

To: U.S. Department of State

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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

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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 Foreign Military Financing Assistance to Mexico**

INTRODUCTION

Since the onset of increased U.S. security assistance to Mexico in FY2008, primarily under the Merida 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, placing human rights requirements on select U.S. funds. Since 2009, our organizations have produced eight 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 has repeatedly failed to meet these requirements.

As is described below, in the past year the Mexican government has again demonstrated its unwillingness to make progress on emblematic cases of human rights violations. Emerging human rights concerns, such as forced internal displacement due to violence, have not been recognized by Mexican authorities, leaving

the over 329,917 internally displaced persons that have been documented between 2009 and 2017 without assistance or protection.¹ In spite of the passage of important laws on disappearances and torture, their slow and incomplete implementation also call into question the government's commitment to fully addressing these grave human rights violations. In 2017 federal complaints of human rights violations remained high while government agencies' compliance with recommendations made by the National Human Rights Commission (CNDH) were poor; investigations into those violations are insufficient, slow, and incomplete. In his presentation of the CNDH's annual report, Ombudsman Luis Raul González affirmed that in Mexican President Enrique Peña Nieto's first five years in office, "Mexico has not undergone a significant and objective change towards greater respect and enforceability of human rights."²

Human rights defenders and journalists also continue to be threatened, attacked, and even killed. The Committee to Protect Journalists' (CPJ) investigations into the motives behind journalist killings in Mexico have so far confirmed that at least six reporters murdered in 2017 were targeted in reprisal for their work, making Mexico the deadliest country in the world to practice journalism outside of warzones.³ In the first six months of 2018, at least five journalists have been killed⁴ and one has been reported as disappeared.⁵ Human rights defenders face a similar situation: Front Line Defenders registered the murder of 31 human rights defenders and journalists in Mexico in 2017.⁶ On May 14, 2018 Manuel Gaspar Rodríguez—a member of the Antonio Esteban Human Rights Centre who was opposing energy projects, mining concessions, and the construction of high-voltage power lines in the northern mountain region of Puebla—was found dead in Cuetzalan, Puebla.⁷ As with the majority of such cases, the perpetrators of this crime remain unknown. While we recognize important progress made in the investigations into the murder of Mexican journalist Javier Valdez and a handful of other cases, the majority of these crimes remain in impunity. The Special Prosecutor's Office for Crimes against Freedom of Expression (FEADLE) has opened over 1,000 investigations into crimes against journalists since its creation in 2010, but as of October 2017 it has brought charges in only 115 cases and has obtained just 3 convictions.⁸ The Mexican government has also made no measurable progress in investigating the illegal use of spyware against human rights defenders, journalists, activists, and members of the IACHR's Interdisciplinary Group of Independent Experts (GIEI).

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 human rights bodies, which demonstrate that the Mexican government has failed to make sufficient progress on the human rights priorities identified by Congress in U.S. Foreign Military Financing (FMF) assistance to Mexico.

As Peña Nieto's term comes to an end, we believe the U.S. Department of State has an important opportunity to provide a thorough, accurate assessment of the human rights benchmarks laid out by Congress for U.S. security cooperation with Mexico. Such an assessment would signal to the current Mexican government as well as Andrés Manuel López Obrador's incoming administration the importance that the United States places on human rights in its bilateral relationship and cooperation with Mexico.

1) Thoroughly and credibly investigating and prosecuting violations of human rights in civilian courts, including the killings at Tlatlaya in June 2014 and the disappearance of 43 students at Ayotzinapa in September 2014, in accordance with Mexican law.

As the Department of State notes in its Mexico Country Report on Human Rights Practices for 2017, "[i]mpunity for human rights abuses remained a problem, with extremely low rates of prosecution for all

forms of crimes.”⁹ According to Mexico’s national victimization survey, an estimated 94 percent of crimes in Mexico are never reported or investigated, primarily because victims distrust authorities or because they believe reporting crimes is a waste of time.¹⁰ In 2017, Mexico had the fourth highest impunity index on the Global Impunity Index (out of 69 countries), and it ranked first out of the 21 countries in the Americas that were analyzed. In the case of human rights violations, almost no cases result in the conviction of the government officials responsible. In the Global Impunity Index, Mexico ranked first amongst the countries analyzed for impunity for human rights violations.¹¹

a. Lack of accountability for military abuses

The government still shows little political will to implement the 2014 reforms to Mexico’s Military Code of Justice (CJM) that allow civilian investigations into human rights violations committed by soldiers against civilians. It also lacks the will to approve additional legal reforms that would enable serious and successful civilian investigations. As a result, 96.8 percent of military abuses against civilians in Mexico remain unpunished.¹²

The two main agencies lacking political will to carry out and advance criminal investigations into military abuses are the federal Attorney General’s Office (PGR) and the Ministry of Defense (SEDENA). The PGR refuses to pursue fundamental lines of investigation in these cases, particularly the chain of command of high-ranking military officials who order soldiers to commit abuses against civilians. Moreover, the PGR’s investigations are slow, incomplete, and often lack sufficient evidence to bring strong cases to court.

