

To: U.S. Department of State

Rex Tillerson, Secretary of State

John Sullivan, Deputy Secretary of State

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

Francisco Palimeri, Acting Assistant Secretary, Bureau of Western Hemisphere Affairs

Virginia Bennett, Acting Assistant Secretary, Bureau of Democracy, Human Rights and Labor

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. Hal Rogers, 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:

Amnesty International

Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh)

Centro de Derechos Humanos de la Montaña Tlachinollan

Fundar, Centro de Análisis e Investigación

Latin America Working Group (LAWG)

Washington Office on Latin America (WOLA)

Date: August 2, 2017

Subject: **Assessment of the Human Rights Requirements in Foreign Military Financing Assistance to Mexico**

INTRODUCTION

Since the onset of increased U.S. security assistance to Mexico in FY2008, primarily under the Mérida Initiative, 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 U.S. funds. Since 2009, our organizations have produced seven 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 one 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 follow up to previous memos, 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 in previous memos, we believe that the U.S. government should not provide assistance to Mexico's armed forces 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.

In the last six months we have witnessed a worsening human rights situation, including elevated levels of violence and particularly egregious attacks against human rights defenders and journalists. A total of eight journalists have been killed in 2017 so far. This environment is compounded by the recent revelation from *The New York Times* and international and Mexican civil society organizations regarding the illegal use of spyware, which can only be acquired by government entities, to target human rights defenders, journalists, and anti-corruption activists.

We highlight that the State Department's 2016 Report on Human Rights in Mexico included the same assessment of the human rights situation in Mexico as the 2015 report, which both state 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." **In light of this analysis, we believe the State Department's report on the human rights requirements included in U.S. Foreign Military Financing assistance to Mexico presents an important opportunity to provide a thorough, accurate assessment of the human rights benchmarks laid out by Congress.** Such an analysis is crucial as both countries work to strengthen their bilateral relationship, which includes engagement on human rights.

REQUIREMENT 1) The Government of Mexico is: thoroughly and credibly investigating and prosecuting violations of human rights in civilian courts, including the killings at Tlatlaya in June 2014, in accordance with Mexican law.

Since the last memo we submitted in 2016, there has been no progress in the criminal investigation into the death of 22 civilians at the hands of soldiers in Tlatlaya, Mexico State, on June 30, 2014.

All of the soldiers prosecuted in civilian court for this case have been released. Four soldiers charged with abuse of authority, improper performance of their duties, and cover-up were released in October 2015. The following two issues show the government's failure to thoroughly and credibly investigate the killings at Tlatlaya in June 2014:

A. Failure to obtain arrest warrants against soldiers for homicide, cover-up, and alteration of evidence. In May 2016, a federal collegiate court ruled that Mexico's Attorney General's Office (*Procuraduría General de la República*, PGR) had not submitted sufficient evidence to place the soldiers on trial. Until the PGR completes its investigation and obtains new arrest warrants, the evidence and testimonies introduced by Clara Gómez, a surviving victim, and Centro Prodh as her legal representative, to prove the participation of soldiers in the extrajudicial killings will not be considered by judicial authorities.

B. Failure to investigate the "order to kill". The PGR is not properly investigating the military order to "take out criminals" (*abatir delincuentes*) that Mexican soldiers were following when the killings occurred. In 2014, Clara Gómez and Centro Prodh submitted evidence and requested that the PGR investigate the chain of command, the origin of the order, and to call the potentially responsible officers

to testify before the PGR. They also requested that the PGR further investigate similar existing orders in the Mexican Army to “take out criminals”. It was only in 2016 that the PGR called on one soldier to testify on the matter. His testimony confirmed that the order is a standardized document (*machote*) and that similar orders exist in the Mexican Army. The PGR has not done any further inquiries into these alleged orders, which led Clara Gómez to file a constitutional challenge (*amparo*) for the lack of investigation into the order.

The current status of the Tlatlaya investigation further shows that despite the 2014 reforms on military jurisdiction, civilian authorities keep failing to investigate crimes and human rights violations that Mexican soldiers have committed against civilians.

Lack of progress in emblematic cases

Ecologists case: The status of this case is the same as what we reported last year.

