

# TURNING THE TIDE ON IMPUNITY

Protection and Access to Justice for Journalists  
and Human Rights Defenders in Mexico

MARCH 2019

RESEARCH  
REPORT



*Photo: Propuesta Cívica*



Advocacy for Human Rights in the Americas





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**Mexican President Andrés Manuel López Obrador took office after campaigning on a platform focused heavily on combating corruption and insecurity and bringing peace and reconciliation to the Mexican people.**

**This report focuses on how the new government can approach an important aspect of this endeavor: creating a safer and more enabling environment for journalists and human rights defenders to carry out their important work.**

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# TURNING THE TIDE ON IMPUNITY

## Protection and Access to Justice for Journalists and Human Rights Defenders in Mexico

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# KEY FINDINGS

- **Protection measures provided through Mexico's Mechanism to Protect Human Rights Defenders and Journalists are often insufficient.** The Mechanism has been unable to develop risk analysis protocols that effectively identify the different needs of female, rural, indigenous, and other particularly vulnerable journalists and defenders when it comes to receiving protections. Protection measures are often unreliable, are not adequately implemented, and do not take into account realities on the ground in different parts of the country. In some cases, they have been unable to provide sufficient protection: six Mechanism beneficiaries have been murdered since August 2017.
- **The Mechanism suffers from a serious lack of adequate staffing and budget levels.** There are only 35 Mechanism personnel overseeing the protection of 831 journalists and human rights defenders. Despite this context, Mexico's 2019 budget cut funds to the Ministry of the Interior's Human Rights Unit—which finances the Mechanism's staff salaries—by over USD\$610,500, meaning additional staff will likely not be hired in 2019. Moreover, while the Mechanism spent approximately \$13.6 million on the implementation of protection measures in 2018, Mexico's Congress only allocated up to \$10.9 million for protection measures in the 2019 budget.
- **The Mechanism has made progress in developing strategies that go beyond providing immediate protection to journalists and human rights defenders.** Experiences in the state of Chihuahua could serve as a model for developing comprehensive prevention strategies that are more comprehensive and more attuned to local contexts. Since 2016, Mechanism officials have been working alongside Chihuahua's state government, national and international human rights bodies, and local civil society groups to develop a Contingency Plan focused on addressing the root causes of violence against journalists and human rights defenders in that state.
- **Mexican authorities are frequently identified as the perpetrators behind crimes against journalists and human rights defenders.** Public officials were determined to be the likely aggressors in 39 percent of cases the Mechanism has overseen. Similarly, “abuse of authority” was the second-most common crime reported by prosecutor's offices that provided us with statistics on these crimes, pointing to how frequently public officials and security forces are involved in attacks. This helps to explain why many investigations into crimes against journalists and human rights defenders lack credibility and impartiality, particularly at the state level.
- **The Mexican government's failure to properly investigate and sanction crimes against journalists and human rights defenders has left these groups open to attack.** Between 2012 and June 2018, only three percent of investigations opened by the state prosecutor's offices analyzed by WOLA and PBI made it to the courts. Of the 1,077 cases investigated by the federal-level Special Prosecutor's Office for Crimes against Freedom of Expression (FEADLE) during this period, less than 12 percent were taken to court. Only five FEADLE cases—less than one percent—resulted in convictions. Aside from its overall poor track record in prosecuting cases, FEADLE rarely takes advantage of its power to take investigations out of the hands of state prosecutor's offices when state authorities are not handling the cases with due diligence.

