2016

To prevent possible infringements of difficult repair to the human right of children's education that are living in the States of Chiapas, Guerrero, Michoacán, Oaxaca and Mexico City, the National Human Rights Commission (CNDH) requested to the Ministry of Public Education, in coordination with those entities governments, the application of precautionary measures for girls, boys and adolescents in order to

guarantee the exercise and validity of it.

This was carried out by a written document addressed to Mr. Aurelio Nuño Mayer, Ministry of Public Education, facing the beginning of the school year 2016-2017, and due to several warnings reproduced by media in sense that leaders of the Coordinadora Nacional de Trabajadores de la Educación (CNTE) agreed not to come back to classes the next

August 22, 2016, when the school year starts, and that in consequence, schools will stay closed in Chiapas, Guerrero, Michoacán, Oaxaca, besides Mexico City.

http://www.cndh.org.mx/sites/all/doc/Comunicados/2016/Com_2016_219.pdf



THE CNDH AFIRMS ITS SOLIDARITY WITH ENFORCED DISAPPEARANCE VICTIMS, AND CALLS THE FEDERAL EXECUTIVE TO RECOGNIZE THE UN COMMITTEE COMPETENCIES IN THE TOPIC, IN ORDER TO RECEIVE AND EXAMINE INDIVIDUAL APPLICATIONS AS ACT OF POLITICAL CONSISTENCY

CGCP/222/16
August 30th, 2016

The National Human Rights Commission (CNDH) expresses its solidarity with the enforced disappearance victims and with their relatives, as well as with their claims to truth and justice. It highlighted that the existence in our country of this scourge should be recognized and that only one case represents an unavoidable challenge to the Mexican State, whose institutions of investigation and justice procurement are being tested before the citizens and in the international sphere in which Mexico is immersed.

Within the International Day of Enforced Disappearance Victims -August 30th-, the CNDH calls the Federal Executive to recognize the importance and urgency to accept the UN Committee against Enforced Disappearance, to receive and examine communications of or in the name of persons subjected to its jurisdiction claiming that are victims of violations by the State within the provisions of the Convention, as an consistent act between domestic and foreign

policy of our country. Besides, it emphasizes the Mexican State obligations to accomplish meaningfully and comprehensively the international commitments in the human rights field.


Mexico signed the International Convention for the Protection of All Persons from Enforced Disappearance in the UN on February 2007, which was endorsed on March 2008 and it came into force until December 23rd, 2010; still it is awaiting the acceptance


of the committee competence in terms of articles 31 and 32 of the Convention, this is that victims could submit claims before the committee, and that it can receive complaints for other Member States regarding Mexico.



http://www.cndh.org.mx/sites/all/doc/Comunicados/2016/Com_2016_222.pdf





Recommendations



Responsible Authority	Issue	Recommendation
<p>Ministry of Defense</p> 	<p>About the case of an illegal search and the arbitrary detention of minors V1 and V3 and V2, V4, V5 and V6 in Tecpan de Galeana, Guerrero.</p>	<p>RECOMMENDATION No. 42/ 2016 August 31, 2016</p> <p>http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2016/Rec_2016_042.pdf</p>

Responsible Authority	Issue	Recommendation
<p>Mexican Institute of Social Security</p> 	<p>About the case of violations of human rights to protection of health and life, inadequate medical care and loss of life in detriment of V in the regional general hospital No. 200 Tecámac IMSS, Mexico's state.</p>	<p>RECOMMENDATION No. 41/2016 August 31, 2016</p> <p>http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2016/Rec_2016_041.pdf</p>

Autoridad	Asunto	Recomendación
<p>Mexican Institute of Social Security, Chihuahua State Government</p>  	<p>About the case of violations of human rights to health protection by inadequate medical care and life because of obstetric violence, in detriment of V1, in Chihuahua, Chihuahua.</p>	<p>RECOMMENDATION No. 40/2016 August 23, 2016</p> <p>http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2016/Rec_2016_040.pdf</p>

Responsible Authority	Issue	Recommendation
<p>Attorney General's Office</p> 	<p>About the case of violation of human rights to legal certainty and access to justice in the mode of enforcement in detriment of V in the federal highway Minatitlan Villahermosa, Veracruz.</p>	<p>RECOMMENDATION No. 39/2016 August 22, 2016</p> <p>http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2016/Rec_2016_039.pdf</p>

Responsible Authority	Issue	Recommendation
<p>Mexican Institute of Social Security</p> 	<p>About the case of obstetric violence and human rights violations of health care to V1 and V2 and to life of V2, at the General Hospital Number 8 of the Mexican Institute of Social Security in Uruapan, Michoacán.</p>	<p>RECOMMENDATION No. 38/2016 August 19th, 2016</p> <p>http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2016/Rec_2016_038.pdf</p>

Responsible Authority	Issue	Recommendation
<p>Ministry of Defense, Attorney General's Office</p>  	<p>About the case of violation of human rights to the inviolability of the home, legal security and personal integrity of V1, for breaking the home and acts of torture against V1 and V2, as well as the violation of the access to justice in the form of law enforcement in the state of San Luis Potosi.</p>	<p>RECOMMENDATION No. 37/2016 August 18, 2016</p> <p>http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2016/Rec_2016_037.pdf</p>

Business and Human Rights

Addressing to Brazil, for Mexican understanding

Astrid Puentes Riaño
 August 5th, 2016 - 12:49 CDT

In 2011, the Human Rights Council of the UN approved the Guiding Principles of Business and Human Rights. These reiterate the States obligations to protect human rights, including controlling business activities; those highlight business responsibilities to respect human rights; and the need of appropriate mechanisms for access to justice of victims.

The Council also created a Working Group of Business and Rights to promote the implementation of the cited Guidelines. This Group will visit Mexico from August 29th to September 7th. This will be the

second visit to Latin America, the first one was to Brazil was on December 2015. The visit to Mexico is of great importance:

- Mexico is one of the 15th world’s largest economies and it is important part in the business sector, as well as it is the relation with human rights.
- It has become extraordinary that Mexico invites international organisms of human rights to official missions and that the authorities seriously attend the recommendations made by them.

http://internacional.elpais.com/internacional/2016/08/05/america/1470418942_433390.html

Book of the Month



Human trafficking and exploitation in the province of Buenos Aires. Learnings and challenges in attendance and accompaniment from rights perspective.

United Nations Fund for Children (UNICEF)
Undersecretary of Access to Justice Ministry of Justice
of the Province of Buenos Aires
 August 2015
 Printed in Argentina
 First edition

The study- which results are presented in this publication- proposes to systematize assistance experiences and rights restoration to children and adolescents and/ or women with children that have been attended by DPLTP and CPV.1 teams. The investigation- of qualitative character- deals with the approaches developed for victims assistance and accompaniment, and searches within the actors perspective involved in the processes, identifying institutional learning under the Provincial Rights Protection System (SPPD) and in the pending challenges to strengthen working procedures of DPLTP, the CPV, as the SPPD teams as a whole.

http://www.unicef.org/argentina/spanish/Proteccion_TrataPerso



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