Taylin Wang: In last year’s memo we reported that in February 2014, members of the Federal Police broke into Taylin’s house, abducted her and took her to police facilities without any arrest warrant. When this happened, Taylin was seven weeks pregnant. After prolonged beatings and sexual abuse by federal policemen, she was taken to the PGR’s offices where she suffered a miscarriage. While in custody, doctors did not examine her properly and dismissed her claims of brutal beating. Also, they did not report her allegations of torture and ill treatment. In September 2016, two years after the abuses, the PGR’s forensic experts conducted a poor physical examination that failed to document the physical, sexual, and psychological torture she denounced. Taylin remains imprisoned.

Inés Fernandez and Valentina Rosendo: Over the past year, there has not been progress in the case, and the PGR has not shown a willingness to continue the investigations. In 2013, the PGR detained four soldiers and 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 Fernandez. In November 2015 –after a hearing on the compliance of the judgement by the Inter-American Court of Human Rights– Ms. Fernández Ortega and Ms. Rosendo Cantú learned that the PGR had closed the investigation files of their case (AP-PGR/FEVIMTRA/471/2013 and AP-PGR/FEVIMTRA/470/2013). Today, the investigation files remain closed. This means that the PGR will not seek to charge anyone beyond the four material authors already charged.

The PGR has not duly investigated the chain of command. It has also not investigated the killing of Mr. Aguilar Otañez, one of the suspects, in a military prison by another inmate in February 2016 (the victim was not notified of his killing and learned of it through the media). The circumstances of Mr. Aguilar’s killing and the possible connection with the search for justice of Mrs. Fernández Ortega remain unclear.

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 released. Although the family, represented by Tlachinollan, exhausted all domestic remedies to contest the decision, the acquittal was confirmed. Now, they have filed a petition to the Inter-American Commission on Human Rights (IACHR).

The following two cases currently before the Inter-American Court of Human Rights further demonstrate the government's failure to conduct thorough and credible investigations and prosecutions concerning violations of human rights.

Atenco case: The 2006 police repression in Texcoco and San Salvador Atenco, Mexico State, in May 2006 is one of the gravest human rights violations in Mexico to be litigated internationally.¹ During the wide-scale police repression –headed by the Federal Police and state police of Mexico State (*Estado de México*)– over two hundred people were victims of illegal detention and other abuses related with the use of force, most notably torture. Dozens of women were victims of physical, psychological, and sexual torture, of which eleven brought their case before the Inter-American System.

In December 2015, the IACHR transmitted its Merits Report on the case to the Mexican government. The Commission's findings include confirmation that all eleven women were detained without legal cause, tortured (including through rape in the majority of cases), and that the government has not carried out a sufficient investigation of these facts, since only a group of low-ranking material perpetrators has been charged.²

The Commission recommended that Mexico investigate all forms of liability for these attacks, including the masterminds of the attacks, responsibility through the chain of command, and abuses committed by Federal Police. The government was granted four extensions (for a total of nine months) to show evidence of compliance with the Commission's recommendations. However, the government refused to open any federal investigation or to open new lines of investigation at the state level, limiting its actions to an attempt to charge one more relatively low-ranking police officer, for which authorities were unable to obtain an arrest warrant.

Due to a lack of evidence of compliance, in September 2016 the IACHR sent the case to the Inter-American Court, which is expected to hold a public hearing on the case later this year.

Nitza Paola Alvarado and others³: The IACHR sent this case to the Inter-American Court in November 2016. This case concerns the enforced disappearance in December 2009 of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes by Mexican soldiers. Today, the whereabouts of the victims remain unknown.

This is the first case taken to the Inter-American System on an enforced disappearance committed in the context of Mexico's official strategy to counter organized crime and drug trafficking. The Commission determined that this case also demonstrated the situation of impunity persisting in disappearances across Mexico. Because this case was investigated in military jurisdiction, the IACHR determined that there was a violation to the right to an independent and impartial investigation. This also shows the government's failure to carry out civilian investigations.