# KEY FINDINGS

- **FEADLE's capacity to fulfill its mandate has been severely limited by a lack of human and financial resources.** The agency's budget has been reduced by 54 percent since 2014, from over USD\$2 million to around \$942,000. The office only has 22 prosecutors and 15 investigative police officers on staff.
- **Many prosecutor's offices in Mexico do not maintain quality criminal statistics that could aid in criminal analysis and strengthen prosecutorial oversight.** Without systematized databases with reliable statistics on crimes against journalists and human rights defenders, prosecutors are unable to draw patterns and connections between cases, or identify any common *modus operandi* used to target victims. Some offices do not track the status and results of their investigations, such as the outcome of cases that are tried in court. This makes it difficult for authorities to identify and rectify gaps in their investigative practices and processes, and makes clear that prosecutors in these offices are not being evaluated based on their performance.
- **Some law enforcement institutions often devote valuable time and resources toward discrediting and criminalizing the work of journalists and human rights defenders, rather than guaranteeing their protection.** There is a clear pattern of Mexican authorities misusing criminal legislation to criminalize activists and media workers. In Chihuahua state, for example, we found that over the period reviewed for this report, the number of cases in which authorities deemed journalists to be the alleged aggressors was more than double the number of cases opened into crimes committed against them.
- **The U.S. government continues to provide significant funds to support the Protection Mechanism and to strengthen investigations into crimes against journalists and human rights defenders.** In September 2017, the U.S. Agency for International Development (USAID) initiated a USD\$7.1 million project called ProVoces. ProVoces consultants have provided trainings, mentorship, and technical assistance to the Mexican agencies charged with addressing violence against journalists and defenders and aims to strengthen coordination between prosecutor's offices, federal and state-level protection mechanisms, and civil society organizations.



# INTRODUCTION

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As Mexico's human rights and security crisis continues, the situation of journalists and human rights defenders is of particular concern. Former President Enrique Peña Nieto's administration (December 2012–November 2018) was marred by a marked increase in hostility towards critical and dissident voices and a demonstrated failure to protect their spaces of action. During his term, at least 161 human rights defenders and 40 journalists were murdered in apparent retaliation for their work exposing crime and corruption, demanding accountability for human rights abuses, and defending the fundamental rights and freedoms of those most vulnerable.<sup>1</sup>

In 2018 alone, civil society organizations documented 48 killings of human rights defenders and eight journalist murders.<sup>2</sup> With these numbers, Mexico continues to be one of the most dangerous countries in the world for activists and media workers, taking a heavy toll on the fight for human rights, freedom of expression, and government accountability in the country.<sup>3</sup>

At the time of publishing this report, at least 17 journalists and human rights defenders have been killed since December 1, 2018, when President Andrés Manuel López Obrador took office after campaigning on a platform focused heavily on combating corruption and insecurity and bringing peace and reconciliation to the Mexican people.<sup>4</sup> This report focuses on how the new government can approach an important aspect of this endeavor: creating a safer and more enabling environment for journalists and human rights defenders to carry out their important work.

Previous reports on this issue by Peace Brigades International (PBI) and the Washington Office on Latin America (WOLA) have focused primarily on the performance of Mexico's national Mechanism to Protect Human Rights Defenders and Journalists (*Mecanismo de Protección para Personas Defensores de Derechos Humanos y Periodistas*).<sup>5</sup> An important finding of those analyses was that since the Mechanism's primary function is to provide immediate protection, it is unable to address rampant impunity for crimes

against journalists and human rights defenders, the biggest factor driving continued attacks. As the UN Special Rapporteur on the situation of human rights defenders affirmed after his visit to Mexico in 2017, "the failure to investigate and sanction perpetrators sends a dangerous message that such crimes have zero consequences, creating an environment conducive to serial violations and undermining the general aspirations for human rights in Mexico."<sup>6</sup>

While the first section of this report provides an update to our previous research on the Mechanism, the report also examines what more the Mexican government must do beyond providing immediate protection to journalists and defenders.

For instance, the report explores how experiences in the state of Chihuahua could serve as a model for developing long-term violence prevention programs more attuned to local contexts, and more focused on tackling the root causes behind the risks journalists and defenders face.

Using official data gathered from access-to-information requests, the report then analyzes the failure of Mexico's public prosecutor's offices to properly investigate and prosecute crimes against journalists and human rights defenders, highlighting grave shortcomings in investigations that have allowed threats and attacks to continue unabated.

