

To: U.S. Department of State

John Kerry, Secretary of State

Anthony Blinken, Deputy Secretary of State

Sarah Sewall, Undersecretary of State for Civilian Security, Democracy and Human Rights,

Mari Carmen Aponte, Acting Assistant Secretary, Bureau of Western Hemisphere Affairs

Tom Malinowski, Assistant Secretary, Bureau of Democracy, Human Rights and Labor

William Brownfield, Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs

Roberta Jacobson, Ambassador, U.S. Embassy in Mexico

CC: U.S. Congress

Sen. Lindsey Graham, Chair, Subcommittee on State, Foreign Operations, and Related Programs, U.S. Senate Committee on Appropriations

Sen. Patrick Leahy, Ranking Member, Subcommittee on State, Foreign Operations, and Related Programs, U.S. Senate Committee on Appropriations

Rep. Kay Granger, Chair, Subcommittee on State, Foreign Operations and Related Programs, U.S. House of Representatives Committee on Appropriations

Rep. Nita Lowey, Ranking Member, Subcommittee on State, Foreign Operations and Related Programs, U.S. House of Representatives Committee on Appropriations

From:

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Latin America Working Group (LAWG)

Washington Office on Latin America (WOLA)

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Subject: **Assessment of the Human Rights Requirements in the Merida Initiative**

INTRODUCTION

Since the onset of U.S. security assistance to Mexico under the Merida Initiative in 2008, the U.S. Congress has recognized the Mexican government's need to make substantive progress in its respect for human rights within the framework of security operations and efforts to strengthen the rule of law in the country and placed human rights requirements on select funds. Since 2009, our organizations have produced six memorandums for the Department of State based on our research and documentation of the human rights situation in Mexico that have made clear that the Mexican government had failed to meet these requirements. As such, we recognize the importance of the State Department's decision to withhold conditioned funding for Mexico from the 2014 State, Foreign Operations and Related Programs budget based on the Department's assessment that the human rights conditions had not been met.

We submit the following document that is based on our research and documentation, as well as information available in official statistics and reports from international organizations and bodies, which again illustrates that the Mexican government has failed to make sufficient progress on the

human rights priorities identified by Congress in its assistance to Mexico. As will be described below, in the past year the Mexican government has effectively obstructed the investigation of human rights cases and disregarded conclusions from international human rights bodies. It has also failed to collect proper and reliable data on the prosecution of human rights violations, meaning that there is no reliable evidence showing that the reforms portrayed as signs of progress are effectively meeting their goals, including the new criminal justice system and reforms to end military jurisdiction over human rights violations against civilians.

In light of the information available, we believe that the U.S. government should not provide assistance to Mexico's armed forces through the Merida Initiative, as this reinforces and sustains the inappropriate and dangerous open-ended role of the armed forces in domestic law enforcement and exposes the population to further abuse. In general, providing Mexican security forces with more training and equipment while corruption and abuses continue unchecked does little to improve security in Mexico, and is likely to continue to exacerbate an already dire human rights situation.

The State Department's 2015 Report on Human Rights in Mexico stated that "the most significant human rights-related problems included law enforcement and military involvement in serious abuses, such as unlawful killings, torture, and disappearances. Impunity and corruption in the law enforcement and justice system remained serious problems." **Following this analysis, we believe the State Department's report on the human rights requirements included in the Merida Initiative offers a vital opportunity to provide a thorough, accurate assessment of important human rights benchmarks.** Such an analysis is crucial as both countries work to strengthen their bilateral relationship. As the U.S. continues its engagement with Mexico it is necessary to recognize the ongoing need for measurable progress in the areas of human rights, accountability, and transparency.

General context

Our assessment of the human rights requirements included in U.S. assistance to Mexico is done in a context of continued closure to international and national scrutiny of the human rights crisis in the country. In the past year, the federal government continued to engage in confrontation with international and regional human rights bodies: besides rejecting conclusions and recommendations of the UN Committee on Enforced Disappearances and the UN Special Rapporteur on Torture, both mentioned in our July 2015 memo, the government also dismissed the findings of the Inter-American Commission on Human Rights (IACHR) in its country report on Mexico. When the report was presented in early March 2016, the Mexican government asserted that the report "did not reflect the situation of the country" and that it was based on flawed assumptions and assessments.¹ Apart from discrediting international oversight, Mexican authorities impeded the work of the Interdisciplinary Group of Independent Experts (GIEI)—appointed by the IACHR based on an agreement with the Mexican government and the legal representatives of the students' families to provide technical assistance in the investigation of the enforced disappearance of the 43 students from Ayotzinapa, Guerrero—by withholding and tampering with evidence, failing to pursue proposed lines of investigation, failing to denounce the defamation campaign against the Experts, and blocking access to important testimonies and to the Mexican military.

The hostile attitude of the government towards international oversight has been matched internally by the government's failure to provide safeguards for human rights defenders and the increase of attacks against them. The gravity of the situation led a high-level UN human rights advisory body to express concern over the verbal attacks and threats against human rights defenders in Mexico, acknowledging

that many of them must live in constant fear for their lives.² Examples of acts of harassment and intimidation that directly affected some of the local organizations included in this memo during the past year include the use of some media outlets to publicly attack and spread misinformation about them, security incidents at their offices, leaking of telephone conversations and phone threats, and surveillance in offices and private homes. In this context, the UN Committee on Enforced Disappearances called on the government to implement precautionary measures to protect Tlachinollan and Center Prodh, organizations which are signatories to this memo and who accompany the families and victims of the Ayotzinapa case.

REQUIREMENT 1) The Government of Mexico is investigating and prosecuting violations of human rights in civilian courts.

Overall impunity remains high in Mexico and human rights violations by Mexico's security forces continue to occur at alarming levels. The most recent survey of crime victimization from the National Institute of Statistics and Geography (*Instituto Nacional de Estadística y Geografía*, INEGI) shows that in 2014 under 11 percent of the crimes committed in the country were reported to authorities, primarily because victims do not trust authorities or they think that reporting crimes in Mexico is a waste of time.³ The majority of the population has little trust in prosecutors and judges and over 50 percent perceive them as corrupt. Of the crimes reported, a preliminary investigation was opened in 67.5 percent of the cases, in more than half of these investigations, nothing happened or the case was not resolved, a suspect was brought before a judge in less than 10 percent of the cases.⁴

Official information available, and research and documentation of cases by our organizations (described in detail below) confirm the failure to effectively investigate and sanction crimes and human rights violations, including those committed by state agents. For example, even when the National Human Rights Commission has received 9,401 complaints of torture and ill-treatment from January 2007 through December 2015, there are only 15 convictions for torture in Mexico since 1999.⁵ According to the Mexican government, based on information available at the federal level regarding the investigation of state officials responsible for enforced disappearances, 313 officials have been indicted for this crime but only 13 had been convicted.⁶

In a January 2015 case, Mexico's National Human Rights Commission (CNDH) concluded that during a confrontation with civilians in Apatzingan, Michoacan, Federal Police had used excessive force that resulted in the death of six individuals and that police agents had extrajudicially executed one person who was unarmed and had already surrendered.⁷ In May 2015, 42 civilians were killed in another armed confrontation with Federal Police in Tanhuato, Michoacan. According to witness accounts cited by Human Rights Watch, police agents killed several people as they were trying to flee and others who were already under police custody.⁸ No federal police agents have been convicted for their participation in these events.