Failure to implement 2014 reforms to end military jurisdiction in crimes against civilians⁴

Many of the cases reported in this memo (Tlatlaya, Inés and Valentina, Bonfilio Rubio and Nitza Paola) have been investigated in military jurisdiction. These military investigations have obstructed civilian investigations and have violated victims' and families' rights to an independent and impartial investigation.

Even when 2014 reforms to the Military Code of Justice granted the PGR jurisdiction to investigate crimes and human rights violations committed by soldiers against civilians, many obstacles remain and impunity is still the general rule for cases involving soldiers. Three outstanding obstacles are:

A. In practice, the PGR allows military investigations to advance before civilian investigations. According to the direct experience as well as testimonies obtained by organizations presenting this memo, the PGR's investigations into crimes committed by soldiers are slow, bureaucratic, and not transparent. Prosecutors fail to obtain military documents and testimonies for civilian investigations.

B. The PGR does not prioritize the investigation of cases involving soldiers. Despite the fact that the transfer of cases from military to civilian jurisdiction started in 2012, today there is still no specific and transparent strategy in place to investigate these cases. Investigations of crimes perpetrated by the military are scattered in at least eight different offices within the PGR. The coordination between the PGR and the military to investigate crimes is not transparent and procedures to refer cases to civilian authorities appear to be arbitrary.

C. Failure to investigate the chain of command. Crimes committed by soldiers are investigated by the PGR on a case-by-case basis, which fails to take into consideration that they occurred in a context of soldiers being tasked to combat organized crime. Beyond the acts themselves, criminal investigations must look into the orders, actions, and omissions from high-ranking officers. As mentioned previously, the PGR has still not investigated the chain of command in the Tlatlaya massacre, despite the fact that the soldiers were operating under a standing military order that directed them to patrol at night and take out criminals.

The PGR's investigations could also be a fundamental tool to hold civilian authorities accountable for their responsibility in deploying the military and the crimes and human rights abuses that have resulted from the military's expanded role in public security. However, the lack of proper investigation of these cases prevents the PGR from generating relevant information on this topic.

Discussions on a Law on Internal Security

Since the beginning of 2016, Mexico's Congress has been debating a law to regulate the involvement of the armed forces in public security. Instead of designing a plan to gradually remove the armed forces from public security operations (for instance, by carrying out a long-overdue reform of its civilian police bodies), the Mexican government is considering normalizing the role of the military in public security operations. This discussion fails to address the implications of further militarizing Mexico's public security and civilian authorities' inability and lack of will to investigate and prosecute soldiers implicated in human rights violations and crimes. United Nations representatives and Mexico's own National Human Rights Commission (CNDH) spoke out against the draft version of the law.⁵ Pressure from civil society and human rights organizations impeded the approval of this law during the first legislative term of 2017, but members of Congress are expected to resume the discussions to approve the law in the year's second legislative term, which starts in September.

New case of potential extrajudicial execution

In May, video footage was published on social media showing a soldier presumably shooting an individual lying on the floor. The video corresponds to a military operation carried out on May 3, 2017, by the Mexican army in Palmarito Tochapan, in the state of Puebla. Amnesty International

independently verified the video footage, including by analyzing other videos of the same event, and concluded that there are enough reasons to believe that an extrajudicial execution might have occurred.⁶

REQUIREMENT 2) Vigorously enforcing prohibitions against torture and the use of testimony obtained through torture.

The following cases, which have been included in previous memos, further illustrate the Mexican government's failure to investigate and prosecute human rights violations, including in torture cases.

Since the release of Amnesty International's June 2016 report, *Surviving Death: Police and Military Torture of Women in Mexico*, there have been few real advances in combating impunity, including in the cases outlined in this report, and in curbing the use of testimony obtained through torture. The report outlined 100 cases in which women denounced torture, 10 of which were fully documented by Amnesty International. No state agents have been charged in any of these 10 cases, despite the fact that the CNDH has now issued recommendations and recognized the torture committed in three of them –the cases of María Magdalena Saavedra, Verónica Razo and Mónica Esparza Castro. All three of these women remain in prison and the investigations into the torture they suffered have not moved forward.

