

**Access Now submission to the United Nations  
on the Universal Periodic Review - 2018 Cycle  
Mexico**

**About Access Now**

1. Access Now ([www.accessnow.org](http://www.accessnow.org)) is an international organisation that works to defend and extend digital rights of users globally. Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet's continued openness and the protection of fundamental rights. We engage with an action-oriented global community, as through our RightsCon Summit Series, and our technology arm operates a 24/7 digital security helpline that provides real time direct technical assistance to users around the world.
2. Access Now advocates an approach to human rights that protects user rights, including privacy and freedom of expression. Access Now has worked extensively on digital rights including commenting on the ruling on free expression and web blocking, protection of Net Neutrality and government shutdowns of communications networks.

**Domestic and international human rights obligations**

3. Mexico has ratified various international human rights instruments, which include the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).
4. Article 6 of the Mexican Constitution of 1917 promotes freedom of expression rights. This country's constitution in Article 16 limits the government's power to intercept private communication and mandates prior court authorization. The Mexican Penal code defines private communication as the systems of communications or programs that result in technological evolution, as well as data exchange, audio information, and electronic archives.
5. On January 2017, Mexico enacted The Federal Law of Protection of Personal Data in the Possession of Private Parties (Ley Federal de Datos Personales en Posesión de Particulares) in order to protect individuals' personal data, including the right of data subjects to object to data processing, to request access to their personal data, among others rights.

**Developments of right to privacy in Mexico**

6. The 2014 Telecommunication Law granted the Mexican government greater power to conduct surveillance and allow for real-time geolocation. Article 190 of this law also imposes a 24-month data retention period. In 2016, the Mexican Supreme Court upheld this data retention period as constitutional.<sup>1</sup> However, the Supreme Court did not address whether mass data retention is per se unconstitutional.<sup>2</sup>
7. The government is undermining individuals' right to privacy by using surveillance technology to target human rights activists and journalists. Mexico is among the top purchasers of government hacking surveillance tools. Der Spiegel reported that Germany alone exported 1.2 million euros of surveillance technology to Mexico.<sup>3</sup> Additionally, the Mexican government was the greatest buyer of software from an Italian Surveillance company called Hacking Team.
8. In August 2017, Citizen Lab and Mexican partners documented at least 21 cases where the government used Pegasus, software developed by Israel cyberarms dealer NSO Group, in order to target journalists, human rights lawyers, activists, and political figures.<sup>4</sup> This software intercepts private communication, including record of conversations, text messages, emails, search history and contact list, as well as allows for remote access to both the phone's camera and microphone.
9. Since 2011, at least three Mexican federal agencies have purchased about \$80 million worth of spyware created by the Israeli cyberarms manufacturer.<sup>5</sup> The government employed Pegasus surveillance software to track a team of international experts investigating the disappearance of 43 Veracruz students; two prominent Mexican lawyers, representing the families of three slain Mexican women; and a prominent journalist and her minor son, among other victims.
10. Following these surveillance incidents, United Nation experts called for an independent investigation into the use of spyware against human rights defenders and journalists.

## **Developments of Freedom of Expression Rights in Mexico**

11. Although the Mexican government has increased its censorship practices, violence by both the state and private actors represent a more imminent threat to freedom of expression rights. Mexico is among the deadliest countries to be a journalist; and according to the Committee for the Protection of Journalists, "the rise in the number of journalists murdered in Mexico in retaliation for their work is

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<sup>1</sup> <https://www.eff.org/deeplinks/2016/12/surveillance-latin-america>

<sup>2</sup> <https://www.eff.org/deeplinks/2016/12/surveillance-latin-america>

<sup>3</sup> <https://itsrio.org/wp-content/uploads/2018/01/digital-rights.pdf>

<sup>4</sup> <https://citizenlab.ca/2017/06/reckless-exploit-mexico-nso/>

<sup>5</sup> <https://www.nytimes.com/2017/06/19/world/americas/mexico-spyware-anticrime.html>

terrible news and suggest that the Mexican government has failed in its public commitments to end the culture of impunity.”<sup>6</sup>

12. The Mexican government uses cyber troops in order to target journalist and spread fake information on social media platforms.
13. On December 2, 2013, just days after the Mexican government announced that it would fully respect freedom of expression online, the government requested the takedown of 1dmx.org, a website that was critical of the Mexican government. The takedown lasted three months.

## **Recommendations**

14. Mexico can improve its human rights record and protection of digital rights in several areas. We accordingly recommend that the government of Mexico:
  - a. Refrain from using surveillance, whether mass or targeted, to intimidate human rights activists and journalists, and curtail its use to instances approved by impartial, competent judicial authorities, following proper procedure, with full transparency;
  - b. Not censor online and offline content other than in instances strictly adhering to the necessary and proportionate standard Article 19 of the ICCPR, as interpreted by General Comment 34, in substance and procedure;
  - c. Cooperate with United Nations treaty mechanisms and issue standing invitations to UN special procedures such as the UN special rapporteurs on freedom of expression and privacy; and
  - d. Enact laws that protect data subjects’ rights as well as regulations that further access to information and freedom of expression rights.

*The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. Access Now is grateful to make this submission.*

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<sup>6</sup> <https://www.npr.org/sections/parallels/2017/12/22/572822696/number-of-journalists-killed-in-mexico-reaches-historical-high-report-says>