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The report's final section provides a series of recommendations for how the López Obrador government can address these shortcomings and develop a more comprehensive strategy for protecting human rights defenders and journalists.

It is important to note that we conducted the majority of our work and research for this report prior to the formal establishment of Mexico's new National Prosecutor's Office (*Fiscalía General de la República*). This new office is replacing the federal Attorney General's Office (*Procuraduría General de la República*, PGR) based on 2014 reforms to Mexico's Constitution.<sup>7</sup>

The report analyzes how this transformation will alter criminal investigations in Mexico as well as which departments within the National Prosecutor's Office will be in charge of investigating attacks against human rights defenders and journalists.

As Mexico undergoes this transition, we believe the findings and recommendations included in this report can contribute to improving how these cases are handled.

## SIX YEARS OF THE PROTECTION MECHANISM

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In response to significant pressure from Mexican civil society organizations, the federal government established the national Mechanism to Protect Human Rights Defenders and Journalists in November 2012. Housed within the Ministry of the Interior's Human Rights Unit, the Mechanism determines protection measures—such as assigning police escorts or bodyguards, installing security cameras in residences or offices, or providing equipment like bullet-proof vests and satellite phones—on an individual and collective basis for at-risk journalists, defenders, media outlets, and human rights organizations.<sup>8</sup>

When Peña Nieto assumed office in December 2012, an important part of his mandate included ensuring the effective implementation of the Mechanism. But while the protection program has surely saved lives, serious shortcomings in the implementation of protection measures have left many beneficiaries vulnerable to continued threats and attacks.

## METHODOLOGY

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In the production of this report, we submitted 40 information requests to Mexican government agencies.

We also conducted over two dozen interviews with victims, national and international human rights bodies, U.S. and Mexican officials, and members of the Civil Society Organizations' Space for the Protection of Journalists and Human Rights Defenders (CSO Space), a collective of organizations that legally represent victims, accompany cases before the Mechanism, and have played a key role in advocating for effective prevention, protection, and investigation measures.

Much of the information included in the report is also based on PBI's experience accompanying human rights defenders and organizations that receive protection measures from the Mechanism.

In an alarming development, **six Mechanism beneficiaries have been murdered since August 2017**, pointing to the desperate need for the agency to conduct a thorough review of its risk analysis and protection protocols.<sup>i</sup>

## HUMAN AND FINANCIAL RESOURCES

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Through January 2019, the Mechanism had received 766 requests for protection, 644 of which had been accepted, with a total of 1,144 individuals receiving some form of protection since the program's creation in 2012. Since that year, the number of beneficiaries has grown more than 19-fold.<sup>9</sup> While this can be viewed as progress—since in earlier years many Mexican journalists and human rights defenders were unaware of the opportunity to request protection through the Mechanism—it also raises concerns about the agency's capacity to manage its rapidly growing caseload.

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<sup>i</sup> This includes the journalists Cándido Ríos Vásquez, Cecilio Pineda Birto, Rubén Pat Cauich, and Rafael Murúa Manríquez, as well as the human rights defenders Julián Carrillo and Noé Jiménez Pablo.



When we issued our last report in April 2016, we expressed concern that the Mechanism only had 37 people on staff overseeing the protection of 519 defenders and journalists. As of March 2019, the Mechanism is now responsible for the protection of 831 beneficiaries<sup>ii</sup>—a 60 percent increase—yet its personnel has decreased to 35 staff members.<sup>iii</sup>

Although personnel turnover has decreased substantially and the Mechanism's Governing Board has made progress in reducing the backlog of requests for protection,<sup>iv</sup> staffing problems continue to raise concerns about the Mechanism's ability to effectively incorporate new beneficiaries and keep up with current cases.<sup>10</sup>

The Mechanism's budgeting process and funding levels also continue to present significant challenges. First and foremost, the implementation and operation of protection measures is financed through a federal trust, which often leaves the fate of protection measures uncertain.