For example, Verónica Razo was arbitrarily detained, raped, and tortured by Federal Police agents in June 2011. Two years after her arrest, psychologists from the PGR confirmed that Verónica presented symptoms consistent with torture. On September 29, 2016, the PGR presented charges against a Federal Police agent under the investigation 279/UEIDAPLE/LE/19/2011. A judge dismissed these charges as being incomplete and has ordered them to be presented again. On March 24, 2017, the CNDH issued recommendation 12/2017 which confirms the torture suffered by Verónica Razo at the hands of Federal Police. Nonetheless, Veronica remains in prison awaiting the outcome of her trial.

Three other victims included in Amnesty International's report, Korina de Jesús Utrera Domínguez, Denise Francisca Blanco Lovato, and Wendy Noreli Hernández Díaz, were acquitted by a judge and released from prison in December 2016. Nevertheless, their release cannot be equated with progress on the issue of curbing the practice of torture. They were tortured by the Mexican Navy in August 2011; however, the PGR has failed thus far to advance in the investigation of the possible perpetrators. In December 2016, the PGR finally carried out the last stage of forensic examinations with these torture survivors, over five years after the violations occurred. The results of these examinations have yet to be finalized, making any progress in the investigation against possible perpetrators more difficult to achieve.

In the case of Yecenia Armenta those responsible for torture have yet to be brought to justice. As has been referenced in our two previous memos, on July 10, 2012, Yecenia was driving family members to the airport when plainclothes state police stopped her vehicle. Yecenia was interrogated and beaten by officers demanding she confess to the involvement in the murder of her husband who had been shot in a public place a week earlier. Yecenia was threatened, insulted, tortured, and raped; she remained blindfolded and handcuffed while made to sign a "confession" and give her fingerprints after almost 15 hours of torture and ill-treatment in police custody. On July 25th, she made her first statement before a judge and was officially charged with the aggravated murder of her husband and transferred to a local prison in the city of Culiacán. On June 7, 2016, a judge acquitted Yecenia of her charges and released her from prison, after four years of injustice behind bars. In April 2017, Yecenia was informed that the

appeal against her release had been denied meaning that her acquittal stands and no further appeals can be made. However, the police officers who tortured Yecenia have not been charged.

Torture by the National Institute of Migration (INM): One worrying development is the emergence of new reports of torture by authorities not charged with policing tasks. On July 1, 2016, the UN Special Rapporteurs on Arbitrary Detentions, Indigenous Peoples and Torture and other Cruel, Inhuman and Degrading Treatment sent a letter to the Mexican government⁷ regarding a case of torture at the hands of the National Institute of Migration (INM). According to forensic doctors from Mexico City's Human Rights Commission who examined him, at least one young Mexican man of indigenous origin was tortured to "confess" that he was Guatemalan. Migration officials threatened at least two other people. The National Human Rights Commission documented these cases in Recommendation 58/2015.⁸

The issuance of a General Law on Torture

On June 27, 2017, Mexico's new General Law against Torture came into effect. The full and correct application of this law will be crucial if Mexico is to bring justice to victims of torture and end the generalized use of torture in the country.⁹ Four of the seven merits decisions that the IACHR has issued against Mexico in the last decade are on the use of torture and other cruel, inhuman or degrading treatment or punishment. The CNDH has issued at least 100 recommendations on torture and since 2007 it has received over 12,000 complaints of torture. At the federal level alone, the PGR received over 10,000 complaints of torture between 2012 and 2016; however, the prosecutors presented charges in only 22 cases.¹⁰ There is only evidence of 15 convictions for torture in Mexico since 1999.¹¹

The new law corrects some flaws in previous torture legislation. For instance, it now properly defines torture. It also creates specialized prosecutors' offices to investigate torture, provides the basis to exclude evidence obtained through torture, and improves the National Mechanism to Prevent Torture. However, as the cases described in this memo show, the main challenge is the proper implementation of the law, and that authorities show the willingness to investigate and prosecute cases.

REQUIREMENT 3) Searching for the victims of enforced disappearances and credibly investigating and prosecuting those responsible for such crimes.

