

Civil Society Assessment of the Human Rights Situation in Mexico

EXECUTIVE SUMMARY OF A MEMO TO THE U.S. DEPARTMENT OF STATE REGARDING CONDITIONS ON U.S. ASSISTANCE

In a memorandum to the U.S. Department of State prepared by Amnesty International; Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh); Centro de Derechos Humanos de la Montaña Tlachinollan; Ciudadanos en Apoyo a los Derechos Humanos A.C. (CADHAC); Fundar, Centro de Análisis e Investigación; Latin America Working Group (LAWG); and the Washington Office on Latin America (WOLA), our organizations' research and case documentation make clear that the Mexican government has failed to meet the human rights priorities outlined by Congress for fiscal year 2015.¹

Since the onset of U.S. security assistance to Mexico under the Merida Initiative in 2008, the U.S. Congress has placed human rights requirements on select funds in recognition of 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. In this context, 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.

In the past year the Mexican government has effectively obstructed the investigation of human rights cases and disregarded conclusions from international human rights bodies, including the Inter-American Commission on Human Rights (IACHR) and the Interdisciplinary Group of Independent Experts appointed by the IACHR to assist in the investigation of the enforced disappearance of 43 students from Ayotzinapa, Guerrero. It has also failed to properly collect complete data on the prosecution of human rights violations, meaning that there is no reliable evidence that the reforms portrayed as signs of progress are effectively meeting their goals, including reforms to the criminal justice system.

REQUIREMENT 1:

THE GOVERNMENT OF MEXICO IS INVESTIGATING AND PROSECUTING VIOLATIONS OF HUMAN RIGHTS IN CIVILIAN COURTS.

Information made available by the Mexican government and case documentation by civil society organizations confirm the failure to effectively investigate and sanction crimes and human rights violations in Mexico, including those committed by government authorities. For example, although the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*, CNDH) received 9,401 complaints of torture and ill-treatment between 2007 and 2015, there have only been 15 convictions for torture in Mexico since 1999.² According to the Mexican government, 313 government officials have been indicted in cases of enforced disappearances; however, only 13 have ever been convicted as of February 2015.³

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,⁴ the Mexican government provided inaccurate information to the UN Committee Against Torture (CAT) and to the UN Committee on Enforced Disappearances that overstated criminal accountability for torture and the number of investigations into disappearance cases.⁵ A 2016 report by Open Society Justice Initiative analyzed all available statistics and documentation on atrocity crimes in Mexico between December 2006 and 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.”⁶

Additionally, impunity continues to prevail for human rights violations committed by Mexican soldiers; the few sanctioned cases are neither sufficient nor commensurate with the scale of crimes. Between 1990 and June 2016, Mexico’s Army (*Secretaría de la Defensa Nacional, SEDENA*) was the authority that received the third highest number of official recommendations from the CNDH regarding human rights violations committed.⁷

In 2014, the Mexican Congress amended 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 the reform was incomplete and did not require all human rights violations to be investigated and tried in civilian jurisdiction. Moreover, after passing these reforms, authorities neglected their correct implementation and did not ensure that independent and credible investigations of military abuses against civilians took place under civilian jurisdiction. The Inter-American Court has stated that the military should not have a role in the criminal investigation of a case unless the crime solely involves violations of military

discipline. However, military prosecutors and courts continue to investigate human rights violations against civilians, arguing that they retain jurisdiction to open their own investigation to clarify whether the same events constitute military crimes.

Comprehensive public information is not available regarding 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. Limited public information shows that 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 the destruction of human remains. It is unclear if these sentences are final or still subject to an appeal.⁸ There are at least four other cases in civilian jurisdiction of human rights violations committed by Mexican soldiers, all of which are pending final decisions. Among these cases is the massacre of 22 civilians by soldiers in Tlatlaya, State of Mexico; a civilian judge has acquitted the soldiers charged pending further evidence. There are still no convictions for human rights violations committed by Mexican soldiers in the four cases involving the military where the Inter-American Court has issued judgements against Mexico.

REQUIREMENT 2:

THE GOVERNMENT OF MEXICO IS ENFORCING PROHIBITIONS AGAINST TORTURE AND THE USE OF TESTIMONY OBTAINED THROUGH TORTURE.

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 2015, Mexico’s federal Attorney General’s Office (*Procuraduría General de la República, PGR*) reported an over twofold increase in reports of torture between 2013 and 2014, when there were 2,420 reported cases.⁹ Mexico’s Congress is considering a General Law on Torture which has been portrayed as a way to more fully address the problem in the country. In April 2016, the Senate approved its draft and sent it to the Chamber of Deputies for debate in September 2016. However, there is significant concern that the draft bill fails to fully resolve some of the obstacles that have prevented torture cases from being investigated and sanctioned in the past.

In a 2016 report, Amnesty International concluded that 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, 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); 41 women said they had been near-asphyxiated with a plastic bag or similar object; and 33 reported being raped by municipal, state or federal police officers or members of the Army and Navy. 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. 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.¹⁰

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.¹¹ In 2014, the PGR received 2,420 criminal complaints for torture but did not bring any criminal charges in 2014 or 2015. In the case of the military, Amnesty International found that “not a single soldier had been suspended from service for rape or sexual abuse from 2010 to 2015” and that “only four marines had been suspended in the same time period.”¹²

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. 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 decision to acquit the soldiers charged was based on the testimony of three survivors who were tortured and subjected to cruel and inhuman treatment.¹³ In the Ayotzinapa case, the Group of Experts found that nearly 80 percent of the suspects detained in connection with this case had injuries indicative of torture or mistreatment, including key detainees whose testimonies support the government’s theory of what happened to the students.¹⁴

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.

