

## Introduction

1. The submitting organisations welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Mexico. This submission addresses Mexico's compliance with its international human rights obligations in relation to freedom of expression and information, with a focus on:
  - National institutions protecting and promoting human rights;
  - Legal framework for free expression;
  - Safety of journalists;
  - Access to the Internet;
  - Access to information.
2. Notwithstanding recommendations accepted during its last UPR to improve the situation for these rights, civic space has continued to shrink in Mexico. The rights to freedom of expression and information, freedom of assembly and association, and to privacy, online and offline, have been systematically undermined by the government, weakening the fundamental mechanisms of democratic accountability in the country.

## National institutions protecting and promoting human rights

### National Human Rights Commission

3. Mexico accepted recommendations to strengthen national institutions responsible for the protection of human rights, including the National Human Rights Commission (CNDH by its Spanish acronym).<sup>1</sup> However, sufficient political will and adequate resources to ensure its effectiveness are still lacking.
4. The CNDH is mandated, *inter alia*, to defend and promote the human rights recognised in the Constitution, international treaties and national laws. The CNDH is empowered to investigate complaints by victims of human rights violations, and issue recommendations to the government agencies implicated in these violations, setting out individual remedies, and structural remedies aimed at ensuring guarantees of non-repetition. However, the CNDH's recommendations are not binding, and there is no formal mechanism for the CNDH to follow-up on recommendations to ensure compliance, undermining their impact.
5. The CNDH has only rarely issued recommendations in complaints submitted by journalists: out of 283 complaints between 2012 and 2017, only 4 individual recommendations were issued.<sup>2</sup> As a result, victims in more than 200 cases have not received reparations, and measures to prevent violations recurring have not been implemented. Further, despite clear evidence of escalating threats faced by those exercising their free expression rights, the CNDH has issued only two thematic recommendations: 'concerning the exercise of the right to freedom of expression in Mexico (24/2016) and 'concerning attacks against HRDs' (25/2016).<sup>3</sup>

### Criminal Justice System Reforms

6. Mexico accepted recommendations to criminal justice system reform and strengthening the rule of law, in order to reduce the rate of impunity in the country, including for crimes perpetrated by State actors.<sup>4</sup> The 2016 transition to an adversarial criminal justice system has not reduced impunity, however.<sup>5</sup> In the absence of an effective deterrent, serious human rights violations by State and non-State actors have accelerated, including against those exercising their rights to free expression, as addressed below.
7. The 2017 Internal Security Law<sup>6</sup> effectively removes powers from the civilian police by allowing the military to participate in internal security operations. Historically, rights violations by the military have rarely been effectively investigated: only 3.2% of investigations by the Office of the Attorney General's Office (PGR) have resulted in convictions, and superiors are rarely held accountable.<sup>7</sup> The Law further raises transparency concerns, as any information on military operations can be categorized as confidential on 'national security' grounds, preventing reporting on these violations.

### **Recommendations:**

- Ensure that the CNDH promptly investigates and issues recommendations in all cases of human rights violations against journalists, in accordance with its mandate, ensuring appropriate reparations for the victims and their families, and the guarantee of non-repetition by addressing the responsibilities of the authorities implicated in

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1148.29. (India, Serbia);

2 Recommendations 35/2012, 46/2014, 13/2015, 19/2016

3 Recommendations 24/2016 and 25/2016 available at [http://www.cndh.org.mx/Recomendaciones\\_Generales](http://www.cndh.org.mx/Recomendaciones_Generales)

4 148.109. (Sierra Leone, Peru, Brazil, Canada, Czech Republic, Italy, Australia, France, Republic of Korea); 148.103. (Cyprus); 148.98. (United States of America).

5 See: Rodríguez Ferreira, O and Shirk, D 'Criminal Procedure Reform in Mexico, 2008 - 2016, University of San Diego, October 2015, available at:

[https://justiceinmexico.org/wp-content/uploads/2015/10/151008\\_FINALCOUNTDOWN\\_Full-Finallow-res.pdf](https://justiceinmexico.org/wp-content/uploads/2015/10/151008_FINALCOUNTDOWN_Full-Finallow-res.pdf)

6 'Ley de Seguridad Interior'; 21 December 2017 available at: [http://www.diputados.gob.mx/LeyesBiblio/pdf/LSInt\\_211217.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LSInt_211217.pdf)

7 See, "Justicia olvidada. La impunidad de las violaciones a derechos humanos cometidas por soldados en México", WOLA, November 2017.

each case. The CNDH must ensure adequate follow-up and publication of findings related to the local and federal authorities' fulfillment of recommendations;

- Repeal the Internal Security Law, or at minimum, with the full and effective participation of civil society, ensure its reform, repealing articles 9, 29, 30, and 31 that restrict freedom of association, expression and information.

## **Legal Framework for Free Expression**

8. Mexico accepted recommendations related to harmonising state and federal law with international human rights instruments, and ensuring the practical implementation of human rights standards across the country.<sup>8</sup> While the Federal Constitution protects freedom of expression and information (Articles 6 and 7), provisions in many states' criminal codes remain incompatible with international human rights law and the Constitution, and are routinely relied upon to criminalise the work of journalists, restrict media freedom, and undermine the public's right to know.

### **Criminal Law Framework**

9. The following criminal provisions are predominantly used by public officials against journalists or their publications, to deter or prevent them from investigating and publishing information in the public interest.
10. **Defamation, calumny and insult of state officials** remain criminal offences in 8 states,<sup>9</sup> punishable by custodial sentences, against international human rights law.<sup>10</sup> In January 2018 in Hidalgo, for example Leonardo Vazquez was charged with defamation and subsequently, calumny, for leaking information on the corruption of public officials to the media. His case is currently pending, and he faces a possible custodial sentence of up to two years.
11. **22 states criminalise the broadly defined offence of 'halconeo'**, applied to individuals who allegedly act to "obtain information from state public security and law enforcement agencies, the penitentiary system or military authorities".<sup>11</sup> In 2014, journalist Julio César Dávila, was detained in Nuevo León under this provision for taking pictures of the vehicle and bodyguards of then Nuevo León Justice State Prosecutor, Adrián Emilio de la Garza.<sup>12</sup> Though the case was dropped swiftly after charging, the mere threat of legal action, and a 15-year prison sentence, had a chilling effect on free expression and journalistic freedom. We are concerned that although the Supreme Court declared 'halconeo' provisions unconstitutional in 2015,<sup>13</sup> state congresses have not taken action to repeal them.