The Washington Office on Latin America’s (WOLA) research on military abuses shows that military authorities engage in practices that hinder civilian investigations, including: 1) limiting civilian authorities’ access to testimony from accused soldiers or soldiers who are witnesses in investigations, 2) allowing soldiers to tamper with crime scenes or give false testimony, without properly investigating these actions, and 3) carrying out separate investigations into the same case, which fragments cases.¹³

If the PGR had the will to advance these cases, it could improve the quality of investigations. It could also establish a public prosecution plan to investigate and prosecute crimes and human rights violations committed by soldiers against civilians that increases transparency on the outcome of such investigations and explicitly promotes the investigation of the chain of command and military orders that instruct soldiers to commit human rights violations. SEDENA has the power to end the practice of obstructing civilian investigations, but it refuses to do so.

Recently, a federal judge issued a historic ruling in the case of Valentina Rosendo Cantú, convicting two members of the Mexican military to 19 years in prison for the crimes of rape and torture against her in 2002. Sixteen years after the crimes took place, and eight since the Inter-American Court of Human Rights (Inter-American Court) issued a judgment against the Mexican government on the case, Valentina finally obtained justice. This is the only case resolved by the Inter-American Court on military abuses in Mexico where the perpetrators have been sentenced in a national court. The ruling analyzed the asymmetry of power and the coercive environment that soldiers create while they perform security operations. However, this judgment is not final: both soldiers have appealed it, and a higher court is now revising it. Moreover, there has been no further investigation into the other six soldiers that also participated in these crimes, and higher military responsibility has not been investigated.¹⁴

Additional cases further illustrate the shortcomings of investigations into human rights violations committed by Mexican soldiers. Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes were detained by Mexican soldiers and forcibly disappeared in the northern state

of Chihuahua in December 2009 in the context of “Joint Operation Chihuahua”, which was implemented to combat drug trafficking and organized crime through increasing the presence of soldiers in the streets.¹⁵ Mexican authorities have failed to investigate how this security operation led to the violation of the victims’ human rights. This case was taken to the Inter-American Court of Human Rights and the hearing was held in April 2018. It is the first case in which an international court will rule on how the Mexican government’s military-led operations to combat drug trafficking and organized crime affect the human rights of civilians.¹⁶

The extrajudicial killings in Tlatlaya (explained below) are another example of how civilian authorities fail to investigate the chain of command in cases of human rights violations committed by soldiers. Despite evidence showing that soldiers in this case received an order to “take out criminals” (*abatir delincuentes*), this order has not been investigated.

Finally, the issuance of the Internal Security Law on December 22, 2017 was a setback to accountability for military abuses. The law lacks accountability mechanisms to ensure civilian oversight over the law’s implementation and in the investigation of military abuses. It also solidifies practices that have led to such a high rate of impunity for military abuses, such as a lack of transparency regarding the military’s actions. According to the law, information pertaining to the law’s enforcement is “classified” on the grounds that it is a matter of “national security”.¹⁷ This provision limits public access to information regarding use of force by soldiers operating under the law, including in cases where there are civilian deaths.¹⁸ The law has been challenged before federal courts by different individuals, and at least 23 legal remedies were presented before the Supreme Court of Justice (SCJN) to review the law’s constitutionality, including by the CNDH.¹⁹ The Mexican Supreme Court will now rule on whether the law violates international treaties and the Mexican Constitution.²⁰

b. Lack of justice in paradigmatic cases of human rights violations

The following are cases that our organizations have documented—and, in several, legally represented—that illustrate the Mexican government’s failure to effectively investigate and prosecute officials responsible for human rights violations. Many of the cases have been highlighted in past memos to the Department of State.

- **Ecologists case:** As reported in prior years, no one has been tried for the torture committed against the environmentalists Rodolfo Montiel and Teodoro Cabrera, despite the fact that the Inter-American Court of Human Rights issued a judgment against Mexico in 2010 ordering the Mexican government to investigate the case with due diligence.
- **Taylin Wang:** In our last two memos, 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 an arrest warrant. At the time of the events, Taylin was seven weeks pregnant. After prolonged beatings and sexual abuse by federal policemen, she was taken to the PGR’s office where she suffered a miscarriage. As occurs with many victims of arbitrary detention and torture, rather than charging and punishing her torturers, Mexican prosecutorial authorities accused Taylin of crimes she did not commit. Taylin remains imprisoned today based on those false charges. There has been no meaningful progress in bringing charges against those who tortured Taylin.

In October 2017, four UN human rights mandates—the Special Rapporteur on torture, the Special Rapporteur on violence against women, the Working Group on arbitrary detentions, and the

Working Group on discrimination against women—sent a joint communication to Mexico expressing their serious concern over this and seven other cases of sexual torture of women in Mexico.²¹

- **Atenco case:** As we reported last year, the notorious May 2006 case of police repression in the towns of Texcoco and San Salvador Atenco in the State of Mexico came before the Inter-American Court of Human Rights in 2016.²² The Inter-American Commission sent the case to the Court upon finding that the government had not carried out a sufficient investigation into the arbitrary detention and torture (including rape and other forms of sexual torture) against the 11 petitioners, since only a group of low-ranking material perpetrators had been charged.²³ It is worth noting that these perpetrators are not accused of committing torture but of failure to protect against it (that is, no one is directly charged with committing the acts of sexual torture). The Inter-American Commission recommended that Mexico investigate all forms of liability for these attacks, including responsibility through the chain of command, and abuses committed by Federal Police.