Lack of reliable information and impunity

For its report, *Undeniable Atrocities: Confronting Crimes Against Humanity in Mexico*, the Open Society Justice Initiative (OSJI), in collaboration with Mexican and international experts and five Mexican human rights organizations, conducted a thorough analysis of all available statistics on and documentation of atrocity crimes in Mexico from December 2006 to March 2016 and concluded that government data on human rights violations and atrocities in Mexico is "notoriously incomplete, skewed towards

minimization, and therefore often unreliable” and it “downplays the extent of violent crime in the country, especially regarding atrocities committed by state actors.”⁹

We believe Mexican authorities either misrepresent or lack relevant information on accountability for human rights violations. As we highlighted in our July 2014 memo to the State Department, Mexico provided inaccurate information to the UN Committee Against Torture (CAT) that exaggerated criminal accountability for torture.¹⁰ The Mexican government also reported inaccurate statistics to the UN Committee on Enforced Disappearances, overstating the investigation of disappearances by reporting a number of investigations opened that was in fact the number of criminal complaints filed before the PGR by victims or authorities.¹¹

Prosecutions of human rights violations committed by Mexican soldiers

Impunity continues to prevail for the majority of the human rights violations committed by Mexican soldiers and the few sanctioned cases are neither sufficient nor commensurate with the scale of crimes. A 2016 special report from Mexico’s National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*, CNDH) shows that the Mexican Army (SEDENA) is the third authority with the highest number of recommendations for human rights violations between 1990 and June 2016.¹²

In 2014, the Mexican Congress amended Article 57 of the Military Code of Justice to grant civilian authorities jurisdiction over crimes perpetrated by the military against civilians. However, the Inter-American Court on Human Rights found that this reform was incomplete and failed to establish that all human rights violations must be investigated and tried in civilian jurisdiction, including crimes where the victim and the perpetrator of human rights violations are members of the military. Moreover, as shown below, after passing these reforms, authorities neglected their correct implementation, and failed to ensure independent and credible investigations of military abuses against civilians in ordinary courts. In the May 2016 follow-up report on his visit to Mexico, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions noted that exceptions to Article 57 of the military code still conflict with his recommendation of ending military jurisdiction over abuses against civilians.¹³

There is no comprehensive, public information on how many members of the military have been investigated and sanctioned in civilian jurisdiction for human rights violations since the reforms were implemented in 2014. Based on limited public information from the federal judiciary, only two soldiers have been convicted in civilian jurisdiction for abuses: in August 2015, an Army sub-lieutenant was sentenced to 31 years of prison for enforced disappearance, and in April 2016, an Army general was sentenced to 52 years of prison for torture, homicide, and destroying human remains. It remains unclear if these are final decisions or still subject to an appeal.¹⁴

There are at least four other cases of civilian investigations into human rights violations by Mexican soldiers. Mexican media reports that in March 2016 five soldiers who were working with the state police in Nuevo Leon were convicted for the homicide of Otilio Cantu in April 2011. There is no official communication from the judiciary on this case, so it is not clear if this conviction has been upheld.¹⁵ In July 2015, a soldier was sentenced to 18 years of prison for the 2011 murders of Rocío Romelí Elías Garza and Juan Carlos Peña Chavarría.¹⁶ However, according to CADHAC who represented the victims’ families, the judgment was appealed and overturned and a final resolution of the case is still pending. In July 2015, four soldiers were indicted under the new criminal justice system for the alleged enforced disappearance and killing of seven people in Zacatecas. However, as of yet there is no judgment in this

case.¹⁷ The fourth example is the Tlatlaya case, discussed below, in which all of the soldiers charged were acquitted.

When it analyzed the reforms, the Inter-American Court highlighted that the military should have no role in the criminal investigation of a case unless the crime solely involves violations of military discipline. Yet, as the Tlatlaya massacre (described below) shows, military prosecutors and courts continue investigating human rights violations against civilians, arguing that they retain jurisdiction to open their own investigation to clarify whether the same events constitute military crimes. In April 2016, Center Prodh filed public information requests asking SEDENA in how many cases it had opened investigations “in which one or more civilians is involved” and also how many cases had been declined in favor of civilian jurisdiction due to civilian involvement, from June 1, 2014 to April 10, 2016.¹⁸ In June, SEDENA responded that it does not maintain a registry of this information, making it difficult to know how many other cases, like Tlatlaya, are still being investigated in civilian and military jurisdiction.

The Mexican government has also opened the path to extend military jurisdiction and to allow the involvement of armed forces in civilian criminal investigations under the new adversarial system. In May 2016, the Mexican Congress approved the Military Code on Criminal Proceedings. Serious flaws and shortcomings in the wording of the code could open the path to interpretations that would permit the military to extend its jurisdiction beyond military cases to conduct searches on private property or in public offices, and wiretapping. In fact, in June 2016 the CNDH challenged the constitutionality of some articles of this code and the Military Code of Justice before the Supreme Court under argument that the wording of the Codes could extend the scope of military jurisdiction over civilians and subject them to complying with military orders when military courts are investigating crimes.¹⁹

Concrete examples of how the CNDH considers that the military laws violate human rights include:

1. Handling of remains (article 267 of the Military Code on Criminal Proceedings): when conducting a military criminal investigation and based only on their assessments, soldiers can handle and manipulate human remains without prior notice or cooperation with civilian authorities, even if afterwards the case is referred to a civilian court. For the CNDH the fact that the military can handle remains could have “irreversible consequences” in civilian investigations. As we mention below, the Tlatlaya case and the killing of two students from the Technologic Institute of Higher Studies of Monterrey (ITESM)²⁰, where the military tampered with evidence and the cases were eventually referred to civilian authorities, are examples of how the handling of remains and crime scenes by the military can affect investigations in civilian courts. This, along with the ability of soldiers to participate as “first responders” in charge of protecting crime scenes in the new criminal justice system,²¹ grants the military powers in civilian criminal investigations.
2. Arbitrary searches of private property of civilians and non-military authorities: (articles 278, 282, 283 and 286 of the Military Code on Criminal Proceedings): the wording of these articles could allow the military to conduct searches in private property and in the offices of the government.
3. Interception of private communications (articles 291, 295 and 296): even when under Mexican law only a civilian judge can authorize the interception of private communications, the Military Code allows military authorities to carry out interceptions and to destroy records of such communications without expressly acknowledging the prior authorization of a civilian judge.
4. For obtaining evidence in military investigations (articles 128 VIII, 129 XI, 212 of the Military Code on Criminal Proceedings, and articles 38 and 49bis XII of the Military Code): instead of setting forth cooperation mechanisms with civilian authorities for military investigations, the Military Codes directly grant the military the authority to order the appearance of civilians before courts,

and to present evidence for their military investigations, it also allows the military to use force to compel witnesses to appear in court.

5. Lack of transparency (articles 103, 105 and 215 of the Military Code on Criminal Proceedings): there is a prohibition to provide information about individuals involved in a criminal case, which includes revealing the names of the investigators in charge of a case, as well as limiting full access to criminal investigation and proceedings and establishing a minimum of three years after the case has been closed to make the information public. For the CNDH, these restrictions will inhibit its work to investigate grave human rights violations by the military.²²

Lack of progress in emblematic cases

Tlatlaya: In the case of the death of 22 civilians at the hands of soldiers in Tlatlaya, Mexico State, on June 30, 2014, Mexico's National Human Rights Commission (CNDH) determined that at least 12 to 15 of the civilians were extra-judicially executed.²³ Center Prodh, which represents a surviving victim, Clara Gómez González, published a report on the case calling for an investigation of the military chain of command in light of the orders under which the troops were operating in Tlatlaya at the time of the events, considering that:

“the case file contains orders from superiors that promote extrajudicial executions... the order specifies: ‘Troops should operate massively at night and reduce activities during the day, in order to kill criminals in the darkness of the night, given that most crimes are committed during those hours.’”²⁴

This case was investigated in military and civilian jurisdictions, and in both jurisdictions the extrajudicial killings have gone unpunished. The military investigation and trial moved ahead faster than the eventual civilian investigation by the federal Attorney General's Office (*Procuraduría General de la República*, PGR). The army tried seven implicated soldiers in military court, keeping them in military prisons; eventually all of the accused were acquitted except for one soldier who was convicted of disobedience and released with time served.

The civilian investigation of the Tlatlaya massacre was marked by impunity and irregularities. All of the soldiers charged in civilian court for this case have been released, principally due to the failure of the PGR to prove charges against them: four soldiers charged with abuse of authority, improper performance of their duties, and cover-up were released in October 2015 and three soldiers charged with homicide, cover-up, and alteration of evidence were released in May 2016.²⁵

Moreover, the investigations and trials of this case show alarming signs of abuses that have been highlighted by international bodies and experts during the investigation of crimes in Mexico, notably:

1. The use of testimonies obtained through torture: the soldiers accused of homicide were released in civilian jurisdiction based largely on initial statements from the three surviving women, which the CNDH had previously determined were obtained through torture and cruel and inhuman treatment to influence their initial account of events.²⁶
2. Failure to respect victims' rights: neither Ms. Clara Gómez, a witness and survivor of the massacre whose 15-year-old daughter was killed by soldiers in Tlatlaya, nor her lawyers from Center Prodh have been given full access to the CNDH's case file even when Mexican norms, including the General Law on Victims – championed by Peña Nieto as one of the first actions by

his government to show commitment with human rights – grants her the right to have access to all the information related to her case.