### **Legal Framework for the Media**

12. We are concerned that the government is undermining the media's editorial independence, and pluralism in the sector, through viewpoint-based discrimination in its allocation of the public advertising budget, which, with many media in financially precarious positions, is a significant revenue source. On 15 November 2017, in a major victory for media freedom advocates, the Supreme Court ruled that Congress must approve a law to regulate government spending of public funds on advertising in the media by 30 April 2018.<sup>14</sup> However, we remain concerned that the drafting process has not been inclusive or participatory, and as a consequence, the new law is likely to entrench existing bad practices, rather than serve the public interest.
13. The Federal Telecommunications Law, adopted 14 July 2014, and reformed 31 October 2017, facilitates judicial harassment, prior censorship, and the seizure of communications equipment, through Article 304, which prohibits individuals sanctioned for broadcasting TV or radio programming without a licence from broadcasting for 5 years. Its application through Article 172 of the Federal Criminal Code further threatens to effectively criminalise indigenous community radios,<sup>15</sup> by criminalising the use of radio or TV communications without authorisation or a licence, punishable by prison sentences of 2-6 years, a fine of 100 – 300 times the daily minimum wage, and the confiscation of equipment.

### **"The right to be forgotten"**

8 First cycle: 5 (Azerbaijan); 6 (Bolivia, Guatemala, Spain, Turkey, Uruguay); 7 (Canada, Switzerland) Second cycle: 148.12. (Tunisia); 148.11. (Oman);

9 Campeche, Colima, Hidalgo, Michoacán, Nayarit, Nuevo León, Sonora, Yucatán.

10 General Comment No. 34 on Article 19: Freedoms of Opinion and Expression, UN Human Rights Committee, CCPR/C/GC/34, 12 September 2011, at para. 47; available at: <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

11 Chiapas, Chihuahua, Coahuila, Colima, Durango, Estado de México, Guerrero, Hidalgo, Jalisco, Nayarit, Nuevo León, Oaxaca, Puebla, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Veracruz, Yucatán, Zacatecas.

12 ARTICLE 19 Mexico and Central America, "[Escoltas del Procurador de Nuevo León acusan de 'Halconeo' a periodista](#)", 10 October 2014.

13 ARTICLE 19 Mexico and Central America, "[Sentencia de Suprema Corte contra delito de halconeo protege derecho de acceso a la información](#)", 28 May 2014.

14 <http://www.proceso.com.mx/511303/la-suprema-corte-ordena-al-congreso-regular-la-publicidad-oficial>

15 ARTICLE 19 Mexico and Central America, "[Sociedad civil rechaza adiciones a Ley de Telecomunicaciones que criminalizan medios comunitarios](#)", 8 February 2018; (Spanish).

14. The Federal Law on the Protection of Personal Data Held by Private Parties, in particular Chapter IV, Article 28 and Chapter III, Article 25,<sup>16</sup> and the General Data Protection Law for Obligated Entities,<sup>17</sup> adopted 5 July 2015 and 26 January 2017 respectively, have become instruments of online censorship.
15. The Court of Justice of the European Union (CJEU) ruling on the so-called “right to be forgotten” has been influential in Mexico. The provisions of the abovementioned laws have since been interpreted too broadly, with media organisations pressured to remove online content without a court order determining whether its removal would constitute an undue restriction on freedom of expression, under threat of filing a case before the courts. The absence of clear exceptions for the protection of freedom of expression and information in these laws has enabled powerful actors (public officials and private actors) to successfully argue for the delisting or removal of information online, against the public interest.<sup>18</sup>

### Recommendations:

- Urgently decriminalise, in all states where they are still offences, defamation, calumny, insult of State officials, and ‘halconeos’;
- Fully implement the 2017 Supreme Court decision and adopt a Law on Public Advertising, with the full and effective participation of civil society, and guarantee its subsequent harmonisation into state laws, ensuring media independence and pluralism, as well as adequate oversight and accountability mechanisms;
- Amend the Federal Telecommunications Law to bring it into compliance with international standards on freedom of expression, and to promote media pluralism, in particular to repeal Articles 172 and 304, and cease the use of the criminal law to regulate the media and telecommunications sector;
- Reform the Federal Law on the Protection of Personal Data Held by Private Parties and the General Data Protection Law for Obligated Entities, to include an explicit exception limiting the right to cancel and to oppose, where the information is in the public interest, and where it is necessary protect the right to freedom of expression and information.

### Safety of Journalists

16. Mexico accepted 24 recommendations related to the safety of journalists and the situation of impunity for attacks against them.<sup>19</sup> We are deeply concerned that five years since the passage of the Federal Law for the Protection of Human Rights Defenders and Journalists,<sup>20</sup> which created a Federal Protection Mechanism for Journalists and Human Rights Defenders (hereinafter “the Mechanism”),<sup>21</sup> the situation for the safety of journalists has deteriorated to unprecedented levels.