In both 2017 and 2018, authorities announced that the Mechanism's financial reserves would run out before the year's end, putting beneficiaries' protection measures at risk.<sup>11</sup> While funds were eventually provided to guarantee the program's functioning, this points to the fact that so long as it is reliant on the federal trust, the Mechanism is never guaranteed that it will have enough resources to properly manage its caseload.

Given the varying number of individuals with protection measures and their different needs, it is also difficult to calculate a precise budget for protection measures each year. The Mechanism's Consultative Council—the civil society-elected body that monitors the Mechanism—asked Congress to designate a sum of USD\$26.2 million<sup>v</sup> to the federal trust in 2019 in order to secure the Mechanism's funding for the future,<sup>12</sup> but the final budget only granted a total of \$10.9 million to the various federal trusts housed within the Ministry of the Interior's Human Rights Unit.<sup>13</sup>

Though the budget does not specify how much of these funds will be designated specifically to the Mechanism's trust, even the full \$10.9 million would likely not be enough to cover the year, given that about \$13.6 million were spent on protection measures in 2018.<sup>14</sup> Additionally, funds allocated to the Mechanism's Human Rights Unit—which funds the salaries of Mechanism personnel—saw a reduction of over \$610,500 in the 2019 budget, meaning the Mechanism will likely not hire additional staff in 2019.<sup>15</sup>

## INTERINSTITUTIONAL COORDINATION

In a December 2018 interview with WOLA, Patricia Colchero, then-Executive Coordinator of the Mechanism highlighted that coordination with state-level authorities continues to be a major challenge for the Mechanism.<sup>16</sup> Since the agency's creation, insufficient coordination with local police, prosecutors, and other authorities has limited the Mechanism's ability to assess and react appropriately when defenders and journalists are under threat.

In a positive step forward, in August 2017 the Mechanism's Governing Board and Mexico's National Conference of Governors established a protocol outlining means of coordination between the federal and state entities involved in the protection of journalists and human rights defenders. Additionally, in 2017 and 2018, state protection units (*Unidades Estatales de Protección*) were installed in each state.<sup>17</sup> However, it is not yet clear whether these developments will lead to real progress.

Coordination with state prosecutor's offices is particularly challenging. For example, when Mechanism officials request information on investigations that could aid in the risk analysis process or the development of prevention strategies, local officials are often not willing to cooperate. According to Colchero, it depends on the will of the attorney general to pressure them to hand over the information.

<sup>ii</sup> This includes 298 journalists and 533 human rights defenders.

<sup>iii</sup> This includes six personnel in the Case Reception and Rapid Response Unit, 21 in the Risk Evaluation Unit, and eight in the Prevention, Follow-Up, and Analysis Unit.

<sup>iv</sup> In 2017, an average of 40 cases were addressed in each of the Governing Board's meetings, compared to four in 2012.

<sup>v</sup> Using an exchange rate of MXN\$19.1 to USD\$1.

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On the other hand, coordination with the federal Attorney General's Office (PGR)—now the National Prosecutor's Office (*Fiscalía General*)—appears to have improved. Both Colchero and the head of the PGR's Special Prosecutor's Office for Crimes against Freedom of Expression (*Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión*, FEADLE) expressed to us that there has been greater collaboration between the two agencies in determining appropriate protection measures for victims. For instance, when FEADLE is preparing to make an arrest in a case, which may increase the risks posed to the victim, the agency alerts Mechanism officials so that they can reevaluate the case and adjust protection measures accordingly.