3. Failure to investigate the chain of command: authorities have refused to investigate the chain of command in the order to kill “criminals” at night under which the implicated troops were operating, failing to summon and investigate the officers that gave these orders.²⁷

Ecologists case: In the case of the ecologists Rodolfo Montiel and Teodoro Cabrera, the investigation into torture ordered by the Inter-American Court shows few advances nearly six years after the Court issued its judgment. To date, there has been no substantial progress in the case: no soldiers have been charged, despite the fact that the victims have identified several of their torturers by name, presented several medical examinations carried out by world-renowned experts in documenting torture (demonstrating they were subjected to acts of torture), and presented witness testimony that supports their case.²⁸

Upon requesting reelection to the Human Rights Council for the 2014-2016 period, Mexico had pledged to the U.N. General Assembly that it would comply with the judgments of the Inter-American Court and the recommendations of the Inter-American Commission on Human Rights. However, this pledge remains unfulfilled.²⁹

Cases of Inés Fernández and Valentina Rosendo: In the cases of Inés Fernández and Valentina Rosendo, the trials under civilian jurisdiction against the alleged perpetrators continue for the appropriate charges. After the detentions of four members of the Armed Forces in December 2013 the judge charged two of them – one of whom had left the force – for rape, torture and abuse of authority against Valentina Rosendo; and the other two for rape, torture, abuse of authority, robbery and forceful entry against Inés Fernández. However, more than two years after the soldiers’ arrest very little has happened in the investigation and they continue to be held in military prisons.

It was not until November 2015 that Ms. Fernández Ortega and Ms. Rosendo Cantú were informed – and only because of the compliance-supervision process open in the Inter-American Court of Human Rights – that in February 2015, the PGR had closed investigation files AP-PGR/FEVIMTRA/471/2013 and AP-PGR/FEVIMTRA/470/2013, which were opened after the start of the trials against the four soldiers in order to continue to investigate any other person involved in the events and therefore, the chain of command.

In February 2016, Mr. Aguilar Otañez, one of the perpetrators, was killed by another inmate inside a military prison. Military authorities failed to notify this situation to the civilian judge and the victim, Ms. Fernández Ortega, even when the information was published in the media.

Case of Bonfilio Rubio: Despite the unprecedented Supreme Court ruling regarding the unconstitutionality of the Code of Military Justice in this case in August 2012, the extrajudicial execution of Bonfilio Rubio in June 2009 by members of the Mexican army remains unpunished and the only soldier who had been charged with involuntary manslaughter (*homicidio culposo*), Valentín Alejo Hilario, has been set free. Although Bonfilio’s family and Tlachinollan attempted to appeal the decision, the acquittal was confirmed. The family, represented by Tlachinollan, continues to present legal remedies in order to challenge the decision.

Killing of ITESM students: On March 19, 2010, Jorge Antonio Mercado Alonso and Javier Francisco Arredondo Verdugo, students of the ITESM, were killed during a shootout between members of an

organized criminal group and soldiers near the school. The CNDH found that both students had been shot at short range and that soldiers subsequently altered the scene of the crime and lied about the events, making statements that the students had participated in the shootout.³⁰ Although the Military Attorney General opened an investigation against one of the soldiers for altering the scene, that soldier was acquitted and the case was dismissed.³¹ The PGR also opened an investigation against several soldiers for the acts. However, more than six years after the events, no soldier has been held responsible for killing the students and altering the scene of the crime.

REQUIREMENT 2) The Government of Mexico is enforcing prohibitions against torture and the use of testimony obtained through torture.

As we asserted in our July 2015 memo, recent cases and reports by Mexican and international human rights organizations, as well as the United Nations Special Rapporteur on Torture, confirm that torture plays a central role in policing and public security operations by military and police forces across Mexico. The legal framework and safeguards in place in the country to prevent and punish the use of torture, and prevent the admissibility of evidence obtained through torture, are regularly disregarded by the police, the military, prosecutors, and judges. Furthermore, the failure to adequately investigate reports of torture has created a culture of impunity conducive to its continued use, as perpetrators do not fear reprimand or conviction.

In July 2015, Mexico's Congress reformed the Constitution to give it the authority to pass General Laws against torture and enforced disappearance, respectively. This measure was announced as one of the key benchmarks of the government's commitment to human rights.

A broad coalition of human rights organizations and academic institutions came together to present input to the federal government on its bill to propose the General Law, including Amnesty International and the Mexican organizations who signed this memo. By working with the Human Rights Prosecutor (*Subprocuraduría de Derechos Humanos*) of the PGR, these organizations were able to achieve a proposal that was much closer to accurately representing Mexico's human rights obligations. However, when this proposal was submitted to the office of the President, other advisors eliminated large tracts of the text and inserted provisions that once again violated human rights treaties, especially regarding the admissibility of evidence obtained under torture.

In April 2016, the Senate approved a text of the law and sent it to the Chamber of Deputies for debate. This will be done in the next session, beginning in September 2016. The draft law approved by the Senate that the Chamber of Deputies will discuss in September takes into account civil society input in various sections, yet fails to resolve fully some of the problems that have prevented torture cases from being investigated and sanctioned in the past, such as:

- Failure to establish explicitly the liability of high-ranking officers according to international humanitarian law: Article 13 of the current law establishes the liability of the perpetrator and the superior that orders torture, but it fails to set forth a broader concept of liability also encompassing officers who failed to take action to prevent or punish crimes which they knew (or should have known) were being committed. A narrow concept of liability in torture is one of the reasons why torture cases are misclassified or not properly investigated.
- Failure to comply fully with binding international law regarding the exclusion of evidence obtained through torture: Articles 50-52 of the law impose requirements on

torture victims that exceed international standards and introduce restrictions and exceptions to the exclusionary rule that, in the context of Mexico's traditional reliance on torture to fabricate evidence, could encourage the continued use of torture.

The fact that the torture law was not approved immediately by the Chamber of Deputies in April means that actors who wish to ensure a less effective law will have a second chance to exert pressure on the Deputies this fall; in other words, we cannot know if the Senate's version of the law will pass in the Chamber. It should be noted that the deadline for the enactment of the two General Laws, as established in the Constitution, was January 2016.

General data

A September 2014 Amnesty International report affirmed that torture in Mexico is "frequently condoned, tolerated or ignored" by law enforcement officials, superior officers, and some human rights commissions.³² The OSJI report recalls that as early as 1998, then-UN Special Rapporteur on Torture and Ill-Treatment Nigel Rodley reported that torture in Mexico is not exceptional or occasional and that the police resorted systematically to torture as a method for criminal investigation.³³

In 2015, the PGR reported to the IAHCR a more than twofold increase in reports of torture between 2013 and 2014, when there were 2,420 cases.³⁴ Under the Mexican Constitution and international treaties, judges are required to report cases of torture and other ill-treatment to public prosecutors. However, cases identified and reported by judges under-represent the use of torture in Mexico, as many torture cases do not end in a criminal trial against the victim, including, for instance, cases in which the victim is tortured, held in *arraigo*³⁵ (during which the visible marks of torture may heal), and then released without charge, or in which judicial authorities refuse prosecutors' requests to bring the person to trial (for lack of evidence, for instance).

Meanwhile, as Amnesty International documented in its report *Surviving Death: Police and Military Torture of Women in Mexico*, sexual torture and gender-based violence have become normalized in interrogation processes. Amnesty International interviewed 100 women in federal prisons who claimed to have suffered physical or psychological abuse during their arrest or in the hours that followed. Of these, 97 said they had suffered physical violence during their arrest or in the hours that followed, 79 said they were hit in the head, 62 in the stomach or thorax, 61 on the legs and 28 on the ears (the face was deliberately excluded to avoid obvious injuries);³⁶ 41 said they had been near-asphyxiated with a plastic bag or similar object;³⁷ and 33 reported being raped by municipal, state or federal police officers or members of the Army and Navy.³⁸ In arrests carried out by municipal and state police and the armed forces, rape was reported in at least half of the cases. Sixty-six of the women said they had reported the abuse to the authorities but investigations were opened in only 22 cases. Amnesty International is not aware of any criminal charges arising from these investigations.³⁹ Many women interviewed stated that they reported their torture in their first hearing before a judge, but there was a lack of follow-through on the part of prosecutors and judges and many were not sure which authority was investigating the torture.⁴⁰

In September 2015, a Standard Nationalized Protocol for the Investigation of Torture was introduced for all state and federal prosecutors.⁴¹ On September 9, 2015, in response to a campaign by torture survivors and civil society organizations, a "Mechanism to Follow Up on Cases of Sexual Torture Against Women" was established in the Ministry of the Interior, coordinated by the National Commission to Prevent and Eradicate Violence Against Women (*Comisión Nacional para Prevenir y Erradicar la*

Violencia contra las Mujeres, CONAVIM) to investigate torture accusations.⁴² However, since its creation, the Mechanism has failed to convene sessions or to issue opinions on cases. The first case under its jurisdiction has not yet been addressed: this is the case of the torture, asphyxiation, electric shocks, and rape of Ms. Veronica Razo in 2011. Verónica has been imprisoned for five years and awaits the outcome of her trial, based on a “confession” obtained under torture. No charges have been filed against the perpetrators, despite official forensic reports confirming that she showed signs of trauma consistent with her account.