In November 2017, this case was the subject of a two-day hearing before the Inter-American Court, and litigation closed in early 2018, meaning that the parties await the Court's judgment this year. As of today, a growing number of the low-level material perpetrators charged in the case have won legal actions invalidating the arrest warrants or charges against them, showing that even these limited trials offer no guarantee of punishment due to the lack of solid construction of the accusations.²⁴

- **La Parota Dam case:** On January 7, 2018, serious human rights violations occurred in the rural community of La Concepción, Acapulco, Guerrero, where an operation of over 200 elements of the military, investigative police, Guerrero State Police, and Federal Police arbitrarily arrested 38 persons, carried out 25 illegal house searches, tortured at least eight individuals, and arbitrarily executed three indigenous police members.²⁵ As a result, a criminal process was brought against 25 indigenous leaders defending their right to territory who belong to the Council of *Ejidors* and Communities Opposed to La Parota Dam (CECOP) and the community police force.²⁶

The criminal process against these indigenous leaders has been characterized by a lack of impartiality, independence, and good faith. Although the state of Guerrero's Attorney General's Office opened an investigation into the torture allegations that occurred during the security operation, the legal representatives of the victims have not been able to review the case file. Conditions in the prison where the detainees are being held are precarious and, particularly in the case of Marco Antonio Suástegui Muñoz (CECOP's main spokesperson) and his brother, may amount to a form of punishment for their work as human rights defenders. There has been no progress in the investigation into the arbitrary that occurred. Although the Mexico office of the UN Office of the High Commissioner for Human Rights recommended applying the Minnesota Protocol in these three cases, Government of Guerrero has publicly declared that it would not do so.²⁷ To date, the federal government has not addressed these human rights violations, which are paradigmatic of the pattern of criminalization of human rights defenders and the excessive use of force in Mexico. According to Tlachinollan's documentation, some witnesses to the security operation affirm that police officers openly acknowledged that the Internal Security Law (discussed above) allowed them to perpetrate these acts with no judicial or legal oversight.

c. Update on the Tlatlaya investigation

As detailed in our 2017 memo, the Tlatlaya case (the extrajudicial execution of more than a dozen civilians by members of the Army in the State of Mexico in June 2014) remains in impunity. All those charged in relation to the case in civilian jurisdiction have been released. In military jurisdiction, only one soldier was convicted of disobedience and sentenced to one year, which he had already served in military prison and was thus released as well.

To date, the PGR has failed to properly investigate the military order to “take out criminals” that Mexican soldiers were following when the killings occurred. As we reported last year, 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. However, the PGR failed to follow up on this line of investigation, which led Clara Gómez, the surviving victim whose 15-year-old daughter was killed by the Army in Tlatlaya, to file a constitutional challenge (*amparo*) for the lack of investigation into the order, registered as case 545/2017.

In response, on July 31, 2017, the Fourteenth District Court for *Amparos* and Criminal Trials in Mexico City ordered the PGR to investigate the case with due diligence. The court found that the PGR had indeed failed to pursue necessary lines of investigation, making specific reference to the failure to investigate the chain of command implicated in the order to kill as had been indicated by Clara Gómez and her representatives (Center Prodh).²⁸ That is, the judicial authority did not consider that the PGR’s actions on the case were within its discretion as the federal institution charged with criminal investigations, but rather that the level of omissions in the investigation was such that the PGR was violating the victim’s constitutional rights. While the victim received a favorable decision in her legal challenge, this decision has not translated into advances in the investigation.²⁹ On the contrary, instead of complying with the judgment, the PGR appealed it, generating a new favorable judgment that the PGR has now appealed again.³⁰

d. Update on the case of the 43 disappeared students from Ayotzinapa, Guerrero

The Mexican government has not determined the whereabouts of the 43 forcibly disappeared students nor secured convictions for anyone detained in the case. On May 31, 2018, a Mexican federal collegiate tribunal issued an unprecedented ruling on four applications for constitutional relief (*amparo*) by nine of the individuals detained in the case.³¹ In the ruling, the tribunal found multiple irregularities in the detention and charges against these individuals due to the PGR’s investigative errors. The ruling not only applies to the detained individuals, but is also in favor of the constitutional rights of the families of the disappeared students who were victims of grave human rights violations. The ruling highlights grave irregularities and human rights violations in the investigation, including the use of torture to extract confessions and the failure to investigate Federal Police and military officials that may have participated in the students’ disappearance. The ruling also highlights a bias in the investigation, which has prioritized only one line of inquiry—that the students were taken to a local trash dump in Cocula, killed, and incinerated in an open pyre—which has no scientific basis.

The federal collegiate tribunal determined that the PGR’s investigation into the Ayotzinapa case has not been prompt, effective, independent, or impartial. Therefore, it ordered certain investigative actions to be redone and to investigate whether the confessions and testimonies used by the PGR to substantiate its official theory of the Ayotzinapa case were obtained through torture. The tribunal also ordered the creation of an Investigative Commission for Truth and Justice (Iguala Case) to continue the investigation.