#### Trends in attacks on journalists

17. Since the last UPR, according to monitoring by ARTICLE 19 and PEN International at least 49 journalists and writers have been murdered.<sup>22</sup> 12 journalists were killed in 2017, making it the deadliest single year for journalists since 2000. Other serious attacks have also been steadily increasing: ARTICLE 19 documented an overall 144% increase in attacks against the press between 2012 and 2017. In addition to 49 murders, in this period there were 8 enforced disappearances, 404 credible threats, 132 attacks on media outlets, 660 physical attacks (including destruction of equipment), 132 acts of harassment, 376 acts of intimidation, 241 deprivations of liberty<sup>23</sup> and 96 acts of institutional violence, including judicial harassment.<sup>24</sup>
18. Threats to journalists’ digital security have also markedly increased. Between 2012-2017, ARTICLE 19 documented 28 cases of targeted, unlawful interception of journalists’ communications. Since 2015, ARTICLE

<sup>16</sup>Ley Federal de Protección de Datos Personales en Posesión de los Particulares, published in the Official Journal of the Federation (DOF) on July 5, 2010, available: [http://dof.gob.mx/nota\\_detalle.php?codigo=5150631&fecha=05/07/2010](http://dof.gob.mx/nota_detalle.php?codigo=5150631&fecha=05/07/2010)

Ley General de Protección de Datos en Posesión de Sujetos Obligados, published in the Official Journal of the Federation (DOF) on January 26, 2017 available: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5469949&fecha=26/01/2017](http://www.dof.gob.mx/nota_detalle.php?codigo=5469949&fecha=26/01/2017)

<sup>18</sup> Álvarez Acevedo, Carlos, “Google y activistas vs. el inai: ‘Derecho al olvido’ borrará historial negro de políticos”. Sin Embargo, 27 de mayo de 2015.

<sup>19</sup> <http://www.sinembargo.mx/27-05-2015/1357840>; Instituto Federal de Acceso a la Información y Protección de Datos Personales, ifai, “Resolución PPD.0094/14”, México, 2014, p. 1. <http://inicio.ifai.org.mx/pdf/resoluciones/2014/PPD%2094.pdf> ; R3D, “Tribunal anula resolución del INAI sobre el falso <<derecho al olvido>>”, available at: <https://r3d.mx/2016/08/24/amparo-inai-derecho-olvido/>

<sup>20</sup> 148.116. (Canada), (Austria); 148.117. (Colombia); 148.118. (Netherlands); 148.119. (United Kingdom of Great Britain and Northern Ireland); 148.120. (United States of America); 148.121. (Australia); 148.122. (Norway); 148.123. (Switzerland), (Czechia), (Germany), (Hungary), (Belgium); 148.124. (Finland); 148.125. (France); 148.126. (Republic of Korea); 148.127. (Slovakia); 148.128. (Hungary); 148.129. (Sweden); 148.130. (Tunisia); 148.131. (Spain); 148.132. (Romania); 148.133. (Belgium); 148.134. (Japan); 148.135. (Lithuania); 148.136. (Slovenia); 148.137. (Ireland); 148.138. (Bosnia and Herzegovina); 148.22. (Poland);

<sup>21</sup> Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas (25 June 2012) See:

<http://www.pgr.gob.mx/Fiscalias/feadile/Documents/LEY%20PARA%20LA%20PROTECCION%20DE%20PERSONAS%20DEFENSORAS%20DE%20DERECHOS%20HUMANOS%20Y.pdf>

<sup>22</sup> Mecanismo de Protección para personas defensoras de derechos humanos y periodistas.

<sup>23</sup> According to combined data from ARTICLE 19 and PEN International recording the killings of journalists and writers, the number killed were: 2013 (4); 2014 (9); 2015 (8); 2016 (12); 2017 (13); 2018 (3).

<sup>24</sup> This includes both arbitrary detentions by the State and kidnappings by non-State actors

<sup>25</sup> ARTICLE 19 Mexico and Central America internal documentation.

19's monitoring shows that digital attacks, including cyber-attacks (such as DoS and DDoS attacks), threats, harassment, and intimidation via social media or email, and interception of communications, have increased by 46%.<sup>25</sup>

19. State actors were shown to be directly or indirectly involved in the perpetration of approximately half of the 507 attacks against journalists documented by ARTICLE 19 in 2017.<sup>26</sup> While some senior politicians have denounced violence against journalists, other public officials have reacted to attacks on journalists by discrediting their journalistic work. Official reactions to attacks and murders often blame organized crime, without acknowledging that State actors are often implicated in attacks, or have links to organised crime.
20. Journalists covering protests, elections, corruption of public officials, human rights, organised crime, security policy are particularly at risk. Discrimination on intersecting grounds of sex, sexual orientation or gender identity, ethnic or indigenous identity, geographic location, carries different and particular security risks, creating additional prevention and protection concerns, as well as barriers to justice.
21. On average, one third of attacks against the press are against women journalists, and the gendered dimension of these attacks is increasing. Women journalists are targeted in gender-specific ways, including, threats or acts of sexual violence; non-consensual sharing of intimate images; the targeting of their family members; smear campaigns focused on their alleged 'deviant' sexual behavior, or references to their sexuality; and the use of gendered abusive language. Online, women journalists encounter a disproportionate amount and intensity of harassment simply for expressing their views.
22. Indigenous journalists and media outlets have faced threats from State and non-State actors. Indigenous community radio stations, have been raided by armed groups with total impunity – this includes radio comunitaria Calentana 98.1FM in August 2014, and radio comunitaria *Tlayole* "Voces del Maíz" in November 2016. ARTICLE 19 has documented three indigenous journalists arbitrarily detained for their work and subject to smear campaigns: Pedro Canché (2014),<sup>27</sup> Ricardo Neftalí (aka. Felix Bigman) (2016)<sup>28</sup> and Edwin Canché (2014).<sup>29</sup> All were allegedly tortured by state security agents whilst in custody in the state of Yucatán and Quintana Roo; these allegations have yet to be exhaustively investigated by the authorities.