Although there are numerous reports of torture in the federal justice system, it is important to highlight the fact that the CNDH continues to downplay torture cases by wrongfully classifying them as cruel, inhuman, and degrading treatment, practices which are also prohibited under all circumstances under international law. According to information gathered by OSJI, from the beginning of 2007 through the end of 2015, the CNDH received 9,401 complaints of torture and ill-treatment.⁴³ However, only 187 of these cases were classified as torture. Even with the misclassification of cases, reports of torture and ill-treatment are alarmingly high. During the Fox administration (2001 to 2006) there were an average of 252 complaints of torture and ill treatment per year. From 2007 through 2012, the approximate tenure of former president Calderón, that number more than quadrupled, to 7,055 (an average of 1,176 per year). In 2013-2015 (approximately the first half of the Peña Nieto term), there were 2,539 complaints of torture and ill treatment (an average of 846 per year). Assessing the prevalence of torture at the state level is even more difficult. As the Special Rapporteur noted in his 2014 report: “At present, there is no national register of cases and each state has its own data.”⁴⁴

While the number of federal investigations formally opened for torture has increased in recent years, this increase has not translated into proportionately higher levels of trials and convictions: in 2013, the PGR opened 1,064 investigations for torture, but brought charges in only 4 cases.⁴⁵ In 2014, the PGR received 2,420 criminal complaints for torture and the office was able to confirm zero criminal charges for 2014 and 2015. In the case of the military, the 2016 Amnesty International report found:

“Despite the high number of complaints of sexual violence as torture or other ill-treatment by the armed forces, the Ministry of Defense informed Amnesty International that **not a single soldier had been suspended from service for rape or sexual abuse from 2010 to 2015, and the Ministry of the Navy informed that only four marines had been suspended in the same time period.** One marine who was convicted of sexual abuse was only temporarily suspended from the navy, potentially allowing him to be reintegrated into the navy once his prison term is over.”⁴⁶

Admission of testimony obtained through torture

Testimony obtained through torture continues to be admitted in court, even in jurisdictions that operate under Mexico’s new adversarial justice system, which is meant to establish and strengthen safeguards that prohibit torture. As was discussed above, even in high-profile cases with international and national scrutiny, the investigation of cases has relied on torture. In the Tlatlaya case, for example, the judicial ruling ordering the release of accused soldiers was based on the testimony from three surviving women that was obtained through torture and cruel and inhuman treatment.⁴⁷ In the Ayotzinapa case, nearly 80 percent of the suspects detained in connection with this case whose medical files were examined by the GIEI had injuries indicative of torture or mistreatment, including key detainees whose testimonies support the government’s theory of what happened to the students.⁴⁸

Prosecutorial and judicial officials are also not correctly applying the Istanbul Protocol, the UN's international guidelines to investigate allegations of torture or ill-treatment. The official medical examinations of potential torture survivors are often delayed, incomplete, or manipulated to omit signs of torture, while examinations carried out by independent experts—available in only a tiny minority of cases—may be dismissed or considered not to have the same evidentiary value as an official government exam, all of which makes it possible for prosecutors and judges to justify not launching an investigation, and facilitates the admission of evidence obtained through torture.⁴⁹ Authorities within the PGR who conduct forensic examinations that are supposed to be in line with the Istanbul Protocol also report long delays in being able to do the exams. Amnesty International reports that in the course of its research, a number of defense lawyers, torture complainants and family members declared that when they requested the application of the official forensic examinations by the PGR they were told the waiting list was “more than 3,000” or that “they can't carry out any examinations until 2020.”⁵⁰

Emblematic cases

Some cases included in Amnesty International's new and previous torture reports are:

María Magdalena Saavedra: On May 10, 2013, Magdalena, who owned a small beautician and manicure business in San Luis Potosí, northern Mexico, heard noises from the roof of her apartment and thought burglars were trying to get into her house. Before she knew it, a large group of armed Navy officers wearing helmets knocked down her door and burst into her bedroom. The marines started to beat her, shouting and asking her “Where is the money?” They yelled at her, accusing her of being the financial controller for a major drug gang.

They placed a bag over her head until she suffocated and passed out, then loaded her into a van and continued to beat her and rape her with objects. They later took her to a building that to Magdalena appeared to be a police station and applied electric shocks to her vagina and her mouth. They threatened Magdalena that they would harm her daughter. The torture at the hands of the members of the Navy lasted for 20 hours.

Magdalena was then taken to the offices of the PGR and forced to sign a “confession” with her fingerprints. On her way to the PGR, a member of the Navy stayed by her side and continued to beat her. In the PGR she was presented to the media by the Navy and the Coordinated San Luis Potosí Police (*Mando Único Policial de la Zona Centro.*)

When Amnesty International interviewed Magdalena in early 2016, the scars were still visible and she showed clear signs of trauma. At her first hearing before a judge a couple of days after her arrest, the description of Magdalena's state was in stark contrast to that documented by the Navy: “the suspect was sobbing, with tension, depression and manifest anxiety.” The Navy doctor had noted following her arrest that “the detainee is ‘physically healthy.’” Magdalena remains in prison awaiting the outcome of her trial.⁵¹

Taylin Wang: Taylin was approximately seven weeks pregnant when her house was broken into by federal police officers in February 2014 and she was taken to police installations without any arrest warrant. After prolonged beatings and sexual abuse at the hands of federal police, Taylin miscarried inside the PGR offices in Mexico City. Two state doctors undertook a medical examination while she was under official custody, and despite her injuries, the first doctor did not properly examine her and dismissed her claims that she had been brutally beaten. Neither doctor reported her allegations of

torture and ill-treatment. She was given no medicine for her pain and was simply handed a few sheets of paper towel to stuff down her pants before she was whisked away, handcuffed, boarded onto a commercial plane and taken to a federal prison. When the plane landed in Tepic, northwest Mexico, the airline seat was drenched with blood. Taylin told prison officials she had had a miscarriage, but they only yelled at her. She bled for five more days in prison without being given any proper medical attention. Taylin remains in prison awaiting the outcome of her trial. Despite denouncing torture over two years ago, she is still waiting to be examined by an official forensic expert to document the torture and ill-treatment she suffered.⁵²

Adrián Vásquez: As has been documented by Amnesty International, in 2012 police picked up Adrián Vásquez and claimed he was a local drug lord. They tortured him to the point of near-death, breaking some of his ribs, injuring his bladder, and pouring water through his nose and filling his lungs. A doctor on the government's behalf examined him but only documented minor injuries, which he concluded would heal within 15 days. Soon after, Adrián collapsed and was rushed to a hospital for life-saving surgery for the trauma inflicted on him from the torture. In April 2015, three of the policemen who Adrián identified as his torturers were charged in Tijuana, Baja California. Soon after, a judge allowed Adrián's lawyers to appeal on his behalf and ruled that there was no evidence against him. Adrián was released on December 2, 2015; a resolution of the investigation into those responsible for the torture is pending.⁵³

Yecenia Armenta: As was described in our July 2015 memo, Yecenia Armenta Graciano left her home in Culiacán, Sinaloa, on July 10, 2012 to drive her sister and sister-in-law to the airport. She was detained by plain clothed police who beat her, demanding she confess to involvement in the murder of her husband who had been shot in a public place a week earlier.

Police took her to an unknown location where she was continuously beaten and asphyxiated with a plastic bag placed over her head. She was repeatedly threatened and insulted, then subjected to water-treatment where a cloth was used to simulate drowning. She was then taken to another location where she was forced to strip naked and handcuffed. She was hung upside down and beaten all over her body and sexually tortured. Yecenia only gave in to demands to confess to the involvement in her husband's murder after police officers said they would bring her children in and rape and kill them.

