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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; 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 2017.

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 the last six months we have witnessed a worsening human rights situation in Mexico, 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 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.

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 the killings at Tlatlaya in June 2014. Two central issues limiting progress in this case have been the failure to obtain arrest warrants against soldiers for homicide, cover-up, and alteration of evidence as well as the failure to investigate the Mexican military's "order to kill." The current status of the Tlatlaya investigation shows that despite the 2014 reforms on military jurisdiction, civilian authorities have failed to investigate crimes and human rights violations that Mexican soldiers have committed against civilians in emblematic cases.

Likewise, there is still no progress in emblematic cases that have been described in previous memos, such as the cases of the torture victims Taylin Wang, Inés Fernandez and Valentina Rosendo, or in the

extrajudicial killing of Bonfilio Rubio. The two cases that are currently before the Inter-American Court on Human Rights, regarding the physical, psychological and sexual torture of eleven women during the police repression in Atenco, the State of Mexico in 2006, and the enforced disappearance of Nitza Paola Alvarado¹ and others by Mexican soldiers in 2009, further demonstrate the government's failure to conduct thorough and credible investigations and prosecutions of human rights violations.

In many of the cases reported in this memo, military investigations have obstructed civilian investigations and have violated victims' and families' right to an independent and impartial investigation. Although 2014 reforms to the Military Code of Justice granted the PGR jurisdiction to investigate crimes and human rights violations committed by soldiers against civilians, impunity is still the general rule for these cases. This is in part due to the PGR's failure to prioritize the investigation of cases involving soldiers. For example, prosecutors often fail to obtain military documents and testimonies for civilian investigations and the investigations are often slow, bureaucratic, and non-transparent. Moreover, the PGR has failed to investigate the military's chain of command. Because it investigates each crime on a case-by-case basis, the PGR does not take into consideration the context in which the crime occurred and the orders, actions, and omissions from high-ranking officers.

Since the beginning of 2016, Mexico's Congress has considered normalizing the role of the military in public security operations with discussions on a Law on Internal Security. Although United Nations representatives, Mexico's own National Human Rights Commission (CNDH),² as well as members of civil society have spoken out against the draft of the proposal and impeded its approval during the first legislative session of 2017, members of Congress are expected to resume the debate during the second legislative term, which starts in September.

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

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 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.

New reports of torture committed by agents not charged with policing tasks have also emerged. 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 government³ 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 58/2015.⁴

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. However, the main challenge is the proper implementation of the law and that authorities show the willingness to investigate and prosecute cases. 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.⁵ There is only evidence of 15 convictions for torture in Mexico since 1999.⁶

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

According to official numbers, there are 32,142 disappeared persons in Mexico.⁷ 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.⁸ Family members of the disappeared continue to lead the search process with little support from authorities and face threats for doing this work.

Discussions on the General Law against Disappearances have been long and complicated, with members of civil society struggling to ensure that their input is seriously considered and incorporated into the final version of the law. Nonetheless, there is still tension between the changes proposed by the Executive Branch to the draft law and the demands made by the families of the disappeared. The President's proposed amendments fail to take seriously the gravity of the situation, particularly since 2016 marks the year with the largest number of registered disappearances in Mexico. For example, the President's proposal includes insisting on distinguishing 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. The proposal also maintains state-level search commissions rather than a sole National Search System; this would replicate the current system where state and federal authorities fail to coordinate their 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 the GIEI in its final report. In addition, concerns were raised regarding various, documented ways in which the Mexican government had impeded the investigation and obstructed justice, including the strong possibility that evidence had been tampered with and concealed and that suspects were tortured to coerce confessions.

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 Municipal Police from Huitzuco, Guerrero. New findings have also 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. However, despite these gradual developments, no new accusations have been made in the case. As of today, no one has been sentenced for the crimes committed against the Ayotzinapa students.

After the GIEI reported irregularities in the October 2014 proceedings at the San Juan River,⁹ where, according to the government's version of the story, investigators found the cremated remains of a student, the PGR ordered an investigation by the internal affairs unit, the Inspector General (*Visitaduria General*). After the Inspector General was suddenly removed from his post, it was revealed that in his initial report he had concluded that there were serious and numerous irregularities in the government's investigation

warranting a criminal investigation¹⁰ and that he had been pressured to change his written resolution on the case.¹¹ The families were then formally notified of a different resolution that eliminated the main findings of the initial report and found the government's faults to be minor, a disconcerting "switch" between the initial and final report. The families filed a constitutional challenge against the final report 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.¹²

Lastly, 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 came in the midst of a series of documented cases of the use of spyware against journalists and human rights defenders in Mexico, including members of the Centro Prodh who are the lawyers of the Ayotzinapa families, including a U.S. citizen.¹³ These cases were reported by *The New York Times*¹⁴ and confirmed by Citizen Lab¹⁵—a laboratory at the University of Toronto. The malicious software, which according to NSO Group, the company that provides the services, is sold exclusively to governments, infiltrates smartphones via a malicious link sent through a text message. Available documentation shows that Mexican government agencies have acquired such technology, including the PGR. The members of the IACHR have emphasized the demands of the victims for the implementation of an independent, international panel to oversee the investigation into the spying attempts.

The spying attempts against the GIEI add to the list of other documented irregularities in the case, such as the concealment of relevant evidence¹⁶, the concealment of important criminal records¹⁷, and obstacles faced by the GIEI during its stay in Mexico. Together these facts demonstrate how the federal government did not act in good faith towards the Group during the investigation and that it has impeded a truly exhaustive investigation of the Ayotzinapa case. In particular, the attempted spying shows that once the GIEI ruled out the official government version of the events, the government was dishonest with them.

¹ 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>.

² 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

³ 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>

⁴ CNDH, "Recomendación No. 58/2015," December 31, 2015, http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2015/Rec_2015_058.pdf

⁵ 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/>

⁶ 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>.

⁷ Secretariado Ejecutivo, Consulta Pública, "Registro Nacional de Datos de Personas Extraviadas o Desaparecidas," <http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php>

⁸ 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

⁹ Grupo Interdisciplinario de Expertos Independientes (GIEI), *Informe Ayotzinapa II*, April 24, 2016, <https://www.scribd.com/doc/310287401/Informe-Ayotzinapa-II-pdf>

¹⁰ 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/Iguala-mexico-missing-students-report.html>

¹¹ “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/>

¹² 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

¹³ 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>.

¹⁴ 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>

¹⁵ 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/>.

¹⁶ 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

¹⁷ 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>