While this progress is welcome, civil society organizations have criticized the continued lack of support the Mechanism receives from some officials within federal institutions, including those that have representatives participating in the Mechanism's Governing Board, such as the PGR, the National Security Commission (which is now part of the Ministry for Citizen Security and Protection under the López Obrador administration), and the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*, CNDH).<sup>18</sup>

## **RISK ANALYSIS AND PROTECTION MEASURES**

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Over the past two years, some top Mechanism officials have demonstrated increased commitment, political will, and openness to dialogue with civil society organizations on how to improve their operations. In 2018, these officials organized various meetings where civil society groups were given the opportunity to provide input on risk analysis, gender-based needs when it comes to protections, and the effectiveness of

certain protection measures. Unfortunately, some of these officials have since left the Mechanism, and this level of commitment and dialogue has not extended across the entire agency.

Despite receiving feedback from civil society organizations, concerns remain regarding the inadequacy of the Mechanism's risk analysis protocols. In September 2018, the Consultative Council recognized that the Mechanism had failed to develop protocols that effectively incorporate differentiated perspectives—that is, the different needs of female, rural, indigenous, and other particularly vulnerable journalists and defenders when it comes to receiving protections. An improved risk analysis methodology has been developed with the support of Protection International, but Mechanism officials have yet to implement it.

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**Six Mechanism beneficiaries have been murdered since August 2017, pointing to the desperate need for the agency to conduct a thorough review of its risk analysis and protection protocols.**

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Moreover, there continues to be a lack of transparency regarding the criteria by which the Mechanism determines who qualifies as a human rights defender, and therefore who qualifies for protection, even though there is a broad definition under federal law.

Another ongoing concern has to do with the privatization of protection measures. Most types of measures continue to be implemented through the security and communications conglomerate RCU Sistemas. Beneficiaries have had negative experiences with bodyguards contracted through RCU's companies, and there are concerns regarding how bodyguards and others responsible for implementing protection measures will handle confidential information once their contracts expire. Additionally, the companies charge high prices for the measures, and as the Inter-American Commission on Human Rights (IACHR) has highlighted, once protection measures are privatized, they become market products unrelated to human rights concepts.

## BOX 1

### THE CASE OF JULIÁN CARRILLO

The case of Julián Carrillo, a Raramurí indigenous land rights defender who was killed in October 2018, is emblematic of the Mechanism's shortcomings in developing protection plans appropriate for journalists and human rights defenders living in rural areas, especially in regions with a significant presence of criminal organizations.<sup>19</sup>

Carrillo was a leader of the Coloradas de la Virgen community in Chihuahua's remote Sierra Tarahumara mountains. The community has been fighting a legal battle in Mexico's Unitary Agrarian Court over the exploitation of natural resources in their ancestral territory for over a decade.

Several community members have faced numerous threats and attacks in retaliation for this work, as has the land and territorial rights organization Alianza Sierra Madre, A.C. (ASMAC) that is supporting their case. Carrillo was enrolled in the Mechanism collectively with other members of ASMAC and the Coloradas de la Virgen community in February 2014, but as WOLA and PBI warned in our 2016 report, their protection measures have been insufficient.

First and foremost, difficult terrain, rampant organized crime, and limited state presence in the Sierra Tarahumara hindered the Mechanism's ability to conduct an effective risk analysis. Mechanism staff conducted the assessment remotely, without visiting the area, and they appeared to lack knowledge on how to analyze the collective risks posed to the community. It took them 17 months to complete the risk analysis. The second risk analysis was conducted over a year later, again without visiting the community.

Additionally, Carrillo's case demonstrates how the Mechanism's protection measures can be inadequate when they fail to take into account realities on the ground. For example, one of the protection measures the Mechanism provided for his case consisted of a satellite phone for making calls in case of an emergency; however, these phones are rarely able to capture satellite signal in mountainous areas.

The day of Carrillo's murder, the satellite telephone provided to his family failed. After receiving alarming notifications about Carrillo being followed by armed men, ASMAC tried to call the phone to get more information, but they weren't able to make contact. They only heard an automated recording saying that the phone was not programmed to receive calls. Soon after, ASMAC received another call from the community requesting that they inform government authorities that Carrillo had been found dead.<sup>20</sup>

It is important to highlight that even if the satellite phone provided to Carrillo's family hadn't failed, it is unlikely that security forces would have been able to reach the community in time to protect him. After receiving notification of Carrillo's murder, it took state police 16 hours to arrive to the crime scene due to the four hour driving distance between the community and the nearest police station, security concerns for police officers traveling through the region at night, and difficulties crossing the terrain up the mountains.<sup>21</sup> It's clear that the Mechanism's current protection options are incapable of effectively protecting beneficiaries in such high-risk, difficult to reach areas.