While the investigation will remain under the responsibility of the PGR, the ruling calls for the victims and their legal representatives to participate in the Investigative Commission with the technical support of the CNDH and national and international organizations such as UN bodies. The new Commission is mandated to redirect the case towards the lines of investigation identified by the Interdisciplinary Group of Independent Experts (GIEI) in their two reports,³² as well as in the report *Double Injustice*—issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in March 2018—on the use of arbitrary detentions and torture in the Ayotzinapa investigation.³³

According to Mexico's *Amparo* Law, the tribunal's decision is final and binding. However, given the high profile of the case and in a sign of the Mexican government's continued lack of will to fully investigate the facts, eight federal institutions—including the Presidency, the Congress, the PGR, the Ministry of Defense, and the Navy, among others—have presented more than a hundred legal claims, clarification requests, and extraordinary reviews challenging the ruling before the Mexican Supreme Court, the federal collegiate tribunal that issued the ruling, and the tribunal that should review the ruling's implementation. The PGR claimed that it is impossible to comply with the ruling since Mexican law does not foresee the creation of this type of investigative commission, asserting that the PGR is the only agency with the legal power to investigate cases and appealing the content of the sentence.

While some of these proceedings were dismissed by the federal collegiate tribunal and the Mexican Supreme Court,³⁴ the unitary tribunal that should review the ruling's implementation recently issued a troubling resolution, ruling that the PGR's motion for legal impossibility to comply with the federal collegiate tribunal's ruling was justified.³⁵ Now the Supreme Court must rule on the legal possibility of the creation of the Investigative Commission. Nevertheless, the considerations in the ruling regarding the irregularities, biases, and human rights violations that occurred in the context of the Ayotzinapa investigation have not been contested, and the considerations of the federal collegiate tribunal on this matter continue to be binding. In the meantime, the Mexican government has taken no steps to meet with the families or their legal representatives to discuss any further development in the investigation into the case or in the search for the students.

Apart from the Mexican federal collegiate tribunal's ruling, on June 6, 2018, the Inter-American Commission on Human Rights (IACHR) issued a performance report on the 18 months of work of the Special Follow-Up Mechanism for the Ayotzinapa Case, which was created to follow up on the recommendations of the GIEI.³⁶ In the report, the IACHR calls on the Mexican government to change its narrative about the case, given the overwhelming evidence that their official theory on the Cocula trash dump is not backed by scientific evidence. Other key areas of the Mechanism's findings include the need to execute several outstanding arrest warrants in the case, the need to further investigate the role of the Federal Police and the military in the events surrounding the students' disappearance, the importance of continuing to investigate the use of buses in cross-border drug trafficking and the role of the criminal group *Guerreros Unidos* and its connections in both the United States and Mexico, and the need to further investigate allegations of torture and other irregularities in the investigation (as is highlighted in the federal collegiate tribunal's ruling and detailed in the torture section below).

In April 2018, the Mexican media published confidential information provided by the U.S. Department of Justice to the PGR on an ongoing trial—known as the Chicago case—taking place in a District Court of Illinois against members of *Guerreros Unidos* for drug trafficking from Guerrero to Illinois. The information included telephone messages between alleged criminals in Iguala, Guerrero and in Chicago from the night of the 43 Ayotzinapa students' disappearance and in the days after the events, in which information about the events was discussed and even important instructions were issued from the U.S. The Mexican

government was negligent in safeguarding this information that is key to the investigation and leaked it to the media. Nevertheless, the information proves the importance of strengthening collaboration with U.S. agencies in investigating the case, which could certainly deepen understanding of key information for clarifying the case.

As we described in our August 2017 memo, and as is reiterated in the IACHR and OHCHR reports discussed above, the Mexican government has not fully investigated allegations of obstruction of justice by federal officials involved in the case. The GIEI's second report found several irregularities in the procedures carried out by Mexican federal officials in the San Juan River where a bag containing a bone fragment of one of the students was found.³⁷ These included the "unlawful movement of a detainee who was questioned without his defense lawyer present [and] signs that that detainee was tortured while in custody."³⁸

The inspector general who was initially in charge of carrying out an internal investigation into these matters determined "the responsibility of the then-director of the Criminal Investigation Agency of the PGR for engaging in investigative acts without the supervision of the Public Prosecution Service; breaking of the chain of custody, and failure to formalize proceedings in violation of the right to truth."³⁹ The inspector general concluded that there were numerous and serious irregularities in the PGR's actions that warranted a criminal investigation. However, this inspector general was suddenly removed from his post and the final report on the internal investigation, issued in December 2016, eliminated the main findings of the initial report and found the faults in the Ayotzinapa investigation to be minor.⁴⁰ The IACHR notes that in February 2017, the students' families filed an application for constitutional relief (*amparo*) so that the courts might determine if the resolution of the Inspector General's Office was comprehensive and that it conformed to the highest standards, but Mexican courts have not reached a final decision for this *amparo*.

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

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, due in large part to the near-absolute impunity that prevails for this crime.