According to official numbers there are 32,142 disappeared persons in Mexico.¹² Since the beginning of the year, the discoveries of several mass graves highlight the widespread nature of disappearances across the country and the government's continued challenges in searching for and exhuming bodies, identifying them, and returning them to family members. For example, more than 300 skulls were found in the state of Veracruz in the month of March alone, following efforts by a collective of family members to point authorities to the relevant site.¹³ Family members of the disappeared continue to lead the search process with little support from authorities and face threats for doing this work. In May 2017, Miriam Elizabeth Rodríguez Martínez, an activist and mother who had faced threats for her work of pursuing justice in the case of her daughter's disappearance, and helping other families of disappeared victims in Mexico to do the same, was shot to death in her home in the state of Tamaulipas.

In July 2015, a constitutional reform was approved that gave the Mexican Congress a term of six months to issue a General Law against Disappearances. The deadline to approve the law expired on January 6, 2016.

Throughout this time, discussion of the General Law has been long and complicated. Families of disappeared persons and civil society organizations have constantly striven to ensure that their input is taken seriously and incorporated into the final version of the law. However, changes proposed in April 2017 by the Executive Branch ignore the gravity of the ongoing situation, including that 2016 was the year with the highest number of disappearances ever reported in Mexico. The Executive's observations are at tension with the demands of families in various aspects of the law, including the notion of what is understood by a disappeared person, how the National Search System should be integrated, how disappearances should be investigated, and how to identify human remains found in clandestine and common graves.

There are two observations by the President to the General Law against Disappearance that are particularly worrying:

A. Insistence on including the concept of a “missing person”: For years the government has used the distinction between a "disappeared person" and a "missing person" to minimize and evade the gravity of disappearances in Mexico, and to insinuate that a large part of the disappearances in the country are cases of "voluntary" absences and not related to crimes.

The distinction between a "missing person" and a “disappeared person” has served the interests of the government and not the interests of family members who search for their disappeared relatives. Now the government insists that the General Law distinguish between a "disappeared person" (absence related to a crime) and "missing person" (absence not related to any crime) even though the reasons for a person’s disappearance cannot be known immediately.

B. Composition of the National Search Commission (CNB): The CNB, as proposed by the families, would be the sole authority in charge of coordinating federal and local authorities nationwide to search for disappeared persons. This would free the victims and families from the costs of the lack of coordination that currently exists in Mexico. However, the Executive has proposed the creation of state-level search commissions that would replicate the current system where federal and state-level authorities have failed to coordinate efforts to find disappeared persons.

REQUIREMENT 4) The Committee expects the Government of Mexico to cooperate fully with the Inter-American Commission on Human Rights Interdisciplinary Group of Independent Experts’ (GIEI) investigation of the disappearance of 43 students in Guerrero in September 2014.

The irregularities in the case remain and so does a lack of access to truth regarding the whereabouts of the 43 disappeared students. Upon completing a second official visit to Mexico in April 2017, the members of the IACHR-appointed follow-up mechanism were concerned by the lack of progress in the search for the students and the slow pace in the areas of investigation identified by GIEI in its final report. The updated information below highlights the failure to advance in three central aspects of the case: failure to comply with the recommendations issued by the GIEI; a lack of investigation into the claims of obstruction of justice and; the use of spyware against the attorneys representing the families of the students and the GIEI itself.

a) Failure to comply with the GIEI recommendations and lack of truth

As of today, the whereabouts of the 43 disappeared students remains unknown. The theory put forth by the federal government—that the students were killed and incinerated the night of the disappearances

in a nearby landfill in Cocula — was scientifically disproven by independent analyses, including by the GIEI. Despite this, the Mexican government once again insisted that this theory should still be considered in March 2017 during an IACHR hearing in Washington D.C. on the case.

As for the criminal investigation, the few developments recorded this year confirm that the GIEI was originally right in its reports. For example, the investigation has found that 9 of the students' cell phones devices showed activity after their disappearance on September 26, 2014, disproving the official theory that the cellphones were incinerated. Similarly, the ongoing investigation of the perpetrators' cell phones, while advancing at a slow pace, has confirmed the participation of other parties in the crimes, in particular that of the Municipal Police of Huitzuco, Guerrero. In this regard, we recall that evidence indicates that the 43 disappeared students were not all taken to the same place, but instead were likely divided into different groups.