Carrillo's case also points to the Mechanism's unfortunate failure to preemptively detect and ensure the protection of individuals who may be at risk due to their relationship with a beneficiary, particularly family members. Before his death, four of Carrillo's family members were killed—a son in February 2016, two nephews in July 2016 and September 2017, respectively, and a son-in-law in July 2018.<sup>22</sup>

# PREVENTION EFFORTS

In regions like the Sierra Tarahumara, protection measures will continue to prove insufficient so long as the Mexican government fails to fully address the root causes of the risks faced by journalists and human rights defenders in those areas.



*Indigenous leaders from Chihuahua's Sierra Tarahumara mountains discuss the human rights and security situation of their communities at a 2013 IACHR hearing.*

The Mechanism has begun to address prevention through the development of "early warnings" and "contingency plans", a system aimed at preventing future attacks against journalists and human rights defenders. In any state where an early warning is activated, Mechanism staff are charged with collaborating with the state government and, ideally, local journalists and human rights defenders, to put together a written assessment of the situation of journalists and defenders in that state. The assessment is then used to develop a contingency plan with actions designed to combat the root causes of the risks posed to these groups.<sup>23</sup>

So far, contingency plans have been implemented in the states of Veracruz and Chihuahua. The Veracruz Contingency Plan only focuses on the situation of journalists, and the program's implementation has been poor, as past state governments demonstrated a lack of commitment to the plan and did not show openness to considering input from local civil society organizations. Chihuahua's experience has been more positive, due in large part to the willingness of the state government to allow victims and human rights groups to play a key role in deciding how the action items outlined in the plan will be carried out.

After 26 civil society groups petitioned for an Early Warning System in Chihuahua in March 2016,<sup>24</sup> they

collaborated with Mechanism officials, state authorities, and the Mexico office of the UN High Commissioner for Human Rights (OHCHR) to develop an assessment outlining the particular vulnerability of defenders and journalists working on issues related to the rights of women, migrants, and LGBTI individuals; the defense of the environment; and those working in the Sierra Tarahumara Mountains.<sup>25</sup>

In June 2017, the Mechanism's Governing Board and the Chihuahua state government—under Governor Javier Corral, who took office in October 2016—signed a cooperation agreement formalizing the Contingency Plan.<sup>26</sup> Importantly, the plan includes strategies on how to strengthen Chihuahua's justice institutions and legal framework in order to improve investigations into crimes against journalists and human rights defenders.

So far the implementation process has been highly participatory: working groups between civil society organizations, federal and state authorities, and representatives from the OHCHR and CNDH are held periodically to discuss best practices for implementation. On occasion, international organizations and representatives of foreign governments serve as observers to the working group discussions. Since May 2017, PBI's Northern team based in Chihuahua has been observing this process.



*Working group meeting for Chihuahua's Contingency Plan.*

While promising, there have been concerns regarding some aspects of the Contingency Plan's implementation. For one, despite the commitments made under the plan, Chihuahua authorities have not yet launched campaigns to raise awareness of the underlying factors contributing to violence against this population, such as the overexploitation of water, organized crime, and



lack of government presence in the Sierra Tarahumara. While authorities have responded to this critique citing speeches made by the governor that mention the importance of human rights defenders' work, a much more comprehensive awareness campaign is needed.