Hours after her detention, Yecenia was subjected to initial physical examinations by doctors from the very same prosecutor's office that detained her. These medical reports failed to document the scope of her injuries. In September 2012, independent medical experts carried out an examination in line with the Istanbul Protocol and concluded her injuries were consistent with her reports of torture. Yecenia's torturers came from the very same institution that presented the criminal charges against her. Despite the weight of evidence from national and international experts proving the torture that Yecenia suffered, the Sinaloa State Attorney General's Office (*Procuraduría General de Justicia del Estado de Sinaloa*) insisted on accusing Yecenia. In January 2015, the CNDH issued a recommendation to the Sinaloa government confirming that Yecenia was tortured and calling for action against the police responsible for the crimes. The Third District Judge in the State of Sinaloa ruled that Yecenia's confession cannot be used as evidence in the case as it was obtained through torture. In February 2015, the Sinaloa State Attorney General (*Procuraduría General de Justicia del Estado de Sinaloa*) announced that an investigation into torture had been launched. In April 2015, a federal tribunal referred the case to the Supreme Court.⁵⁴ With the information gathered from the investigation, Yecenia was finally acquitted and released from prison on June 7, 2016,⁵⁵ although this ruling has already been appealed. There are no reports about the alleged investigation into those responsible for torturing Yecenia torture

launched by the Sinaloa State Attorney General in February 2015. This alleged investigation is also in contradiction with the State Attorney General's appeal filed on the judge's decision to acquit Yecenia.⁵⁶

REQUIREMENT 3) The Mexican army and police are promptly transferring detainees to the custody of civilian judicial authorities, in accordance with Mexican law, and are cooperating with such authorities in such cases.

The cases registered by our organizations demonstrate that prolonged, illegal detention by security forces (military and civilian, federal and local), continues to be a routine practice in Mexico, as is the falsification of the time of the detention and judicial authorities' willingness to accept false data or to overlook clear cases of prolonged detention if the victim is brought to trial. After raising this concern in the Department of State's 2014 Country Report on Human Rights Practices for Mexico, it was again included in the Department of State's 2015 report: "Some detainees complained about lack of access to family members and to counsel after police held persons incommunicado for several days and made arrests arbitrarily without a warrant."⁵⁷

A national database to track detainees, with a protocol for immediately registering critical information such as the time and location of detention and the names of the officers responsible for the detainee, could help prevent abuses from occurring from the moment of detention. However, despite clear mandates, the current databases are incomplete. The 2008 reform of Article 16 of the Mexican Constitution calls for the creation of a registry of detainees. More specifically, Articles 112-116 of the General Law of the National Public Security System, which went into effect in 2009, established the Administrative Registry of Detentions (*Registro Administrativo de Detenciones*) and mandated that all police agents who carry out detentions should report the detention to the National Information Center within the Executive Secretariat of the National Public Security System (*Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública*).⁵⁸

Apart from the Administrative Registry of Detentions, in 2010 the PGR established its own Detainee Registration System (*Sistema de Registro de Detenidos*, SIREN) that specifically requires federal investigative police to immediately register into the system any individual that they detain.⁵⁹ In July 2015, the PGR also created the Detainee Consultation System (*Sistema de Consulta de Detenidos*, SCD) to facilitate public searches of the database through the online platform, telephone calls, or in-person meetings, of the individuals who are under the PGR's custody and to provide resources to search for people detained by state-level attorney general's offices. Although the online database is meant to be part of the Mexican government's commitment to open government, it excludes any detainee who is accused of organized crime. In these cases, the requests must be done by phone and only people who are accredited as being a family member or defense lawyer can have access to the information. At the same time, the aggregated information in the system has only been updated as of September 2015, meaning that authorities do not provide the public with information on detentions in real time. A preliminary search done by WOLA of three individuals known to have been detained by the PGR in recent months did not produce results, suggesting that many crimes are likely being classified as organized crime and are exempt from the online search, that authorities that detain suspects (including Armed Forces) are not handing them immediately to the PGR so their detention is not registered, and/or that the database itself is not up to date.⁶⁰

The following are examples of the failure of authorities to promptly transfer detainees to the custody of civilian judicial authorities, and the human rights violations that occur as a result:

Raúl Nuñez Salgado was detained by the Navy on October 14, 2014 after “confessing” to being in charge of the finances for the criminal organization Guerreros Unidos in relation to the case of the 43 disappeared students. Following his detention in Acapulco, Guerrero at 9:30 pm on October 14, he was not presented to civilian authorities until 8:50am on October 15, 2014. A drive that normally takes 4-5 hours took members of the Navy over 12 hours. According to the official explanation, they were “driving slowly because their vehicle had mechanical failures; they had to repair a flat tire”. Later, the Navy asserted that the injuries that Núñez sustained while in its custody resulted from the detainee’s repeated attempts to escape, falling down, and from the detainee “hitting himself against a Navy vehicle.” The PGR’s “certificate of physical integrity” (which was done when he was taken into custody) indicates that Núñez had over 30 different injuries on his body which required medical attention.⁶¹

Another example involved the first-ever case in which the Victims Commission (CEAV) paid out reparations. The victim was a physician abducted from his house in Veracruz by members of the Navy in September 24, 2011 and accused of being the doctor of the organized crime group Los Zetas. The man was not presented to prosecutors until eight hours after his detention. Despite his accounts of how he was a victim of torture, he was held in prison for 21 months before a federal judge issued an acquittal judgment in his criminal trial. CEAV granted reparations for violations of his rights to due process and personal liberty because of the prolonged time before the Navy presented him to judicial officials, although CEAV failed to grant reparations for the torture.⁶²

REQUIREMENT 4) the Government of Mexico is effectively searching for the victims of forced disappearances and is investigating and prosecuting those responsible for such crimes.

Disappearances continue in Mexico at alarming levels, and the government’s efforts to search for people who have been forcibly disappeared and to investigate and prosecute those responsible are inadequate. The Mexican government reports only 13 convictions for enforced disappearance at the federal level.⁶³ In a report provided to the IACHR by the CNDH, of 22 of the 27 states that have the crime of enforced disappearance on their books, there had only been 95 investigations opened for enforced disappearances, with 4 indictments and no convictions.⁶⁴

According to the Mexican government’s highly flawed National Registry of Missing and Disappeared Persons (*Registro Nacional de Datos de Personas Extraviadas o Desaparecidas*, RNPED), over 28,000 people were reported disappeared between 2007 and May 2016; of these, over 54 percent occurred during President Enrique Peña Nieto’s administration.⁶⁵ However, Open Society’s report analyzes the errors and shortcomings of the RNPED and concludes that the flawed government accounting of missing persons means that nobody knows how many people have disappeared in Mexico since December 2006 and that the oft-cited official figure is misleading and largely arbitrary.⁶⁶ Multiple organizations that have searched the official registry have found that anywhere from 63 to 98 percent of the cases they have documented are not in the registry,⁶⁷ including well-known cases related to the Dirty War.⁶⁸

Open Society finds that the database has “its own confusing, broad definition of ‘disappeared person’ for statistical purposes...including persons reported missing but also runaways, emigrants, others missing from their families and communities of their own volition, or who are victims of accidents and natural disaster.” In short, RNPED includes many non-criminal cases of missing persons and excludes thousands of disappearance cases perpetrated by state agents and criminal organizations in the form of kidnappings or enforced disappearances. Open Society also found that RNPED substantially underestimates various kinds of disappearances resulting from violent crime because:

1. Clear victims of enforced disappearance have been removed from the database. Names can be removed on five different grounds but there is no transparency in the process of removal, suggesting that there may also be many others that were improperly excluded in the first place.
2. RNPED does not include kidnappings and there are indications that a significant number of reported disappearances that the government records as “kidnappings” are in fact “enforced disappearances.” Even if reported kidnappings were included in RNPED, it would still greatly understate the problem because very few kidnappings are ever reported to authorities, as has been highlighted by Mexico’s statistical institute. INEGI’s 2015 victimization survey estimated 102,883 kidnappings for 2014, but it projected that almost 93 percent of crimes in Mexico are never reported.⁶⁹
3. The numbers of enforced disappearances could be significantly undercounted: many enforced disappearances are never reported precisely because military, police, and other state authorities are the direct perpetrators and families do not report cases out of fear and intimidation.

To facilitate investigations, in May 2013 the PGR created the Special Unit for the Search for Disappeared Persons (*Unidad Especializada de Búsqueda de Personas Desaparecidas*, UEBPD). UEBPD’s mandate included the responsibility to investigate disappearances and search for victims.⁷⁰ However, the unit did not produce substantive results and was a burden for the investigation of cases and the location of victims. The last reported results of the Unit reveal that between September 1, 2014 and June 30, 2015, it investigated the disappearance of 332 people; of these they found 36 alive and 12 deceased.⁷¹

In October 2015, the Unit was replaced by the Special Prosecutor for the Search for Disappeared Persons (*Fiscalía Especializada de Búsqueda de Personas Desaparecidas*) but it was not until June 2016 that the Attorney General appointed the prosecutor that will lead the new office. According to available information, this office has only 29 prosecutors and 58 investigators working on over 1,000 federal cases. The new prosecutor’s office has a budget of \$28,114,011 pesos (around \$15.6 million USD), which is 34 percent less than what the Special Unit had in 2014.