### **Protection Mechanisms**

23. While the Mechanism's existence remains positive, we have serious concerns regarding its operational effectiveness. From 2012 to 2017, 380 journalists were in receipt of protection measures from the Mechanism, demonstrating a clear demand for its assistance.<sup>30</sup> Yet, its budget has been drastically reduced from 128 million MSP in 2013 to just 15 million MSP in 2017, undermining its ability to provide effective assistance.<sup>31</sup> At-risk individuals also continue to be denied the assistance required from government agencies mandated by the Mechanism to ensure their holistic security.
24. The Mechanism's Prevention, Monitoring and Analysis Unit's<sup>32</sup> work is inhibited by a lack of disaggregated data collection which would enable it to better analyse patterns of attacks, how risk factors played out in individual cases, and perpetrators' profiles, and thus be more effective in preventing attacks.<sup>33</sup>
25. The Mechanism is not transparent with the risk-analysis methodologies it uses, and does not proactively disclose disaggregated information on these methodologies for statistical analysis by external stakeholders.<sup>34</sup> The Risk Evaluation Unit,<sup>35</sup> is criticised for not taking a holistic approach, and for not sufficiently addressing the individual circumstances and needs of at-risk individuals. In particular, risk-assessment protocols are not sensitive to the varying gender-based and gender-specific risks facing women journalists. Publicly disclosed information on how

25ARTICLE 19 Mexico and Central America, "Libertades en Resistencia". México, 2017, p.27. Available at: [https://articulo19.org/wp-content/uploads/2017/04/Libertades-en-Resistencia\\_Informe-2016-A19.pdf](https://articulo19.org/wp-content/uploads/2017/04/Libertades-en-Resistencia_Informe-2016-A19.pdf)

26ARTICLE 19 Mexico and Central America, "Democracia Simulada: nada que aplaudir". México, 2018. Available at: [https://articulo19.org/wp-content/uploads/2018/03/INFORME-A19-2017\\_v04.pdf](https://articulo19.org/wp-content/uploads/2018/03/INFORME-A19-2017_v04.pdf)

27 ARTICLE 19 Mexico and Central America, "Policías municipales torturan a periodista en Yucatán" 30 December 2016, available (in Spanish).

28 ARTICLE 19 Mexico and Central America, "Disculpa pública a Pedro Canché: primer paso para una reparación integral" 27 April 2017, available (in Spanish).

29 ARTICLE 19 Mexico and Central America, "CNDH omite estándares de derechos humanos y niega tortura contra Edwin Canché" 11 January 2017, available (in Spanish).

30 Mexican Ministry of the Interior Oficio UPSA/100/2017. See also, Presidential Speech of Enrique Peña Nieto, "Actions to promote freedom of expression and the protection of journalists and human rights defenders", 17 May 2017, available at: <https://www.gob.mx/presidencia/articulos/acciones-para-la-libertad-de-expresion-y-para-la-proteccion-de-periodistas-y-defensores> (accessed: 28/2/18); and, [https://articulo19.org/wp-content/uploads/2018/03/INFORME-A19-2017\\_v04.pdf](https://articulo19.org/wp-content/uploads/2018/03/INFORME-A19-2017_v04.pdf) p. 91

31 Mexican Ministry of the Interior Oficio UPSA/100/2017.

32 *Unidad de Prevención, Seguimiento y Análisis*

33 ARTICLE 19 Mexico and Central America, "[Comprehensive Protection for Human Rights Defenders and Journalists: The Duty of the Mexican Government](#)" 15 March 2018; (Spanish).

34 Federal Government of Mexico, "Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas", 21 August 2017; available (in Spanish).

35 *Unidad de Evaluación de Riesgos*



risk analyses are conducted, and according to what criteria, is essential for effective scrutiny of the Mechanism's effectiveness, and to inform public participation in efforts to enhance it.<sup>36</sup>

26. Regrettably, the identification of risks does not always prompt the swift provision of appropriate, individually-tailored protection measures. Protection measures offered by the Mechanism are typically focused on physical security, and can be limited to the mere provision of panic buttons or security cameras. That journalists have been attacked, or killed, whilst in receipt of such measures, including Candido Ríos, killed on 22 August 2017 in Veracruz, is demonstrative of their insufficiency.<sup>37</sup> A recent report found that in some cases, the same authority identified as the aggressor by at-risk individuals, was the assigned by the Mechanism to provide their protection.<sup>38</sup> During Governing Board meetings discussing the journalists' cases, the Federal Police have specified that, due to a lack of personnel, they are unable to offer physical protection to journalists in cases where local police are believed to be behind threats, creating a serious protection gap.
27. We are further concerned that "RCU Sistemas", a private sector company contracted by the Mechanism to provide many of its protection services, often severely underperforms. The lack of transparency regarding the contract with RCU, and regarding RCU's internal processes including, the vetting procedures used for their bodyguards, undermines trust in the quality of the protection available.
28. Protection measures are frequently withdrawn on the basis of flawed risk-analysis, and often against the will of the beneficiary. This has left at-risk journalists vulnerable. For example, Cecilio Pineda Birto, a crime reporter killed in Guerrero on 2 March 2017 had his protection measures withdrawn before his killing.<sup>39</sup>
29. Digital security is largely disregarded by the Mechanism: given the growing digital threats to journalists (see below, on surveillance) the lack of technical expertise on digital security across the Mechanism's units, including the Rapid Response and Case Referral Unit, is of serious concern. Psychosocial security is also largely ignored, with no support offered to address these risks.
30. The National Executive Commission<sup>40</sup> of the Mechanism, tasked with coordinating the Mechanism's work with other Federal entities that are needed to provide protection, is not effective. Even Federal agencies on the Mechanism's Governing Board have not implemented measures required to ensure better coordination. The PGR, for example, has not consistently issued precautionary measures in cases where at-risk journalists have been victims of crimes.<sup>41</sup>
31. 9 states have established state protection mechanisms,<sup>42</sup> 16 states have legislation addressing this issue,<sup>43</sup> and legislation is under consideration in another 15 states.<sup>44</sup> This is creating an increasingly fragmented system, which the Mechanism has been unable to bring together. We are concerned that none of the state-level mechanisms have the capacity to conduct proper risk analyses.<sup>45</sup> State mechanisms' funding streams are precarious, with funds earmarked for them on a discretionary rather than secured basis, with evidence that in Quintana Roo and Mexico City, funds earmarked for local protection mechanism have instead been used to control press coverage.<sup>46</sup>

### **Impunity and FEADLE**

32. The overall rate of impunity for attacks on journalists is over 99%, which serves to only encourage a cycle of violence. In the minority of cases where individuals have been prosecuted,<sup>47</sup> they are often only "foot soldiers", and the masterminds of attacks almost always escape justice.
33. Many factors contribute to impunity, including:

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36 Federal Government of Mexico, "[Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas](#)", 21 August 2017; available (in Spanish).