In the National Survey of Detained Persons conducted by Mexico's National Institute for Geography and Statistics (INEGI) in late 2016, which surveyed individuals held in all of Mexico's municipal, state, or federal prisons, 46.6% of detainees who had given a statement to a public prosecutor reported being pressured by the police or other authorities to give a different version of the events. 41% of the detainees who had confessed said they had declared their guilt because they had been pressured, threatened, or physically assaulted. Detainees reported physical violence (64%) and psychological violence (76%) during their arrest, and reported that, while at the public prosecutor's office, they were held *incommunicado* or in isolation (49%), threatened with false charges (41%), undressed (40%), tied up (29%), blindfolded or had a bag over their head (26%), and suffocated (25%). 20% said authorities made threats to their families and 5% said harm was done to their families.⁴¹

As we have referenced in previous memos, sexual torture by Mexican police and members of the armed forces against women is also widespread. Since 2005, the CNDH has issued recommendations for 17 cases involving sexual torture. The human rights violations suffered by the 36 women victims in those cases

include electrical shocks to the vagina and the breasts, rape, forced nudity, touching, and sexual harassment, with the perpetrators primarily being from the military.⁴²

The federal Specialized Torture Investigation Unit, created in October 2015 within the PGR, reported in February 2018 that it had opened 8,335 investigations but had only presented charges in 17.⁴³ In 2017, the Unit ordered expert examinations designed to detect possible medical and psychological signs of torture in only 17 cases.⁴⁴ In early March 2018, the newspaper *Milenio* published information derived from freedom of information requests, which detailed that the Unit executed two arrest warrants for officials involved in torture between January 2017 and January 2018.⁴⁵ In addition, the article details that since the creation of the Unit in October 2015 until the beginning of 2018, judges had rejected 21 requests for arrest warrants from the PGR and approved 50 arrest warrants presented by the Unit.

In July 2017, the Unit reported at least 2,700 investigations opened against members of the Army and the Navy,⁴⁶ yet in September 2017—while providing contradictory numbers regarding investigations opened against members of the military—the PGR reported having presented charges in just four cases in which the Army is implicated since 2015, with no convictions.⁴⁷

There is also a troubling continuation of the role of military prosecutors and judges in investigating torture cases involving soldiers, which highlights the need to further reform the Military Code of Justice to limit the military's ability to be the first to investigate any crime committed by soldiers and to solidify the role of civilian authorities in investigations.⁴⁸ In response to a request for information regarding how many torture investigations against soldiers included an expert examination to detect possible medical and psychological signs of torture, the PGR reported a total of two, both requested by military prosecutors, with eight pending applications of expert examinations, all requested by a military judge in Mexico City.⁴⁹

In the UN Special Rapporteur on Torture's February 2017 follow-up report on Mexico, the Rapporteur observed, "Despite public statements by authorities, there are no signs of impartial and independent investigations" of torture in Mexico.⁵⁰ He continued, "Additionally, reports indicate that judges, particularly local [state-level] ones, do not always accept complaints of torture, or if accepted, they do not follow up on them, failing to order medical examinations following detention or the immediate opening of an investigation."⁵¹

a. Governmental resistance to implementation of the General Law on Torture

While the General Law on Torture that came into effect in June 2017 was a step in the right direction, actions by Mexico's executive and judicial branches have openly violated the precepts contained in the law since its enactment.

First, in November 2017, just months after the law entered into force, the First Chamber of the Supreme Court of Justice issued the binding judicial precedent 1a./J. 101/2017 (10a.), which is contrary to the absolute prohibition of torture and limits the rights of defendants who allege through constitutional challenges (*amparos*) that their convictions are based on evidence obtained through torture. This precedent implies that only those allegations of torture that result in the self-incrimination of the victim could lead to the exclusion of illicit evidence, leaving open the admission of confessions and statements coerced under torture from co-defendants.⁵² This is concerning because it prevents a retrial in cases in which police and prosecutors coerce two or more people to incriminate each other; for example, in the Ayotzinapa case, victims of torture were forced to incriminate other individuals to confirm the authorities' theory of the case. This precedent therefore openly contradicts the General Law's provisions (which

themselves reflect international law already binding on Mexico), which clearly establish that no evidence obtained through torture may be admitted in criminal trials.⁵³

Second, in February 2018 the National Conference of Prosecutors announced the adoption of a new Uniform Protocol for the Investigation of Torture.⁵⁴ This Protocol violates the investigation procedures established in the General Law,⁵⁵ and in fact establishes a new procedure incompatible with Mexico's adversarial criminal justice system, by requiring prosecutors to carry out a long list of investigative actions prior to submitting torture complaints to the Specialized Torture Investigation Unit, or even registering a case in the National Torture Registry. Under the Protocol, only upon finding evidence that leads to a presumption of torture should prosecutors send the complaint to the Unit so that an investigation can be opened and the complaint can be registered for statistical purposes. This means that in many cases, torture victims' complaints will not lead to an investigation or even contribute to official statistics on the number of people denouncing torture. The Protocol is currently the subject of a constitutional challenge (*amparo*) filed by Centro Prodh.

There have also been no advances in the implementation of the National Program for the Prevention and Sanction of Torture, which—as outlined in the General Law—should be led by the PGR. Additionally, there has been only meager progress in implementing the Mechanism to Follow Up on Cases of Sexual Torture, convened by the National Commission to Prevent and Eradicate Violence against Women (CONAVIM) within the Ministry of the Interior. Despite the large number of cases of sexual torture in Mexico the Mechanism has issued recommendations on just two cases since its establishment in 2015.

b. Lack of due diligence in response to allegations of torture at the state level