Another obstacle during Peña Nieto's administration was that some federal authorities responsible for addressing specific actions related to the plan—such as those concerning environmental management or improving conditions in the Sierra Tarahumara—sent representatives who had no decision-making power to the working groups, and later provided little to no follow-up.<sup>27</sup>

The Contingency Plan's continuation is paramount given the continued risks facing defenders and journalists

operating in Chihuahua: six human rights defenders and journalists were killed in the state between 2017 and 2018. If the Mexican government is serious about upholding press freedom and defending human rights in Chihuahua, it is imperative that it fulfill its commitment to the plan.

While not without flaws, Chihuahua's experience could arguably be seen as a model for other Mexican states to follow. Notably, in June 2018, the UN and IACHR Special Rapporteurs for freedom of expression affirmed that "the Contingency Plan in Chihuahua, if developed properly and in a transparent manner, has the potential of becoming one of the best practices in the region regarding prevention measures for human rights defenders and journalists."<sup>28</sup>

## BOX 2

### THE CASE OF CRISTINA AUERBACH

The Pasta de Conchos Family Organization (*Organización Familia Pasta de Conchos*, OFPC) emerged in 2006 after Coahuila's Pasta de Conchos coal mine collapsed and left 65 miners dead. As the CNDH has reported, authorities in Coahuila allow mining companies to operate in the state without the necessary permits and without the protocols required for guaranteeing the safety of miners.<sup>29</sup> Under the leadership of Cristina Auerbach, the OFPC has taken the Pasta de Conchos case before the IACHR and the International Labor Organization (ILO), and continues to document and advocate against offenses committed by mining companies and the precarious conditions in which miners work.<sup>30</sup>

Auerbach has faced numerous threats and attacks in response to this work. She has been beaten and slandered and has suffered numerous assassination attempts. For example, in June 2007, aggressors beat her and stole her van, insulin pump, and documents about Pasta de Conchos.<sup>31</sup> In February 2019, a group of prominent human rights organized raised concern about defamation campaigns against Auerbach carried out by a Mexican senator.<sup>32</sup> She has received protection measures from national and state human rights institutions since 2007, and was among the first individuals to enroll in the Mechanism in 2013. Each time the Mechanism reevaluates Auerbach's case, staff conclude that she is at "extraordinary high risk", suggesting little has been done to address the root causes behind attacks against environmental and labor rights defenders in the region. Until authorities crack down on harmful mining practices, individuals raising awareness of human rights abuses within the mining industry will continue to be at risk.

Like Auerbach, many journalists and human rights defenders live with protection measures for years without seeing any real improvement in their security situation. One factor leaving Auerbach open to attack is that authorities have failed to make progress in investigating any of the complaints she has filed with the Coahuila State Prosecutor's Office. In 2018, when Auerbach approached authorities to file additional complaints, she was told they would open a new investigation, rather than adding the information into her existing case file. A common practice among prosecutor's offices, this raises concerns that each attack against Auerbach will be investigated as an isolated incident, rather than within the context of the ongoing risks she faces. In December 2018, one of her aggressors was finally charged for a complaint she filed in 2015, but the case is still being tried in court.

# OBSTACLES TO JUSTICE

Until the Mexican government addresses the widespread impunity that persists for attacks against journalists and human rights defenders, powerful political, criminal, and economic interests looking to silence their critics will continue to feel emboldened to do so.

To better understand the shortcomings in official investigations into crimes against journalists and defenders during Peña Nieto's administration, we submitted information requests to the federal Attorney General's Office (PGR) and to state prosecutor's offices in the 10

states where the Mechanism has accepted the most requests for protection: Mexico City, Veracruz, Guerrero, Oaxaca, Mexico State, Tamaulipas, Chiapas, Coahuila, Chihuahua, and Michoacán. These states account for 65 percent of the cases the Mechanism has received.<sup>vi</sup>

We requested information on the number of investigations each office opened between January 2012 and June 2018, the types of crimes investigated, the current status of each case, and how many of the cases have resulted in convictions or acquittals.<sup>33</sup>