37 ARTICLE 19 Mexico and Central America, "[Protección fallida e impunidad en agresiones previas derivan en asesinato de Cándido Ríos](#)", 23 August 2017; available (in Spanish).

38 See: Wola and PBI Mexico (May 2016) 'Mexico's Mechanism To Protect Human Rights Defenders And Journalists: Progress and Continued Challenges' available at: <https://www.wola.org/wp-content/uploads/2016/05/WOLA-PBI-Mexicos-Mechanism-to-Protect-Human-Rights-Defenders-and-Journalists.pdf> (accessed: 1/3/18)

39 ARTICLE 19 Mexico and Central America, "[Declaraciones de Segob sobre asesinato de Cecilio Pineda exhiben fallas del Mecanismo de Protección](#)", 8 March 2017; available (in Spanish).

40 Comisión Ejecutiva Nacional

41 According to FEADLE, a total of 547 protective measures have been granted, linked to 319 investigations (including preliminary investigations and open investigations), with some individuals in receipt of multiple measures. FEADLE, "Sistema tradicional", PGR, diciembre de 2017.

[https://www.gob.mx/cms/uploads/attachment/file/285955/ESTADISTICAS\\_Diciembre\\_2017.pdf](https://www.gob.mx/cms/uploads/attachment/file/285955/ESTADISTICAS_Diciembre_2017.pdf)

42 Guerrero, Nayarit, Veracruz, Jalisco, Quintana Roo, Coahuila, Hidalgo, Ciudad de México y Morelos.

43 Baja California, Chiapas, Ciudad de México, Coahuila, Colima, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, Michoacán, Morelos, Nayarit, Quintana Roo, San Luis Potosí y Tamaulipas.

44 Baja California Sur, Chihuahua, Estado de México, Hidalgo, Morelos, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, Sinaloa, Sonora, Tabasco (2 initiatives) y Zacatecas.

45 ARTICLE 19 Mexico and Central America, "Crear más mecanismos de protección no resuelve la violencia contra la prensa en México, 14 June 2017; available (in Spanish).

46 ARTICLE 19 Mexico and Central America, "Suprema Corte perdió oportunidad histórica para proteger a periodistas", 13 January 2017; available (in Spanish).

47 ARTICLE 19 Mexico and Central America, "[Karla Silva ejemplo de justicia plena](#)" 26 July 2017; available (in Spanish).

- Inadequate investigative standards and protocols, which do not comply with the guidance set out in the Minnesota protocol;<sup>48</sup>
  - Failures to pursue, and exhaust, relevant lines of inquiry early in investigations, in particular those relevant to the victims' journalistic or human rights work;<sup>49</sup>
  - The frequent violation of due process guarantees;<sup>50</sup>
  - Inadequate mechanisms to ensure the independence of investigations where the authority tasked with conducting or overseeing an investigation is also implicated in the attack.<sup>51</sup>
34. Human rights organisations, and victims and survivors they work with, face numerous obstacles combatting impunity. A lack of open justice during prosecutions, and a lack of transparency around investigations, prevents effective monitoring. The absence of accurate and timely information also constitutes a violation of the right to truth for victims, survivors, and their families.
  35. Attacks targeting victims' family members, who are pursuing justice and accountability, are concerning. In January 2018, for example, the widow of murdered journalist Gregorio Jimenez was attacked despite being in receipt of protection measures from the Veracruz State Commission for the Attention and Protection of Journalists. Two individuals attempted to break into her home and threatened to set fire to the house, and damaged Jimenez' son's car.
  36. The establishment of the Special Prosecutor for the Attention of Crimes Committed Against Freedom of Speech (FEADLE) in 2010, within the PGR, was intended to reduce the rate of impunity for crimes against journalists.
  37. Regrettably, although it is empowered under article 73 of the Constitution to take over cases in which individuals are thought to have been targeted for exercising free expression rights, FEADLE routinely fails to exercise this power. Where it does investigate, the rate of impunity remains exceptionally high: FEADLE reported that from July 2010 to December 2017 it opened more than 1000 cases and achieved convictions in only 3.<sup>52</sup>
  38. FEADLE continues to face capacity constraints in terms of insufficient human resources, in particular staff with appropriate training (e.g. in technical analysis), undermining its ability to fulfil its mandate. Furthermore, FEADLE'S budget has been drastically reduced from 38 million MSP in 2013 to just 18 million MSP in 2017.<sup>53</sup>
  39. It is of ongoing concern that FEADLE has not integrated a gender-sensitive perspective in their investigative work, with the same concerns applying to state and local prosecutors.<sup>54</sup> On the contrary, women journalists targeted for their work often encounter institutional responses based on gender-stereotypes. For example, the investigation into the murder of journalist Regina Martinez, was compromised by senior public officials' reliance on gendered stereotypes, with flimsy evidence used to frame as a 'crime of passion', unlinked to her journalistic work.<sup>55</sup>
  40. We regret that efforts to respond to the growing problem of attacks against women online have focused largely on paternalistic legislative solutions, which further undermine women's rights to privacy, freedom of expression, sexual autonomy and integrity, and equality. In Chihuahua, for example, legislation criminalising "sexting" unduly restricts sexual rights.<sup>56</sup> At the same time, efforts which would genuinely enhance women's access to remedies for violations of their rights have been neglected, including training for law enforcement in gender-sensitive investigative approaches, the role of digital technologies, and wider positive measures to promote gender equality within society.