Additionally, new findings have confirmed that the criminal group that used passenger buses to smuggle drugs into the United States was in fact part of a greater network of criminal activity in the region of Iguala, Guerrero, linked to the criminal organization known as "*Guerreros Unidos*" that is implicated in the disappearances. The new information includes details about this criminal activity that until recently was unknown, making it essential to thoroughly investigate whether the students were attacked because they unwittingly took buses used for illegal activities.

Despite these gradual developments in the investigation, no new accusations have been presented in the case. Because of this, it is essential that the PGR formalize charges against members of the Federal Police and members of the Municipal Police of Huitzuco who participated in these events by action or omission.

Regarding the search for the students, attempting to locate possible burial sites has proven difficult due to the limited use of LIDAR technology. Creating a database with information on the mass graves in the state of Guerrero is essential to improve the search process.

Other pressing issues also remain, such as investigating the relationship between criminal groups linked to drug trafficking and members of local, state, and federal police forces—including the military – as well as to other politicians at the local and state levels.

Lastly, it should be noted that despite the fact that there are around 170 detainees, only about 70 of them are on trial for accusations directly related to the crimes against the students. As of today, no one has been sentenced for the crimes committed against the Ayotzinapa students.

b) Lack of investigation and punishment for the irregularities in the investigation

One of the central recommendations of the last GIEI report referred to the need to carry out an internal investigation into the October 2014 proceedings at the San Juan River¹⁴, where, according to the government's version of the story, investigators found the cremated remains of a student. However, the GIEI demonstrated that the Director of the Criminal Investigation Agency (*Agencia de Investigación Criminal*, AIC) brought a detainee with signs of torture to the scene, without permission or an official chain of custody, and without a lawyer being present, one day prior to the alleged discovery. Officially there was no formal record documenting the illegal transfer of the detainee to that location, nor of the presence of the Director of the AIC; this was all later revealed by the GIEI in a video¹⁵. This action showed serious violations of due process, affecting the integrity of the investigation.

After the GIEI revealed these irregularities, the PGR ordered an investigation by its internal affairs unit, the Inspector General (*Visitaduría General*). Nevertheless, this investigation was concluded poorly with a partial and untimely inquiry. The Inspector General who was initially in charge of the investigation, César Alejandro Chávez Flores, concluded that the irregularities in the investigation were numerous and serious, warranting a criminal investigation¹⁶. However, he was then suddenly removed from his post. It was subsequently revealed that he had been pressured to change his written resolution on the case.¹⁷ The families were then formally notified of a very different resolution that eliminated the main findings of the initial resolution and found the faults to be minor, a disconcerting “switch” between the initial and final report. The families filed a constitutional challenge against final resolution that has not been resolved. These disappointing results were also publicly reported by the United Nations’ Office of the High Commissioner for Human Rights (OACNUDH) in Mexico.¹⁸

c) Use of spyware against the lawyers of the families and the GIEI itself

Finally, at a public hearing held by the IACHR on the Ayotzinapa case on July 6, 2017, the members of the Commission announced that, according to members of the GIEI, they (the GIEI) had been subjected to digital spying attempts while still operating in Mexico.

This information comes after a series of documented cases of the use of spyware against activists and journalists in Mexico, including three members of the Centro de Derechos Humanos Miguel Agustín Pro Juárez, the legal representatives the Ayotzinapa families, including a US citizen.¹⁹ These cases were confirmed by Citizen Lab²⁰—a laboratory at the University of Toronto—and disseminated by well-known U.S. media outlets.²¹ The malware, which is sent via text messages that include malicious links, even came to be used with messages that impersonated the identity of the U.S. Embassy in Mexico. The malicious software is sold exclusively to governments, according to the company that provides the services, NSO Group, and available documentation shows that agencies of the Mexican government have acquired such technology, including the PGR.