Mexican organizations reporting disappearance cases to the authorities during the past year encountered delays at the state level (including victims’ families being informed that it would take days or weeks to carry out basic steps in the search) and continued obstacles at the federal level (PGR), including the reticence of PGR agents to accept complaints, a tendency to question victims’ backgrounds rather than prioritize the investigation of state agents’ involvement, and opening the eventual criminal investigation for “deprivation of liberty” instead of enforced disappearance, even in the face of evidence of potential state agent responsibility.

The government has reported to regional and international bodies the issuance of protocols to search for the disappeared, including a Unified Protocol for the Search of Disappeared Persons and the Investigation of the Crime of Enforced Disappearance (*Protocolo Homologado de Búsqueda de Personas Desaparecidas y la Investigación del Delito de Desaparición Forzada*) and the creation of mechanisms to enforce it, including a National System of Prosecutorial Information (*Sistema Nacional de Información Ministerial*) and a National Network for the Search of Disappeared Persons (*Red Nacional de Búsqueda de Personas Desaparecidas*).

While the PGR has generated great expectations about the protocol, the families and civil society organizations participating in the process have pointed out that the consultation process was inadequate and that the protocol does not include central issues such as combatting corruption and the participation of the authorities implicated in the disappearance within the search mechanism. Specific

obstacles that families have encountered in the application of the Protocol for the Search of Disappeared Persons include authorities in state and federal attorney generals' offices lack of knowledge about the Protocol, or their refusal to apply it under the argument that it is not mandatory. While the Protocol sets forth the creation of the National System and the National Network, these bodies do not exist or if they do, families have not been informed of their existence. Although the Protocol calls for a series of procedures to collect data and cross reference information, this is not happening in practice. The Special Prosecutor for the Search of Disappeared Persons is often unable to access relevant information to look for disappeared persons that is in case files that are handled by other offices in the PGR, such as the organized crime prosecutor (SEIDO), and it has difficulties gathering related information from the National Center for Planning, Analysis, and Information to Combat Crime (*Centro Nacional de Planeación, Análisis e Información para el Combate a la Delincuencia*, CENAPI). The Special Prosecutor's office also lacks the funds to carry out immediate investigative actions. Lack of clarity on whether federal or state authorities should take over the investigation of a disappearance case persists, meaning that investigators lose fundamental time to search for victims.⁷²

Legislation on disappearances

The UN Working Group on Enforced or Involuntary Disappearances (2011), the UN Committee on Enforced Disappearances (2015), and the Interdisciplinary Group of Independent Experts (2015) working on the Ayotzinapa case have all recommended that Mexico develop adequate legislation on enforced disappearances. A large group of civil society organizations worked on a proposal to reform Mexico's Constitution to grant Congress the powers to legislate on this issue. This reform passed the Mexican Congress in July 2015. On December 10, 2015, President Enrique Peña Nieto submitted a draft for the General Law to Prevent and Punish the Crime of Disappearance that sets out the obligations of the federal, state and municipal authorities and coordinates their efforts on the issue.⁷³

Amnesty International, Center Prodh, Fundar, CADHAC, Tlachinollan and several other Mexican organizations accompanying and monitoring disappearance cases have had the opportunity to review the proposed General Law on Disappearance, which defines a series of procedures on enforced disappearances. The Mexican Congress will discuss this law in the next ordinary session, opening in September 2016.

Like the General Law on Torture, the General Law to Prevent and Punish the Crime of Disappearance includes provisions that demonstrate progress toward resolving and clarifying legal questions surrounding the issue. However, the draft law submitted by the Executive repeats and perpetuates flaws from the current legislation for the investigation of disappearances. For instance, it allows an arbitrary and unclear distinction between a disappeared person and a missing person (*persona no localizada*) depending on whether or not a disappearance is the result of the crime of enforced disappearance or a crime by non-state agents and sets forth a different search mechanism for each case. As mentioned above, the government has used this terminology in the past to arbitrarily select the cases it includes in official disappearances records and to downplay the disappearances perpetrated by State actors. This distinction between types of disappearances also places a burden on families of proving that their disappearance case must be treated as such.

The draft law also fails to establish an adequate National Search System (*Sistema Nacional de Búsqueda* -SNB) that would properly unify the criteria for the registration of disappeared persons and lay out the organizational structure for authorities in charge of the investigation— even when lack of coordination has proven to be one of the main obstacles to locate the disappeared in the country. In the current

draft, the ways to involve families and victims in the SNB are weak. For example, the law foresees the creation of a “Citizen Council” where families and victims can participate but the Council does not have a role in the design and planning of actions to search for the disappeared, and the final resolutions of the Council are not mandatory. Finally, the draft law fails to properly regulate the investigation of the chain of command, which may mean that the superiors of members of police and armed forces that perpetrate these crimes are not investigated.

Emblematic cases

Elena is the mother of a 17-year old boy who disappeared in the State of Veracruz on April 28, 2016, with the alleged participation of the Veracruz state security force called “*Fuerza civil*.” When Elena went to the prosecutor’s office to file a disappearance report, the officers questioned the background and history of her son and tried to persuade her to not file the report as doing so “would take between 5 or 6 hours.” In later investigations, authorities failed to include evidence in the file, follow lines of investigation related to the disappearance, and failed to apply the recently-issued Unified Protocol and the Mechanism of Urgent Search (*Mecanismo de Búsqueda Urgente*), arguing lack of staff and that obtaining evidence could take years. Authorities did focus on inquiring whether the victim consumed drugs.

Case of the 43 students from Ayotzinapa: As has been mentioned previously in this memo, the case of the 43 students who were forcibly disappeared in Iguala, Guerrero on September 26, 2014 highlights the Mexican government’s shortcomings and lack of will to investigate enforced disappearances and other grave human rights violations. As the work of the GIEI has made clear, the government’s investigation into this case has been highly flawed, which is alarming given that the Mexican government has called this case the “most exhaustive prosecutorial investigation in the history of Mexico.”⁷⁴

In their first report from September 2015, the Experts scientifically disproved the Mexican government’s theory that the 43 disappeared students were killed and incinerated at a trash dump, finding no evidence to support this version of events (and demonstrating through scientific evidence the impossibility of this version), and they recommended several new lines of investigation to pursue instead. In February 2016, a second outside report by the Argentine Forensic Anthropology Team (*Equipo Argentino de Antropología Forense*, EAAF) also concluded that there is no scientific evidence to support the government’s original theory.⁷⁵ Despite the conclusions of these two reports, the Mexican government continued to insist on this theory. Meanwhile, many other more credible lines of investigation proposed by the Group of Experts remain unexplored, such as the possibility that the students intercepted a bus used to transport heroin as a potential motive for the violent and coordinated attacks against them. In their final report of April 2016, the Experts affirmed that the recommendations outlined in their September 2015 report regarding the investigation, the search for the students, and ways to address disappearances in Mexico, still stand.

In its September 2015 report, the GIEI detailed how crime scenes were not protected or properly filmed or photographed. Ballistic evidence was gathered, but was not properly examined, and evidence was incorrectly processed. Some crime scenes were not investigated at all. Meanwhile, the PGR failed to obtain footage from surveillance cameras that might have contained information relevant to the case and failed to interview key witnesses. For example, the PGR did not question the two drivers of the buses in which the students were travelling until April 2015 and then only at the request of the GIEI.⁷⁶

The GIEI's second and final report highlights lines of investigation that have not been fully explored in the case, and documents various ways in which the Mexican government impeded the investigation and obstructed justice, including the strong possibility that evidence was tampered with and suspects were tortured to coerce confessions. The Mexican government's narrow focus on supporting its original theory about what happened to the 43 disappeared students is at the root of many of the obstacles the Experts faced in their work to uncover the truth.⁷⁷

The following is a summary produced by WOLA based on the GIEI's reports of the ways in which the Mexican government obstructed the investigation and impeded knowing the truth about what happened to the students.

1. Mexican authorities repeatedly denied the Group of Experts' access to the soldiers who were watching, photographing, and taking notes of the attacks on the students.

