

## R3D INTERVENTION

### UPR 45th Pre-sessions - Mexico

#### The right to privacy in Mexico

Red en Defensa de los Derechos Digitales (R3D) is a non-profit organization in Mexico that uses research, advocacy and litigation to defend digital rights in Mexico, including the right to privacy and freedom of expression.

The Mexican legal framework establishes various surveillance powers carried out by different authorities, including the interception of private communications, as well as massive and indiscriminate retention of communications data and real-time geolocation. However, these laws do not offer sufficient clarity and safeguards to prevent abuses. Additionally, there is no mechanism capable of detecting and preventing the acquisition of surveillance equipment and systems that do not comply with human rights standards or facilitate the circumvention of accountability mechanisms.

This is particularly troublesome since several abuses have been found in the acquisition and use of such surveillance technologies, as in the case of the *Pegasus* malware. Pegasus is a spyware created by NSO Group, an Israeli company, which, once successfully implanted on a phone, can actively record or passively gather a variety of different data about the device. By giving full access to the phone's files, messages, microphone and video camera, the operator can turn the device into a silent digital spy in the target's pocket.

This spyware has been used to stifle peaceful political dissent and target journalists, human right defenders and social activists. In past administrations, more than 25 surveillance cases against journalists and human rights defenders in Mexico were documented by civil society organisations. They also documented that Mexican authorities, such as the Mexican Army, the intelligence agency and the (then) Attorney General's Office (PGR) had purchased this software.

Despite the change of government and the repeated statements by the current President promising that surveillance on journalists and human rights defenders would no longer occur, and that *Pegasus* malware or any other similar private communications interception system would no longer be operated, unlawful surveillance prevails in Mexico. Recently, the investigation "*Ejército Espía*", carried out by media and civil society organisations, revealed new cases of *Pegasus* surveillance attributable with a high degree of certainty to the Mexican Army.<sup>1</sup>

The Army has systematically misused surveillance technologies to interfere with investigations carried out officially and by human rights defenders and journalists related to its human rights abuses. In fact, internal army documents confirm that the surveillance and monitoring activities carried out by SEDENA —the agency responsible for the Mexican army— are mainly done

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<sup>1</sup> R3D: Red en Defensa de los Derechos Digitales, Article 19, Social Tic, *et. al.*, *Ejército Espía*, available at: <https://ejercitoespia.r3d.mx/>

against civil society organisations, human rights defenders, activists and journalists, where they are classified as "pressure groups"<sup>2</sup> for their work defending human rights.

Unlawful surveillance exacerbates in a context where Mexico has led and maintained for more than fifteen years a military approach to public security risks, granting powers to the military that are constitutionally prohibited. The Army does not have legal powers to intercept private communications. Nonetheless, as demonstrated at least since 2011, it has illegally done so.

In 2017, 2022 and 2023, surveilled victims filed criminal complaints with the Special Prosecutor's Office for Crimes against Freedom of Expression (FEADLE) for, among others, the crimes of illegal interception of private communications and illegal access to computer systems.

However, despite multiple calls by national and international actors – such as the Office of the UN High Commissioner for Human Rights (OHCHR)<sup>3</sup>, the UN Special Procedures and the Inter-American Commission on Human Rights (IACHR)<sup>4</sup> – regarding the need to carry out a diligent investigation, with reinforced autonomy guarantees, more than six years after the announcement of the launch of the first investigation, and a year after the launch of the second, no significant progress has been made. Not only has the government failed in its obligation to bring truth and justice to the victims, but it has perpetuated impunity and generated the conditions for the repetition of the unlawful surveillance.

Consequently, we encourage Member States participating in the 45th UPR session to include the following recommendations to Mexico:

- Adopt a moratorium on the sale, acquisition, transfer and use of surveillance technology conducted by means of hacking electronic devices through intrusive software, until regulatory frameworks exist, and their use is in line with human rights.
- Establish an international group of experts to autonomously and independently investigate and punish those responsible for the unlawful surveillance of journalists and human rights defenders with Pegasus malware.
- Adopt legal and administrative reforms of surveillance powers, implementing safeguards to guarantee that the practice of these activities is commensurate with a focus on human rights.

Also, to ask the Mexican government the following questions:

- What progress has been made in the criminal investigations that started in 2017, 2022 and 2023 for the crime of illegal interception of private communications against human right defenders and journalists?

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<sup>2</sup> <https://twitter.com/CentroProdh/status/1576928933312102400>

<sup>3</sup> Office of the UN Human Rights Office of the High Commissioner, available at: <https://hchr.org.mx/comunicados/la-onu-dh-expresa-su-preocupacion-por-actos-de-vigilancia-ilicita-contra-personas-defensoras-de-derechos-humanos-y-periodistas/>

<sup>4</sup> UN Special Rapporteur on freedom of opinion and expression & Special Rapporteur for Freedom of Expression (RELE) of the Inter-American Commission on Human Rights (IACHR), *Declaración conjunta sobre programas de vigilancia y su impacto en la libertad de expresión*, June 21, 2013, available at: <https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=926&IID=2>

- What has the government done regarding the UN Special Procedures' recommendations, in particular those of the Freedom of Opinion and Expression Rapporteurs related to the need to reform the surveillance legal framework?

**Thank you for your time.**