### **The Executive Commission for Attention to Victims (CEAV)**

41. Various other state agencies not on the Governing Board of the Federal Mechanism, play an important role in supporting victims of human rights abuses, including CEAV. The process through which victims access assistance from CEAV, by registering with the National Register of Victims (RENAVI), however, is unnecessarily bureaucratic and often subject to unexplained months' long delays. Since 2012 only 38 journalists have registered successfully.<sup>57</sup> Registered journalists report ongoing difficulties and delays in accessing assistance to which they

48 OHCHR, *The Minnesota Protocol on the investigation of potentially unlawful death*, 2016.

49 ARTICLE 19 Mexico and Central America, "A 3 años del asesinato de Moisés Sánchez, el Estado sólo garantiza impunidad" 2 January 2018; available (in Spanish).

50 *Ibid.*

51 *Ibid.*

52 *Statistical report by the Special Prosecutor for Crimes against Freedom of Expression* (2017), p. 8, 23,.

[https://www.gob.mx/cms/uploads/attachment/file/285955/ESTADISTICAS\\_Diciembre\\_2017.pdf](https://www.gob.mx/cms/uploads/attachment/file/285955/ESTADISTICAS_Diciembre_2017.pdf).

53 PGR, "PRESUPUESTO TOTAL ASIGNADO A LA FISCALÍA" Available at [https://www.gob.mx/cms/uploads/attachment/file/285954/Presupuesto\\_FEADLE\\_2018.pdf](https://www.gob.mx/cms/uploads/attachment/file/285954/Presupuesto_FEADLE_2018.pdf)

54 148.136

55 Cfr. Information of cases of Regina Martínez and Rubén Espinosa widely available in ARTICLE 19 Mexico and Central America reports and public alerts. See also <https://www.article19.org/wp-content/uploads/2018/02/ARTICLE-19-IESCR-submission-update-FINAL-1.pdf>

56 Luchadoras (coord.). "Informe: la violencia en línea contra las mujeres en México". Noviembre de 2017, p. 59 <http://internetesnuestra.mx/post/167782105468/informe-la-violencia-en-l%C3%ADnea-contra-las-mujeres>

57 Data obtained through Information request 006330003691 to CEAV.

are entitled from CEAV. This disproportionately affects the most vulnerable, in particular internally displaced journalists, who are unable to access medical and psychosocial assistance, food or financial assistance, and often struggle to continue their journalistic work in displacement.

### **Recommendations:**

42. We refer to recent reports, which comprehensively set out recommendations to address the problem of safety of journalists and impunity in Mexico.<sup>58</sup> In summary, the following are highlighted:
- Establish, through the Ministry of Foreign Affairs, an Advisory Council against Impunity, as recommended by the UN High Commissioner for Human Rights, composed of experts to recommend reforms and strategies to end impunity, and in particular to address the shortcomings of FEADLE;
  - Publicly acknowledge the problem of public officials' involvement with threats to the safety of journalists, including through their collusion with organised criminal gangs, and commit to ensuring journalists' protection from such attacks, working with relevant mechanisms to ensure accountability where they occur;
  - In collaboration with the Mexican Secretariat of Finance and Public Credit (SHCP) increase the funding of the Mechanism to ensure adequate and sustained funding, especially considering its increasing workload, with sufficient resources to address personnel and technical capacity gaps;
  - Ensure that all cases of killings, attacks and threats against journalists are promptly, impartially and thoroughly investigated, ensuring that both the intellectual and material perpetrators (i.e. both "foot soldiers" and masterminds behind attacks) are brought to justice, and victims are granted effective remedies;
  - Guarantee that all crimes against journalists are investigated by FEADLE, in accordance with Article 73 of the Federal Constitution, and the National Code of Criminal Procedure;
  - Ensure updates on the status of active investigations are proactively disclosed to the public, ensuring that victims' families remain informed of progress, while protecting against the disclosure of sensitive or confidential information to the media in ways that are revictimising or that are deliberately intended to misinform the public;
  - Ensure adequate funding for quality training of state and Federal prosecutors investigating crimes against freedom of expression;
  - Ensure the creation of investigative protocols that adopt the best international standards and practices;
  - Develop comprehensive protection measures by the Mechanism – set out clearly in accessible protocols – that allow individually tailored responses to journalists and HRDs and their family members at risk, addressing physical, psychological and digital attacks;
  - Improve the role of the National Executive Commission of the Federal Mechanism to coordinate the actions of the Federal agencies on the Mechanism's Governing Board, and also to coordinate the actions of state and municipal authorities;
  - Commit to proactively disclosing the risk assessment methodologies applied by the Mechanism and state protection mechanisms, and the criteria used to determine whether to assign or withdraw protection measures;
  - Commit to proactively and regularly disclosing all relevant data on the Mechanism's activities, including information on: the number of individuals in receipt of protection measures; the types of threats and attacks they face; the number of individuals that are attacked whilst in receipt of protection measures, and the nature of these attacks;
  - Ensure that journalists subject to attack can easily register with and gain access to the special assistance provided by CEAV, through RENAVID, by eliminating all unnecessary bureaucratic obstacles;
  - Design and implement a comprehensive plan for internally displaced at-risk journalists, ensuring responses are individually tailored, gender-sensitive, and respond to the needs of family members, including medical, psychological, and financial needs, to ensure they are able to continue their work as journalists.