The seriousness of the spying attempts against the GIEI is compounded by the fact that the Mexican government invited the group to the country to provide international assistance on the Ayotzinapa case. This was done through an agreement that granted them diplomatic immunity since it was a group formally designated by the IACHR.²² For this reason, the members of the IACHR emphasized the demands of the victims for the implementation of an independent, international panel to oversee the investigation. The OACNUDH has also recognized this demand.²³

The spying attempts against the GIEI only add to the other irregularities that have been fully documented in the case – such as the concealment of relevant evidence (including a notebook containing important information²⁴), the concealment of important criminal records (regarding previous criminal cases involving *Guerreros Unidos* and drug smuggling on passenger buses²⁵), and obstacles faced by the GIEI during its stay in Mexico (defamatory campaigns, limited access to prisons in the second phase of their operation). Together, these facts demonstrate how the federal government did not act in good faith towards the Group during the investigation. In particular, the attempted spying shows that once the GIEI ruled out the official government version of events, the government was dishonest with them. All of these examples indicate that the federal government has impeded a truly exhaustive investigation of the Ayotzinapa case.

Contact information:

Amnesty International, Marselha Gonçalves Margerin (MGoncalvesMargerin@aiusa.org)

Centro de Derechos Humanos Miguel Agustín Pro Juárez (Center Prodh), Stephanie Erin Brewer (internacional@centroprodh.org.mx)

Centro de Derechos Humanos de la Montaña Tlachinollan, Sandra Ferrer Alarcón (internacional@tlachinollan.org)

Fundar, Centro de Análisis e Investigación, Humberto Guerrero (Humberto@fundar.org.mx)

Latin America Working Group (LAWG), Daniella Burgi-Palomino (dburgipalomino@lawg.org)

Washington Office on Latin America (WOLA), Maureen Meyer (mmeyer@wola.org)

¹ Azam Ahmed, "Police Sex Abuse Case is Bad News for Mexico's Leader," *The New York Times*, September 22, 2016, <https://www.nytimes.com/2016/09/23/world/americas/enrique-pena-nieto-commission-human-rights-investigate-rape.html>

² Mariana Selvas Gomez et al., *Informe No. 74/15, Caso 12.846.*, CIDH, October 28, 2015, <http://www.oas.org/es/cidh/decisiones/corte/2016/12846FondoEs.pdf>.

³ CIDH, "CIDH envía caso sobre México a la Corte IDH," November 22, 2016, <http://www.oas.org/es/cidh/prensa/comunicados/2016/173.asp>

⁴ Ximena Suarez-Enriquez and Maureen Meyer, "Mexico's Law on Internal Security: Turning a Blind Eye to Military Abuses in Public Security Operations," *Washington Office on Latin America (WOLA)*, February 8, 2017, <https://www.wola.org/analysis/mexicos-law-internal-security-turning-blind-eye-military-abuses-public-security-operations/>

⁵ Víctor Mayén, "The CNDH offers advice on Mexico's new Internal Security Law," *The News*, February 2017, <http://www.thenews.mx/mexico/the-cndh-offers-advice-on-mexicos-new-internal-security-law/>; Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, "Discurso de Jan Jarab para el foro 'Seguridad interior, seguridad pública y derechos humanos,'" February 23, 2017, http://www.hchr.org.mx/index.php?option=com_k2&view=item&id=932:discurso-de-jan-jarab-para-el-foro-seguridad-interior-seguridad-publica-y-derechos-humanos&Itemid=395

⁶ Amnesty International, "Mexico: Open Letter to the President on a Possible Extrajudicial Execution by the Military," May 25, 2017, <https://www.amnesty.org/en/documents/amr41/6347/2017/en/>

⁷ UN Special Procedures, "Mandatos del Grupo de Trabajo sobre la Detención Arbitraria," Ref, number MEX 5/2016, July 1, 2016, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=3220>

⁸ CNDH, "Recomendación No. 58/2015," December 31, 2015, http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2015/Rec_2015_058.pdf

⁹ United Nations Office of the High Commissioner for Human Rights, *Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, n.d., <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>

¹⁰ Arturo Angel, "Las quejas por tortura se quintuplican; PGR resuelve menos del 1% de los casos," *Animal Politico*, May 30, 2017, <http://www.animalpolitico.com/2017/05/quejas-tortura-pgr/>

¹¹ CIDH, Organización de los Estados Americanos, *Situación de los derechos humanos en México*, December 31, 2015, <http://www.oas.org/es/cidh/informes/pdfs/Mexico2016-es.pdf>.