Mexico's most recent report to the UN Committee on the Elimination of Discrimination against Women (CEDAW), which evaluated Mexico last July 6, affirms that 47% of Mexico's states are preventing torture.⁵⁶ However, the source of this number is a questionnaire filled out by state supreme courts in which they were asked whether they had acted with due diligence to prevent torture of women, to which 15 of the courts responded "yes", 14 responded "no", and 3 preferred not to answer.⁵⁷ In light of the constant documentation of our organizations and other Mexican and international NGOs of judicial authorities' failure to properly clarify complaints of torture, exclude evidence obtained under torture according to international standards, and other problems, the information presented by the government in its CEDAW report is not a reliable measure of due diligence in torture cases brought before state supreme courts, and much less by state governments (which include police, prosecutors, other state judicial authorities, etc.). While we consider this data to not have any methodological rigor, it is highly concerning that nearly half of Mexican state supreme courts' own self evaluations is that they do not act with due diligence in cases of torture of women.

c. Lack of transparency regarding torture investigations and their results

Lack of transparency and limited access to information regarding the number of torture investigations opened and their results makes it difficult to track the Mexican government's progress in investigating and sanctioning torture. Since June 2016, the PGR has not publicly announced new criminal charges against public officials for torture, nor provided any information on arrests made. The most recent public data was published in the fifth report of the Presidential Administration of Enrique Peña Nieto in September 2017, which reported that 4,390 cases were under revision at the federal level, with 777 investigations under the new adversarial justice system.⁵⁸ However, the report did not provide any information on arrest warrants, suspects detained, or formal charges presented. Much of the information

available on torture investigations comes from media reports on responses to freedom of information requests, such as the *Milenio* article cited above.

d. Torture in the Ayotzinapa investigation

As mentioned above, a March 2018 report by the OHCHR on human rights violations in the PGR's investigation into the Ayotzinapa case documents "a consistent pattern of human rights violations and an almost uniform *modus operandi*"⁵⁹ regarding how people were arbitrarily detained and tortured to extract confessions, finding strong evidence of torture in 34 cases, including five detainees whose testimonies are key for sustaining the official theory of the case. The report found that these human rights violations occurred during the federal government's investigation into the case. Of the torture victims, 23 were allegedly tortured by federal investigative police within the PGR's Criminal Investigation Agency (AIC). The types of torture documented by the OHCHR include electrical shocks, sexual assault and rape, threatening to kill the detainees and their family members, boxing the ears, placing a plastic bag over a suspect's head to cause asphyxiation, and waterboarding. The report indicates that one of the detainees, Emmanuel Alejandro Blas Patino, "appears to have died as a result of torture inflicted by elements of the Secretariat of the Navy (Semar) who reportedly took part in his arrest."⁶⁰

According to the OHCHR, these abuses have yet to be properly investigated or sanctioned, and there is strong evidence pointing to Mexican authorities trying to cover them up, as was discussed in a previous section of this memo. The IACHR has also consistently expressed concern for the lack of accountability for allegations of torture in the case. In the Commission's June 5 performance report on the first year and a half of work of the Special Follow-Up Mechanism for the Ayotzinapa Case, the Commission notes "a startling difference between the positive cases of torture established by the PGR, on one hand, and OHCHR-Mexico and the GIEI, on the other" and calls for more analysis of this discrepancy. The IACHR also highlighted that it is "troubled by the fact that in both confirmed cases of torture in the case the PGR has not taken criminal action against anyone responsible."⁶¹

The Mexican federal collegiate tribunal's rulings on the case, issued on May 31, 2018, also found that in multiple cases, members of the Navy and other government agencies had detained suspects and irregularly delayed their presentation before the PGR, and that it was particularly during these delays that the detainees suffered injuries and/or "spontaneously" confessed to having participated in the disappearance of the 43 students. The tribunal concluded that the justifications authorities gave for these delays lacked credibility, and ordered that an investigation be undertaken to determine whether the confessions and testimonies used by the PGR to substantiate its official theory of the Ayotzinapa case were obtained through torture.

e. Lack of progress on cases involving torture

As we noted in our last memo, three victims included in Amnesty International's 2016 report *Surviving Death: Police and Military Torture of Women in Mexico*—Korina de Jesús Utrera Domínguez, Denise Francisca Blanco Lovato, and Wendy Noreli "Charly" Hernández Díaz—were acquitted and released from prison in December 2016. However, despite having been cleared of the false charges against them, the victims have not had access to justice, as the PGR has failed to advance in the investigation of the perpetrators (Navy officers who detained the victims in Tabasco in 2011). Of the 10 cases included in Amnesty International's report, no state agents have been charged for torture. In three of these cases—María Magdalena Saavedra, Verónica Razo, and Mónica Esparza Castro—the CNDH has recognized the

torture committed and issued recommendations, but the women remain in prison and the investigations into the torture they suffered has not moved forward.⁶²

The case of sexual torture of Yecenia Armenta also remains in impunity: Yecenia was arbitrarily detained, tortured, and raped in 2012. 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 Sinaloa state police custody. On June 7, 2016 a judge acquitted Yecenia, but the police officers who tortured her have not been held to account.

Another case referenced in prior memos and that remains in impunity is the arbitrary detention and sexual torture of Claudia Medina Tamariz. She, too, was acquitted of the false charges against her (in 2015), but the Navy officers who dragged her out of her house in Veracruz and tortured her in 2012 have not been charged. The prosecutorial agent in charge of the PGR’s torture investigation has changed three times, and the Navy has sought to hinder certain investigatory activities.