By law, Mexican security forces are required to immediately transfer detainees to prosecutors, who in turn must free them or place them at the disposition of judges. However, in practice, security forces often delay the transfer of detainees, and it is during this lapse of time when they most often commit acts of torture and other abuses. 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. This concern was included in the State Department’s 2014 Country Report on Human Rights Practices for Mexico and its 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.”¹⁵

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.

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. As of February 2015, the Mexican government reported only 13 convictions on record at the federal level for enforced disappearances.¹⁶ At the state level, the CNDH found that only 95 investigations into enforced disappearances have been opened, with 4 indictments and no convictions.¹⁷

The emblematic case of the 43 students who were forcibly disappeared in Iguala, Guerrero on September 26, 2014 highlights the Mexican government's weak investigative capacity and lack of will to resolve cases of enforced disappearances. As the work of the IACHR-appointed Group of Experts made clear, the government's investigation into this case has been highly flawed, which is alarming given that the Mexican government has called it the "most exhaustive prosecutorial investigation in the history of Mexico."¹⁸ The Group of Experts' 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.¹⁹ More than 21 months after the students' enforced disappearance their whereabouts remain unknown.

According to the Mexican government's 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, more than 54 percent occurred during President Enrique Peña

Nieto's administration.²⁰ However, in its analysis of the RNPED, Open Society concluded that the shortcomings and errors in the government's accounting of missing persons means that the oft-cited official figure is misleading and largely arbitrary.²¹ Multiple organizations that have searched the official registry found that anywhere from 63 to 98 percent of the cases they have documented are not in the registry, including well-known cases related to the Dirty War.²²

The Special Unit for the Search for Disappeared Persons (*Unidad Especializada de Búsqueda de Personas Desaparecidas*, UEBPD), created in 2013 to investigate disappearances and search for victims, was not producing substantive results and was replaced in October 2015 by the Special Prosecutor for the Search for Disappeared Persons (*Fiscalía Especializada de Búsqueda de Personas Desaparecidas*). However, 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 (approximately US\$15.6 million), which is 34 percent less than the UEBPD's budget in 2014.

The government has issued 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 has created mechanisms to enforce the protocol. However, in practice, families searching for disappeared loved ones have found that authorities in state and federal attorney generals'

offices lack knowledge about the Protocol, or refuse to apply it arguing that it is not mandatory.

In September 2016, Mexico's Congress will continue debating the now overdue 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.²³ The proposal submitted by the President's office includes provisions

that perpetuate flaws in the current legislation on the investigation of disappearances. For instance, it allows an unclear distinction between a disappeared person and a missing person and sets forth a different search mechanism for each case. 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 government actors.

NOTES

¹ Memo to Secretary of State John Kerry, *Assessment of the Human Rights Requirements in the Merida Initiative*, July 14, 2016, <http://bit.ly/29PEUhf>.

² Inter-American Commission on Human Rights, *Situation of Human Rights in Mexico*, December 2015, <http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf>.

³ Open Society Justice Initiative, *Undeniable Atrocities: Confronting Crimes against Humanity in Mexico*, June 2016, <https://www.opensocietyfoundations.org/sites/default/files/undeniable-atrocities-en-20160602.pdf>.

⁴ Memo to Secretary of State John Kerry, *Assessment of the Human Rights Requirements in the Merida Initiative*, July 9, 2015, <http://www.wola.org/sites/default/files/Memo%20on%20Merida%20requirements%202015.pdf>.

⁵ Open Society Justice Initiative, *Undeniable Atrocities*, p. 102.

⁶ *Ibid.*, p. 53.

⁷ Comisión Nacional de los Derechos Humanos, *Informe Especial sobre las Recomendaciones en trámite dirigidas a autoridades federales, estatales y municipales*, June 2016, http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2016_IE_Recomendaciones.pdf.

⁸ Consejo de la Judicatura Federal, "Resoluciones y decisiones de interés," Informative Notes 88/2015

and 26/2016, <http://www.cjf.gob.mx/SalaPrensa/notas.htm>.

⁹ Inter-American Commission on Human Rights, *Situation of Human Rights in Mexico*.

¹⁰ 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/>.

¹¹ 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/>.

¹² Amnesty International, *Surviving Death*, p. 36.

¹³ 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, *Sobre los Hechos Ocurridos 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.

¹⁴ Grupo Interdisciplinario de Expertos Independientes, *Informe Ayotzinapa II*, April 2016, <http://prensagieiyotzi.wix.com/giei-ayotzinapa#!informe-c1exv>.

¹⁵ 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>.

¹⁶ 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>.

¹⁷ Inter-American Commission on Human Rights, *Situation of Human Rights in Mexico*.

¹⁸ 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>.

¹⁹ Grupo Interdisciplinario de Expertos Independientes, *Informe Ayotzinapa II*.

²⁰ Secretaría de Gobernación, Registro Nacional de Datos de Personas Extraviadas o Desaparecidas (RNPED), <http://secretariadodejecutivo.gob.mx/rnped/consulta-publica.php>.

²¹ Open Society Justice Initiative, *Undeniable Atrocities*, p. 41-44.

²² 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 RNPED. 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 RNPED. In the case of the Comité Hasta Encontrarlos they found that only 2 of their 82 cases of disappearances of human rights defenders could be found in the RNPED. Fundar did the same exercise with 34 cases and could only find 12 cases in the RNPED. See also: *Informe sobre la crisis de desapariciones forzadas en México*, Thematic Hearing before the IACHR, March 20, 2015. See also: 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/>.

²³ 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>.