¹² Secretariado Ejecutivo, Consulta Pública, "Registro Nacional de Datos de Personas Extraviadas o Desaparecidas," <http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php>

¹³ Paulina Villegas, "More Than 250 Human Skulls Are Found in Mass Grave in Mexico," *The New York Times*, March 14, 2017, https://www.nytimes.com/2017/03/14/world/americas/mexico-veracruz-mass-grave.html?_r=0

¹⁴ Grupo Interdisciplinario de Expertos Independientes (GIEI), *Informe Ayotzinapa II*, April 24, 2016, <https://www.scribd.com/doc/310287401/Informe-Ayotzinapa-II-pdf>

¹⁵ Ibid.

¹⁶ Paulina Villegas and Elisabeth Malkin, "Mexican Report Says Investigators Botched Search for 43 Students," *The New York Times*, December 15, 2016, <https://www.nytimes.com/2016/12/15/world/americas/igual-mexico-missing-students-report.html>

¹⁷ “Reconoce ex visitador de PGR que le pidieron ‘reconsiderar’ resultados de investigación contra Zerón (Video),” *Aristegui Noticias*, March 9, 2017, <http://aristeguinoticias.com/0903/mexico/reconoce-ex-visitador-de-pgr-que-le-pidieron-reconsiderar-resultados-de-investigacion-contra-zeron-video/>

¹⁸ UN Office of the High Commissioner for Human Rights, “La ONU-DH expresa preocupación por las conclusiones de la investigación interna de la PGR sobre el caso Ayotzinapa,” March 1, 2017, https://www.hchr.org.mx/images/Comunicados/2017/20170301_ComPrensa_Ayotzinapa.pdf

¹⁹ Recently, the organizations Article 19, SocialTIC, and R3D published a report documenting the use of the malware known as *Pegasus* in Mexico against the cell phones of human rights defenders, journalists and anti-corruption activists. The malware infiltrates cell phones via text messages containing malicious links, which, once accessed, allow for complete monitoring of all cell phone activity. See: “#GobiernoEspía: Vigilancia sistemática a periodistas y defensores de derechos humanos,” *Artículo 19 et al.*, July 10, 2017, <https://articulo19.org/wp-content/uploads/2017/06/Reporte-Gobierno-Espi%CC%81a-Final.pdf>.

²⁰ Citizen Lab is a multidisciplinary laboratory in the Munk School for Global Affairs at the University of Toronto. See: John Scott-Railton, Bill Marczak, Bahr Abdul Razzak, Masashi Crete-Nishihata, and Ron Deibert, “Investigation into Mexican Mass Disappearance Targeted with NSO Spyware,” *Citizen Lab*, July 10, 2017, <https://citizenlab.ca/2017/07/mexico-disappearances-nso/>.

²¹ Azam Ahmed, “Spyware in Mexico Targeted Investigators Seeking Students,” *The New York Times*, July 10, 2017, <https://www.nytimes.com/2017/07/10/world/americas/mexico-missing-students-pegasus-spyware.html?ribbon-adidx=4&rref=world/americas&module=Ribbon&version=context®ion=Header&action=click&contentCollection=Americas&pgtype=article>

²² CIDH, Organización de los Estados Americanos, *Addendum al Acuerdo Marco para la Incorporación de Asistencia Técnica*, November 12, 2015, <http://www.oas.org/es/cidh/mandato/docs/Acuerdo-Addendum-Mexico-CIDH.pdf>

²³ UN Office of the High Commissioner for Human Rights, “Mexico: UN experts call for an independent and impartial investigation into use of spyware against rights defenders and journalists,” July 19, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21892&LangID=E>

²⁴ Rubén Mosso, “Indaga la PGR si su personal ocultó una libreta de Sidronio,” *Milenio*, May 25, 2017, http://www.milenio.com/policia/indaga-pgr-personal-oculto_libreta-sidronio_casarrubias-giei-normalistas-milenio_0_962903737.html

²⁵ Fernando Camacho and Gustavo Castillo, “PGR ocultó el trasiego de drogas en autobuses,” *La Jornada*, January 23, 2017, <http://www.jornada.unam.mx/2017/01/23/politica/004n1pol>