On June 16, 2009, four civilians—Ramiro Ramírez Martínez, Rodrigo Ramírez Martínez, Orlando Santaolaya Villarreal, and Ramiro López Vázquez—were detained without charge by members of the Army in Playas del Rosarito, Baja California. The four men were accused of organized crime. During their arrest, transfer, and arbitrary detention in military facilities in the city of Tijuana, they suffered repeated acts of torture and ill-treatment.

Due to the Mexican government’s failure to conduct diligent investigations and to provide reparations to the victims, the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), the World Organization against Torture, and the Citizens’ Commission of Human Rights of the Northwest (CCDH) submitted a communication against Mexico to the United Nations Committee against Torture on March 15, 2012. On September 24, 2015 the UN Committee against Torture condemned Mexico for the torture committed against these four individuals by members of the Mexican Army.⁶³ This ruling is a landmark decision that points to the set of bad practices that has been the breeding ground for the widespread use of torture in Mexico for many years. The case is currently under preliminary investigation within the PGR, and no arrest warrant has been issued.

In another case from 2012, 25 police agents accused of being members of organized crime groups were arbitrarily arrested at their workplace in the city of Tijuana, Baja California and taken to local military facilities under pre-charge detention (*arraigo*), without an arrest warrant. During their detention, the 25 agents suffered grave acts of physical and psychological torture, death threats, and intimidation.⁶⁴ The CNDH issued a recommendation on the case, condemning their arbitrary detention, illegal imprisonment, and torture, and determining the responsibility of the military. The case is under preliminary investigation within the PGR, but there has been no significant progress in the case.

Another example of impunity is the case of Ángel Amilcar Colón Quevedo, who was arbitrarily detained in Baja California in 2009 and tortured, including by police, during his illegal detention in an Army base. The CNDH issued a favorable recommendation in his case in 2017,⁶⁵ but there have been no meaningful advances in the PGR’s torture investigation.

f. Torture in the context of collusion between state agents and criminal groups

Torture in Mexico can also occur in the context of collusion between state agents and criminal groups. Ciudadanos en Apoyo de Derechos Humanos’ (CADHAC) documentation of human rights abuses in state

penitentiaries in Nuevo León reveal a troubling trend of torture and other abuses being carried out in state prisons either directly by, or with the acquiescence of, prison authorities. While criminal groups are usually the direct perpetrators of torture in these cases, these abuses are allowed to persist with the knowledge and consent of officials. According to CNDH's 2017 National Diagnostic of Penitentiary Supervision, Mexican authorities' lack of control over prisons has resulted in the persistence of violence and human rights violations against detainees.⁶⁶

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

Though there is a new General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals and the National Missing Persons Search System as of the beginning of this year, its implementation to date has been incipient, and little progress has been made in prosecuting security forces responsible for cases of enforced disappearances. According to information provided by the Federal Judicial Branch, from December 1, 2006 to December 31, 2017 only 14 sentences for enforced disappearance were issued, 12 of them convictions.⁶⁷

Moreover, the continuous discoveries of mass graves and ongoing cases of disappearances by security forces across the country highlight the widespread nature of disappearances and impunity in these cases. According to the latest official statistics through April 2018, there are 37,435 disappeared persons in Mexico.⁶⁸ Nevertheless, the official registry continues to be outdated and does not provide uniform information on all the disappeared people registered. In November 2017, a group of civil society organizations led by Data Cívica presented a database naming all the people included in the official database of disappeared people.⁶⁹

In April 2017, the CNDH released a special report on disappearances and clandestine mass graves, in which it documented that, according to official data, from January 1, 2007 to September 2016, 855 mass graves had been found, with 1,548 bodies exhumed from these sites, out of which 796 were identified. In addition, Coahuila, Colima, Nuevo León, and Veracruz informed the CNDH that they have exhumed or found a total of 35,958 human or bone remains.⁷⁰ A total of 343 clandestine graves were found in the state of Veracruz alone in 2017.⁷¹ Over 40% of total registered disappearances occur in Mexico's six northern border states, where there have been concerning recent cases.⁷² In May, the OHCHR announced that it had documented the disappearance of 23 individuals by Mexican security forces—including five minors—that occurred between February and May of 2018 in Nuevo Laredo, Tamaulipas.⁷³ The federal Specialized Prosecutor's Office on Disappearances opened an investigation into the disappearance of 28 individuals related to these incidents in early June, and the Navy has temporarily suspended 30 marines, but there have not yet been any convictions in these cases.⁷⁴ Reports from NGOs in Nuevo León have expressed concern at the *modus operandi* being utilized by organized crime and security forces in carrying out disappearances.⁷⁵

a. The issuance of the General Law on Enforced Disappearance of Persons, Disappearance Committed by Individuals and the National Missing Persons Search System (LGDFDP)

The General Law on Disappearances was passed in November 2017 and entered into force on January 16, 2018, after several years of debate and pressure by families of the disappeared and civil society organizations. The passage of the law represented an important step forward, as it establishes a framework for the Mexican government to begin addressing the search, investigation, and prosecution of enforced disappearances. However, implementation of the law and the various mechanisms it establishes

has been delayed, and consultations with civil society on its execution have lacked transparency and engagement as required under the law. Following the establishment of the key mechanisms under the law, their full funding continues to be a major challenge, particularly at the local level but also at the federal level. Other challenges include the implementation of search and investigation protocols, the National Registry of Exhumations and the Disappeared, and the training of government officials, local law enforcement, and forensic experts on these matters. In its first recommendation, the Citizens' Council created under the law cited the widespread lack of awareness about the law by federal and state government officials, as well as confusion regarding the delineation of responsibilities established under the law.