All security forces in Mexico share information through a multi-agency communication system known as the C-4. Local police were communicating on the C-4 the night of the students' disappearance. The military in Iguala was listening to the C-4 and was aware of the students' movements that evening. According to testimonies, during the evening a group of soldiers entered the police station and searched the cells where some of the students were said to have been taken.⁷⁸ A military intelligence agent was also present at the scene of one of the attacks on the students and witnessed their detention by municipal police; he reported his observations back to his superiors over the C-4 system and took photos on a cellular phone. This evidence was not provided to the Experts or civilian authorities. The military has also not granted access to C-4 communications from two specific periods during the night of the attacks.

2. Many of the suspects that the Mexican government arrested in connection with the case have claimed they were tortured.

Medical reports by Mexico's Attorney General's Office show that nearly 80 percent of the detainees in the case had injuries indicative of torture or mistreatment.⁷⁹ Given that the majority of the government's evidence to support its "historic truth"—that the students were incinerated at the trash dump—is based on testimonies, the confirmation of torture would further undermine the credibility of the government's original investigation and raise concerns about coerced confessions.

3. Misleading evidence was leaked to the media.

Parts of detainees' testimonies that support the Mexican government's "historic truth" about the trash dump were leaked to the media, but the information contained in these testimonies was not corroborated.⁸⁰ In some cases the leaked information doesn't correspond to what was actually said in the testimonies. The Group of Experts has requested that the Mexican Attorney General's Office investigate the source of the leaked information.

4. The Attorney General's Office excluded information from the investigation and tampered with evidence.

Evidence that could have been important in the students' case was kept in separate investigations that the Experts did not have access to.⁸¹ This includes remains found in an area where the students' parents had requested that authorities search. Likewise, the testimonies and other information given by key

individuals whose detention was requested by the Experts have been excluded from the Ayotzinapa investigation.

Evidence was also tampered with at the San Juan River crime scene, where the government supposedly uncovered trash bags containing the charred remains of some of the students. The only identification of a disappeared student, Alexander Mora, was made based on a bone fragment allegedly found at the river. The government reports that the bag containing his remains was officially recovered on October 29, 2014; however, photo and video evidence provided by journalists from Guerrero shows that the day before the government announced that it had found the bags, the head of the Criminal Investigation Agency (*Agencia de Investigación Criminal*) within the PGR, Mr. Tomas Zerón, and other officers took one of the suspected perpetrators, Agustín García Reyes – without his defense lawyer – to the crime scene.⁸² None of this activity was documented in the government’s case files.

The independent forensic experts accompanying the case from the EAAF were not informed when the government officially uncovered the bags on October 29, 2014 and cannot verify the chain of custody.

Due to these grave violations to due process in this case, the students’ families requested Zerón’s dismissal. At the time of submitting this memorandum, Mr. Zerón remains in his position.

On June 9, 2016, the PGR published a 412-page report on the state of its investigation into the case which fails to demonstrate that substantial progress has been made in continuing with the investigation.⁸³ The Mexican government is currently defining a follow-up mechanism with the legal representatives of the students’ families and the Inter-American Commission to monitor and assist with the implementation of the Experts’ recommendations. It is hoped that the Mexican government will accept the minimum conditions presented by the IACHR in order to move the investigation forward; however, days before the submission of this memorandum, the Mexican government informed the IACHR that it proposes a more restrictive scope for the follow-up mechanism, even proposing that the phrase “recommendations of the GIEI” be erased from the mechanism’s mandate. This has been interpreted by the families as a serious contradiction to the government’s official discourse indicating willingness to accept the mechanism.

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²² Comisión Nacional de los Derechos Humanos, “Demanda de acción de inconstitucionalidad #46, promovida por la Comisión Nacional de los Derechos Humanos,” http://www.cndh.org.mx/sites/all/doc/Acciones/Acc_Inc_2016.pdf.

²³ Comisión Nacional de los Derechos Humanos, *Sobre los Hechos Ocurredos el 30 de Junio de 2014 en Cuadrilla Nueva, Comunidad San Pedro Limón, Municipio de Tlatlaya, Estado de México*, Recomendación No. 51/2014, October 21, 2014, http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2014/Rec_2014_051.pdf.

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- ²⁴ Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh), *Tlatlaya a un año: La orden fue abatir*, June 2015, Spanish: http://centroprodh.org.mx/index.php?option=com_docman&task=doc_details&gid=198&Itemid=28&lang=es; English: <http://centroprodh.org.mx/en/?wpdmpro=one-year-after-tlatlaya-the-order-was-to-kill>. The quoted text is visible on page 3 of the English version, which also specifies: “In Spanish, the word used for “kill” in the order is “*abatir*,” the term used by the army consistently and exclusively to mean “kill” both within the investigation of the Tlatlaya case and in the press releases of the army and navy over the last two presidential administrations, as well as in numerous public statements.”
- ²⁵ Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, Plataforma Nacional de Transparencia, Response with folio number 0320000006616, “Consejo de la Judicatura Federal,” June 13, 2016, <https://www.infomex.org.mx/gobiernofederal/moduloPublico/moduloPublico.action>; Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh), “La liberación de cuatro militares involucrados en los hechos de Tlatlaya muestra que la PGR y el poder judicial de la federación no han garantizado el acceso a la justicia de las víctimas...,” October 6, 2015, http://www.centroprodh.org.mx/index.php?option=com_content&view=article&id=1664%3A2015-10-06-18-45-01&catid=209%3Afront-rokstories&lang=es.
- ²⁶ Comisión Nacional de los Derechos Humanos, Recomendación No. 51/2014.
- ²⁷ Open Society Justice Initiative, *Undeniable Atrocities*, p. 15-16.
- ²⁸ Inter-American Court of Human Rights, *Caso Cabrera García y Montiel Flores Vs. México*, *Sentencia de 26 de noviembre de 2010*, http://www.corteidh.or.cr/docs/casos/articulos/seriec_220_esp.pdf.
- ²⁹ United Nations Human Rights, Office of the High Commissioner, *Note verbale dated 26 November 2012 from the Permanent Mission of Mexico to the United Nations addressed to the President of the General Assembly*, UN Doc. A/68/2585, May 24, 2013, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/85.
- ³⁰ Comisión Nacional de los Derechos Humanos, Recomendación No. 45/2010.
- ³¹ Information from CADHAC, former representatives of the families and victims. The case file for the military investigation is 72M/28/2010
- ³² Amnesty International, *Out of Control: Torture and other ill-treatment in Mexico*, 2014, https://amnesty.dk/media/1216/embargoed_out_of_control_torture_in_mexico.pdf.
- ³³ Open Society Justice Initiative, *Undeniable Atrocities*, p. 45-47.
- ³⁴ Inter-American Commission on Human Rights, *Situation of Human Rights in Mexico*.
- ³⁵ *Arraigo* is a form of preventive detention that allows for imprisonment without formal charges for up to 80 days.
- ³⁶ Amnesty International, *Surviving Death: Police and Military Torture of Women in Mexico*, p. 60, June 28, 2016, <https://www.amnesty.org/en/documents/amr41/4237/2016/en/>.
- ³⁷ *Ibid.*, p. 19.
- ³⁸ *Ibid.*, p. 22.
- ³⁹ *Ibid.*, pp 47
- ⁴⁰ *Ibid.*, p. 47.
- ⁴¹ *Ibid.*, p. 36.
- ⁴² *Ibid.*, p. 54.
- ⁴³ Open Society Justice Initiative, *Undeniable Atrocities*, p. 45-47.
- ⁴⁴ Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>.
- ⁴⁵ Arturo Ángel, “En ocho años la PGR sólo consignó uno de cada 100 casos de tortura,” *Animal Político*, March 12, 2015, <http://www.animalpolitico.com/2015/03/en-ocho-anos-la-pgr-consigno-1-de-cada-100-casos-de-tortura/>.
- ⁴⁶ Amnesty International, *Surviving Death*, p. 36.
- ⁴⁷ Sixth Unitary Tribunal for the Second Circuit, *Toca Penal 247/2015*, May 13, 2016, <https://www.scribd.com/document/312593573/Resolucion-sobre-el-caso-Tlatlaya>. See also: Comisión Nacional de los Derechos Humanos, Recomendación No. 51/2014.
- ⁴⁸ Grupo Interdisciplinario de Expertos Independientes (GIEI), *Informe Ayotzinapa II*, April 2016, <http://prensagieiaiotzi.wix.com/giei-ayotzinapa#!informe-/c1exv>.
- ⁴⁹ Amnesty International, *Surviving Death*, p. 40-43.
- ⁵⁰ *Ibid.*, p. 45.