### **Surveillance and the right to privacy**

43. During 2017, 11 cases of targeted and illegal state surveillance of journalists, human rights defenders and anti-corruption activists were uncovered.<sup>59</sup> Those behind the surveillance used 'Pegasus' software, developed by the NSO Group, which is available for purchase and licencing exclusively to government actors. This highly sophisticated spyware was used to infiltrate the mobile phones of individuals whose journalistic or human rights-related work addressed federal government corruption and grave human rights violations, and was timed to coincide with critical points in their work.<sup>60</sup>

<sup>58</sup>ARTICLE 19 Mexico and Central America, "[Comprehensive Protection for Human Rights Defenders and Journalists: The Duty of the Mexican Government](#)" 15 March 2018; [\(Spanish\)](#).

<sup>59</sup> See: Citizen Lab, R3D, SocialTic and ARTICLE 19's research, published in English here: <https://citizenlab.org/2017/06/reckless-exploit-mexico-nso/>

<sup>60</sup> Periroth, Nicole 'Using Texts as Lures, Government Spyware Targets Mexican Journalists and Their Families, 19 June 2017, [available here](#).

44. The subsequent investigation into the unlawful use of Pegasus software, led by FEADLE, is compromised, since the PGR (in which FEADLE sits) is among the actors accused of having acquired the software.<sup>61</sup> The criminal investigation has not drawn any significant findings or conclusions. The PGR has repeatedly refused to accept an independent panel able to support the investigation, provide the technical expertise required and guarantee an impartial and exhaustive investigation.<sup>62</sup>
45. These cases have demonstrated the weakness of the legal framework for the protection of the right to privacy and freedom of expression in Mexico. The absence of a requirement of judicial authorisation for surveillance activities, as well as a lack of subsequent judicial oversight, is of particular concern. A Supreme Court ruling in 2016 made clear that judicial authorization was necessary to bring the Telecommunications Law into compliance with the Constitution.<sup>63</sup>
46. Legislation requiring reform in this regard includes the National Code of Criminal Procedures, the Telecommunications Law (sections 189 and 190), the Internal Security Law (sections 30 & 31), the Federal Police Law, the National Security Law, the Federal Law to Prevent and Sanction Crimes of Kidnapping, the Law against Organised Crime, and the Military Code of Criminal Procedure.

#### **Recommendations:**

- Guarantee a thorough, impartial, and independent investigation into the use of Pegasus spyware by public bodies to subject journalists and HRDs to surveillance, and ensure accountability for human rights violations, provide redress to victims, and take all necessary measures to prevent future violations. An independent panel of experts must be constituted and integrated in the investigation in order to guarantee the investigation's independence.
- Ensure full transparency in respect of recent unlawful surveillance practices, in particular the Pegasus spyware purchased by the PGR and other agencies of the Federal Government, in particular, ensuring transparency regarding the contracting processes for the acquisition or licensing of this software and any other similar technology.
- Reform, through an open and participatory process, legislation pertaining to the Federal Government's surveillance powers, including the National Code of Criminal Procedures, the Telecommunications Law, the Internal Security Law, the Federal Police Law, the National Security Law, the Federal Law to Prevent and Sanction Crimes of Kidnapping, the Law against Organised Crime, and the Military Code of Criminal Procedure, in particular to ensure all surveillance is subject to judicial authorisation and oversight, and to establish an independent mechanism mandated to regulate State surveillance practices.

### **Freedom of Assembly and Association**

47. Since the last UPR, the freedoms of peaceful assembly and association have been further restricted through law and in practice.
48. In 12 states, ambiguously worded provisions in state laws prohibiting the use of public space, or requiring prior authorisation for its use, continues to enable unjustified restrictions on the right to freedom of peaceful assembly.<sup>64</sup>
49. The crime of "offences against state authority",<sup>65</sup> frequently used to criminalize the exercise of peaceful assembly rights, remains on the books in 26 states,<sup>66</sup> notwithstanding a 2015 Supreme Court ruling finding such provisions unconstitutional on the basis of their vagueness.<sup>67</sup> The charge has even been used against journalists.<sup>68</sup>
50. On 15 September 2017, the Regulation of the Mobility Law of the Federal District (Mexico City) was published in the Official Gazette of Mexico City, introducing, through Article 220, burdensome written notification requirements for protests in the capital city, pursuant to the Mobility Law (2014). The regulations were introduced notwithstanding a 2016 Supreme Court ruling that the implementation of notice requirements in the Mobility Law should not constitute *de facto* authorisation.

61 Mexicanos Contra la Corrupción y la Impunidad, "PGR compró Pegasus", 28 July 2017, [available here](#).

62 Amed, Azam Mexico Spyware Inquiry Bogs Down. Skeptics Aren't Surprised, 20 February 2018, The New York Times, available at:

<https://www.nytimes.com/2018/02/20/world/americas/mexico-spyware-investigation.html>

63 Amparo 964/2015, SCJN, amparo 964/2015, issued in 2016, available at: <http://207.249.17.176/segundasala/asuntos%20lista%20oficial/AR-964-2015.pdf>

64 Aguascalientes, Campeche, Ciudad de México, Estado de México, Michoacán, Oaxaca, Puebla, Quintana Roo, San Luis Potosí, Tabasco, Veracruz, Zacatecas.

65 'Ultrajes a la autoridad', in Spanish

66 Baja California, Baja California Sur, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Ciudad de México, Durango, Guerrero, Hidalgo, Jalisco, Estado de México, Morelos, Nayarit, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Zacatecas.

67 Supreme Court of Justice, Amparos en revisión 2255/2015 y 4436/2015

68 An investigation was initiated against Carmen Olsen in January 2013 by the municipal police in Playas de Rosarito, Baja California, for example. See <https://articulo19.org/periodistas-acusados-de-ultrajes-obtienen-libertad-provisional/>



51. Attacks against journalists covering protests, as well as the excessive use of force during peaceful protests, are a serious concern.
52. During protests organised by the teachers' union,<sup>69</sup> and various union and solidarity groups, between 17-21 June 2016, ARTICLE 19 documented 26 attacks against the press and photojournalists in Oaxaca and Mexico City:<sup>70</sup> the security forces were responsible for 11 attacks. We highlight four attempted killings of journalists during these protests, and the subsequent killing of journalist Salvador Olmos,<sup>71</sup> who covered the protests, by local police in Oaxaca on 26 June. ARTICLE 19 further documented 12 attacks against communicators covering protests in Playas de Rosarito Baja California, 6-7 January 2017.<sup>72</sup>

**Recommendations:**

- Ensure that journalists are able to freely report on assemblies, including through training of law enforcement authorities involved in the management of public assemblies;
- Repeal the crime of “offences against state authority” in all states;
- Reform state laws, including Mexico City's Mobility Law, and implement regulations and protocols to fully protect the right to freedom of peaceful assembly, including the right to spontaneous assemblies.