- **Regulation for the implementation of the law (*Reglamento*):** The regulations for the implementation of the law continue to be discussed between the government, families of the disappeared, and civil society. As they stand now, the regulations have several shortcomings, including failing to establish the responsibility of state-level institutions and failing to establish the rights of victims and their participation in the new mechanisms. The deadline for the government to issue the regulation is July 14.⁷⁶
- **Establishment of the federal and local specialized prosecutor's offices (*fiscalías especializadas*):** The law requires consultation with families in the development of regulations to create the federal prosecutor's office specialized in investigating and prosecuting disappearances within the Attorney General's Office. However, the regulations, which were published in mid-February, had been done without the families' participation, and they lacked clarification on the responsibilities of other offices and units within the Attorney General's Office that are responsible for investigating disappearance cases.⁷⁷ They also failed to specify how federal authorities should coordinate with state-level specialized prosecutor's offices. The federal Specialized Prosecutor's Office remains weak and underfunded. As of the end of last year, it had only 37 public prosecutors' offices and 859 cases in process, with a total of 1,535 victims.⁷⁸ The local specialized prosecutors' offices were supposed to be created in all 32 states by February 15, 2018. However, as of June 2018, only 13 states have met this requirement.⁷⁹
- **Establishment of the national and local search commissions (*Comisión Nacional de Búsqueda y comisiones locales de búsqueda*):** The head of the National Search Commission (the entity tasked with coordinating the search and identification of the disappeared and establishing a national registry) was appointed by mid-March, a month after the law established that he should have been named. Moreover, the process to select him lacked transparency and civil society engagement with the proposed candidates.⁸⁰ This national body was also first established within the National Security Commission instead of directly within the Ministry of the Interior, without consultation with the families as established by the law, but later moved accordingly after they expressed opposition.⁸¹ Under the law, the local search commissions were supposed to have been established under the umbrella of the National Search Commission by mid-April.⁸² To date, the commissions have only been created in seven states,⁸³ and the establishment of these seven commissions does not mean that they are fully operational or that they have named commissioners to head these entities, much less that they have the resources to carry out their work.⁸⁴ The level of consultation with civil society on the selection of the local commissioners has been varied. In the state of Nuevo León, for example, there are mixed civil society perspectives about the background of the local commissioner selected being consistent with the qualifications required under the law.⁸⁵ In states where local search commissions have been created, such as

Nuevo León, NGOs and family collectives point to a lack of funding, personnel, and infrastructure as major challenges for their effectiveness moving forward.⁸⁶

- **Establishment of the Citizens' Council:** The Citizens' Council (*Consejo Ciudadano*)—an independent body within the National Search System—was named by the Mexican Senate in mid-April and includes five representatives of associations of families of the disappeared, four experts, and four civil society members. It recently emitted its first recommendation on the numerous gaps in the implementation of the first six months of the law (*Recomendacion 01/2018 Consejo Nacional Ciudadano del Sistema Nacional de Búsqueda de Personas*).⁸⁷

b. Limited progress on prosecutions of security forces involved in enforced disappearances

In mid-February, an estimated 30 former high-ranking state security officials and members of the police involved in a paramilitary group that carried out disappearances and acts of torture of mainly young men in the state of Veracruz in 2013 were arrested.⁸⁸ This was the first case following the implementation of the law to investigate chain-of-command responsibility. Prosecutions for the accused have yet to move forward within the state-level Attorney General's Office.⁸⁹

c. Negligence in searching for the disappeared and the lack of identification of remains

Despite the large number of body or bone remains exhumed from clandestine mass graves in different parts of the country, as noted above, there is a negligent lack of forensic identification of these remains and resources to process and house remains according to international standards.⁹⁰ Moreover, the relatives of the disappeared are leading most of the searches in a large part of the country, successfully gathering information and leading what are called "civilian searches" of mass graves, very often in precarious conditions without protection. For example, in Veracruz, the group "Familiares en Búsqueda Maria Herrera" A.C. has led different searches in collaboration with the PGR and the local prosecutor's office. Maria Herrera is the mother of four disappeared sons, two of them in the state of Veracruz. Searches at a site called "Gallera", where burned body remains were found, initiated in November 2017⁹¹ and continued later in May 2018.⁹² Despite the PGR being in charge of adequately marking and preserving the remains found, the obligation to carry out the scientific analysis is under the responsibility of the local prosecutor's office. However, more than seven months after the first search began, the local prosecutor has not processed the forensic evidence gathered.

d. New opportunities to strengthen the prosecution of gross human rights violations in the transition to a new federal administration

The upcoming transition to a new federal administration in Mexico presents new opportunities to monitor and promote improvements in the human rights situation in Mexico, especially regarding the construction and development of autonomous institutions to investigate crimes and human rights violations. In this sense, we identify at least three key issues to monitor: a) the appointment of an autonomous federal prosecutor, b) other institutional reforms related to criminal investigation, such as making forensic and other expert services independent of prosecutors' offices, and c) progress in the criminal investigation of emblematic cases such as those mentioned in this memo.

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