⁵¹ Ibid., p. 31-32.

⁵² Ibid., p. 33.

⁵³ Amnesty International, “Urgent action: torture victim released after three years” December 2, 2015, http://www.amnestyusa.org/sites/default/files/uaa09315_2.pdf.

⁵⁴ Amnesty International, *Out of Control: Torture and other ill-treatment in Mexico*.

⁵⁵ Amnesty International, “Mexico: Woman tortured by police is released from prison after four years of injustice,” June 7, 2016, <http://www.amnestyusa.org/news/press-releases/mexico-woman-tortured-by-police-is-released-from-prison-after-four-years-of-injustice>.

⁵⁶ SIPSE, “Fue golpeada, asfixiada y violada por 15 horas para 'confesar' un asesinato,” June 10, 2016, <http://sipse.com/mexico/liberan-yecenia-armenta-mujer-inocente-torturada-policia-ministerial-sinaloa-208785.html>;

Amnesty International, “Mexico: Woman tortured by police is released from prison after four years of injustice.”

⁵⁷ United States Department of State, Bureau of Democracy, Human Rights, and Labor, *Mexico 2015 Human Rights Report*, <http://www.state.gov/documents/organization/253239.pdf>.

⁵⁸ Justicia México, Ley General del Sistema Nacional de Seguridad Pública, <http://mexico.justia.com/federales/leyes/ley-general-del-sistema-nacional-de-seguridad-publica/>.

⁵⁹ Diario Oficial de la Federación, “Acuerdo del Procurador General de la República por el que se crea el Sistema de Registro de Detenidos relacionados con delitos de competencia de la Procuraduría General de la República (SIREDD),” May 24, 2010, http://dof.gob.mx/nota_detalle.php?codigo=5143878&fecha=24/05/2010.

⁶⁰ WOLA searched for Ruben Núñez Ginez, General Secretary of the Sección 22 of the CNTE, detained on June 12, 2016; and Francisco Villalobos Ricardez, Secretary of the same union, detained on Jun 14, 2016 and neither name appeared in the database. WOLA also searched for Jorge Emilio Esquivel Muñoz who reportedly was detained by the PGR in February 2016 and accused of small-scale drug dealing (narcomenudeo) and his name did not appear in the database.

⁶¹ Open Society Justice Initiative, *Undeniable Atrocities*, p. 98; See Annex: Grupo Interdisciplinario de Expertos Independientes (GIEI), *Informe Ayotzinapa, Investigación y primeras conclusiones de las desapariciones y homicidios de los normalistas*, March 2015, http://media.wix.com/ugd/3a9f6f_e1df5a84680a4a8a969bd45453da1e31.pdf.

⁶² Open Society Justice Initiative, *Undeniable Atrocities*, p. 129.

⁶³ United Nations Human Rights, Office of the High Commissioner, *Committee on Enforced Disappearances, Summary Record of the 120th Meeting*, UN Doc. CED/C/SR.120, February 2, 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/017/16/PDF/G1501716.pdf?OpenElement>.

⁶⁴ Inter-American Commission on Human Rights, *Situation of Human Rights in Mexico*.

⁶⁵ Secretaría de Gobernación, Registro Nacional de Datos de Personas Extraviadas o Desaparecidas (RNPED), <http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php>.

⁶⁶ Open Society Justice Initiative, *Undeniable Atrocities*, p. 41-44.

⁶⁷ The Centro Diocesano para los Derechos Humanos Fray Juan de Larios in Saltillo, Coahuila found that only 26 of the 147 cases they had documented were listed in the Registry. Similarly, *Ciudadanos en Apoyo a los Derechos Humanos*, based in Nuevo Leon, found that only 23 of 61 cases it had documented could be found in the Registry. In the case of the *Comite Hasta Encontrarlos* they found that of the 82 cases of disappearances of human rights defenders, a mere 2 could be found in the registry. Fundar did the same exercise with 34 cases that it assists with, and could only find 12 cases in the Registry. *Informe sobre la crisis de desapariciones forzadas en México*, Thematic Hearing before the Inter-American Commission on Human Rights on Marcy 20, 2015.

⁶⁸ Paris Martinez, “Segob retira 7 mil nombres del registro oficial de desaparecidos”, *Animal Político*, December 23, 2013, <http://www.animalpolitico.com/2013/12/segob-retira-7-mil-nombres-del-registro-oficial-de-desaparecidos/>

⁶⁹ Instituto Nacional de Estadística y Geografía, *Encuesta Nacional de Victimización y Percepción Sobre Seguridad Pública (ENVIPE) 2015*.

⁷⁰ *Diario Oficial de la Federación*, “Acuerdo A/066/13 por el que se crea la Unidad Especializada de Búsqueda de Personas Desaparecidas y se establecen sus facultades,” June 21, 2013, http://www.dof.gob.mx/nota_detalle.php?codigo=5303411&fecha=21/06/2013. The mandate of the UEPDB’s includes: a) search for and locate disappeared persons, and engage in criminal investigations and forensic

identification; b) design, implement, supervise, and evaluate the necessary protocols for the location of disappeared persons and forensic identification based on international standards; c) establish working groups to promote investigations of specific cases of disappeared persons; d) coordinate agents of the Attorney General's Office and other governmental units to locate disappeared persons; and e) inform family members of the disappeared on the current status of investigations focused on locating victims.

⁷¹ Procuraduría General de la República, *Tercer Informe de Labores 2014-2015*, September 1, 2015, <http://www.pgr.gob.mx/informesinstitucionales/Documents/INFORME%20DE%20LABORES/2015.df>.

⁷² *Informe Alternativo de las Organizaciones de la Sociedad Civil a las Respuestas Remitidas por el Estado Mexicano sobre las Recomendaciones Prioritarias del Comité Contra la Desaparición Forzada de las Naciones Unidas*, Mexico, June 30, 2016.

⁷³ Amnesty International, *"Treated with Indolence:" The State's Response to Disappearances in Mexico*, p.48, January 13, 2016, <http://www.amnestyusa.org/research/reports/treated-with-indolence-the-state-s-response-to-disappearances-in-mexico>.

⁷⁴ Procuraduría General de la República, "Mensaje a medios de Eber Omar Betanzos Torres, Subprocurador de Derechos Humanos, Prevención del Delito y Servicios a la Comunidad de la PGR," April 24, 2016, <http://www.gob.mx/pgr/prensa/mensaje-a-medios-de-eber-omar-betanzos-torres-subprocurador-de-derechos-humanos-prevencion-del-delito-y-servicios-a-la-comunidad-de-la-pgr>.

⁷⁵ Equipo Argentino de Antropología Forense, *Resumen Ejecutivo*, February 8, 2016, http://www.eaaf.org/files/informe_resumen_ejecutivo_08-02-2016.pdf.

⁷⁶ Grupo Interdisciplinario de Expertos Independientes (GIEI), "Informe Ayotzinapa I," September 2015, <http://prensagieiyotzi.wix.com/giei-ayotzinapa#!informe-/c1exv>.

⁷⁷ Grupo Interdisciplinario de Expertos Independientes (GIEI), "Informe Ayotzinapa II"

⁷⁸ Ibid.

⁷⁹ Grupo Interdisciplinario de Expertos Independientes (GIEI), "Presenta el GIEI los primeros avances de la segunda parte de su mandato," December 7, 2015, <http://prensagieiyotzi.wix.com/giei-ayotzinapa#!Presenta-el-GIEI-los-primeros-avances-de-la-segunda-parte-de-su-mandato/cul3/5665a5430cf28314431b17be>.

⁸⁰ Grupo Interdisciplinario de Expertos Independientes (GIEI), "GIEI, avances y desafíos," February 21, 2016, http://www.wola.org/sites/default/files/GIEI_boleti%CC%81n%2021%20de%20febrero%20de%202016.pdf.

⁸¹ Ibid.

⁸² It should be noted that in the case of the suspect Agustín García Reyes, the first medical report after his detention by soldiers from the Mexican Navy, which was done by a naval doctor within the SEIDO offices, recorded one injury; seven hours later he had 30 injuries that were not present previously. Subsequent medical reports include additional injuries, leading the Group of Experts to conclude that based on the medical reports García Reyes received sequential injuries while he was in custody that correspond to torture or mistreatment.

⁸³ Procuraduría General de la República, Subprocuraduría de Derechos Humanos Prevención del Delito y Servicios a la Comunidad, *Informe del Caso Iguala*, http://www.gob.mx/cms/uploads/attachment/file/103208/INFORME_CASO_IGUALA_9-JUNIO-2016.pdf.