**Access to the Internet**

53. Mexico accepted recommendations related to guaranteeing equality and non-discrimination, in particular for women and indigenous communities. Regrettably, when it comes to access to the Internet, little progress has been made for the most marginalised, with impacts on their economic, social and cultural rights in particular.
54. In Mexico, there is a significant urban-rural digital divide: 86% of Internet users are located in urban areas compared to 14% in rural areas.<sup>73</sup> As of 2017, 49% of homes in Mexico do not have an internet connection.<sup>74</sup> The percentage is even higher in states with greater social and economic inequalities such as Chiapas (83.5%), Guerrero (67.8%), Oaxaca (59.6%), Puebla (67.3%), Tlaxcala (72.4%) and Veracruz (61.8%). For rural and indigenous women, access to ICTs and the Internet is even more limited, further compounding pre-existing inequalities in terms of access to education, economic, social and cultural rights and illiteracy levels experienced by this social group.
55. Mexico's regulatory framework does not support alternative connectivity models that address internet access as instrumental for the full exercise of fundamental rights. The *México Conectado* program, launched in 2013 and run by the Ministry of Communications and Transportation, aimed to “extend internet connectivity to 250,000 public places” before 2017, however it has achieved only 40% of this target, and rural communities have not benefited equally.
56. Where *México Conectado* is operational, the Internet service does not work effectively, nor has Internet access had the expected impact on education, in part due to the failure to implement complementary efforts to enhance access to ICTs, and training and education on their use. This is a particular problem in rural areas, where ICTs are less available and ICT skills are less widespread: rather than facilitating the exercise of other rights or promoting local development, these programmes have, therefore, widened the social and economic exclusion of these communities.
57. We are additionally concerned that the Federal Institute of Telecommunications has delayed consultations on, and publication of, specific regulations that would ensure compliance with net neutrality principles established by articles 145 and 146 of the Federal Telecommunications Law, for over two years. Users' connections are subject to throttling dependent on the content, origin, destination, terminal or application used, in direct contravention of the principle of net neutrality.

**Recommendations:**

- Review and revise policies aimed at promoting Internet connectivity to ensure that the most marginalized groups, in particular, rural and indigenous communities, and women, are able to exercise their rights to freedom of expression online; and regularly collect, analyse, and publish disaggregated data on all programmes aimed at promoting digital inclusion;

<sup>69</sup> Coordinadora Nacional de Trabajadores de la Educación

<sup>70</sup>ARTICLE 19 Mexico and Central America, “Cobertura bajo fuego: Violencia contra prensa durante protestas en Oaxaca y CDMX” 26 June 2016 (Spanish).

<sup>71</sup> ARTICLE 19 Mexico and Central America, “Segundo comunicador asesinado en Oaxaca en una semana” 28 June 2016 (Spanish).

<sup>72</sup> ARTICLE 19 Mexico and Central America, “[Policías agreden a 12 periodistas durante protestas contra el “gasolinazo” en Baja California](#)” 8 January 2017; (Spanish).

<sup>73</sup> INEGI, Encuesta Nacional sobre Disponibilidad y Uso de Tecnologías de la Información en los Hogares 2017 (Spanish).

<sup>74</sup> *Ibid.*

- Revise legislation and regulations related to Internet access, in particular the Federal Law on Telecommunications, Radio and Television, the regulations of the Federal Institute of Telecommunications, to promote a rights-based approach to Internet connectivity and digital inclusion, to target remote areas and to create community networks and more local content.

## Access to Information

58. The Transparency and Access to Information Law, adopted in 2015,<sup>75</sup> is world-leading in the legal protections it establishes,<sup>76</sup> but serious shortcomings remain in its implementation, in particular for the most marginalised. Whilst the National Transparency System (NTS), which the law established, has shown some positive results, NTS guidance is not universally implemented. At local level, many public officials continue to resist the proactive disclosure of information, and responding to requests received. Where information is disclosed, it is often not released in accessible formats, in the appropriate language or with culturally appropriate content, with the result that the most marginalised groups are still denied a genuine right of access to information.
59. In particular, rural and indigenous communities continue to face many structural and institutional obstacles to access information of vital importance to them, including the provision of health services, local governance issues, and massive development projects impacting on their communities. Rather than correcting inequalities within society with regards to access to information, the NTS exacerbates them as the system privileges those who are digitally connected, urban and educated, indirectly discriminating against women, older individuals, those from rural and indigenous communities. There is no provision for individuals seeking information, who may need assistance to properly formulate requests and direct them to the appropriate bodies, or to be made aware of their right to request such information.

### Recommendations:

- Ensure the proactive disclosure of information relating to health, education, water, megaprojects, housing, and social programs at all levels of government, in an accessible format and with culturally appropriate content, in particular for those in marginalised communities and rural areas;
- Raise awareness of individuals' legal rights to access to information from government bodies that are responsible for providing essential services to them in furtherance of their rights.

<sup>75</sup> *Ley Federal de Transparencia y Acceso a la Información Pública* <http://www.diputados.gob.mx/LeyesBiblio/pdf/LGTAIP.pdf>

<sup>76</sup> This ranking is carried out by the Centre for Law and Democracy and Access Info Europe. See, Milenio "Ley de transparencia, la mejor de 112 países", 2 October 2016.