**FIGURE 1**

## PROTECTION REQUESTS ACCEPTED BY THE PROTECTION MECHANISM, 2012-SEPTEMBER 2018

STATE	NUMBER	PERCENTAGE OF TOTAL ACCEPTED CASES
Mexico City	103	16.8%
Veracruz	60	9.8%
Guerrero	52	8.5%
Oaxaca	37	6.0%
Mexico State	30	4.9%
Tamaulipas	27	4.4%
Coahuila	25	4.1%
Chiapas	24	3.9%
Chihuahua	22	3.6%
Michoacán	20	3.3%
<b>TOTAL</b>	<b>400</b>	<b>65%</b>

Source: <https://bit.ly/2CbpQLp>

<sup>vi</sup> These were the top 10 states as of September 2018, when we submitted the information requests to prosecutor's offices. For a recent list, visit: <https://bit.ly/2TzdbvH>. It is also worth highlighting that many journalists and human rights defenders granted protection in Mexico City are individuals who relocated to the city from a different state after being threatened or attacked.



## SHORTCOMINGS IN OFFICIAL DATA

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One major challenge frustrating efforts to reduce impunity in these cases is that prosecutor's offices often do not maintain quality statistics on crimes against journalists and human rights defenders, which hinders prosecutorial oversight and stifles prosecutors' efforts to analyze criminal trends.

For example, personnel within the Coahuila State Prosecutor's Office provided us with an incomplete response to our information request, telling us that they were unable to gather data from two of their regional offices. Despite submitting additional information requests and making several calls to Coahuila authorities, at the time of publishing this report, we have yet to receive the missing information.

Mexico State reported that it does not have a registry for documenting crimes against journalists and human rights defenders, and therefore did not provide us with any statistics. While the states of Chiapas and Veracruz provided us with data on crimes against journalists, they reported that they do not have a registry for human rights defenders. This not only indicates a serious disregard for the gravity of violence against this population, but it also weakens the quality of investigations: the lack of reliable, systematized data on crimes against journalists and human rights defenders hinders authorities' ability to draw patterns and connections between cases, or to identify any common *modus operandi* used to target victims.

Of the offices that provided us with information, their numbers differ greatly from the records maintained by the CNDH and civil society organizations.<sup>34</sup> For example, the National Network of Human Rights Organizations "All Rights for All" (Red TDT) documented 44 killings of human rights defenders in the state of Guerrero during Peña Nieto's term,<sup>vii</sup> but Guerrero authorities reported opening only one investigation into a human rights defender's killing. Similarly, the Red TDT documented 32 killings in Oaxaca, 17 in Chihuahua, and seven in

Michoacán, but these states only reported opening three, two, and zero investigations, respectively.<sup>35</sup>

Similar discrepancies exist in the data on crimes against journalists. The number of threats, attacks, and killings reported by prosecutor's offices are much lower than those counted by prominent press freedom organizations like Article 19,<sup>36</sup> the Committee to Protect Journalists,<sup>37</sup> and Reporters Without Borders.<sup>38</sup>

These findings suggest that the cases prosecutors failed to report in their responses are either not being investigated, or are likely being investigated as common murders, without victims' journalistic or human rights work being considered as a possible motive behind their attack.

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**The lack of reliable, systematized data on crimes against journalists and human rights defenders hinders authorities' ability to draw patterns and connections between cases, or to identify any common *modus operandi* used to target victims.**

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Moreover, some prosecutor's offices failed to report information on the status and results of their investigations, which points to a troubling lack of prosecutorial oversight. Authorities in Mexico City and Chiapas, for example, reported that they do not track the results of their cases that have been taken to court, such as how many have ended in convictions or acquittals. While the PGR provided information on convictions of crimes against journalists, it reported that it does not have a registry for tracking acquittals.<sup>viii</sup>

Michoacán and Tamaulipas, as well as one department within the Oaxaca State Prosecutor's office (the "Special Prosecutor's Office for Crimes of Social Importance"), failed to include basic information on how many of their cases have been closed, taken to court, or are

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vii The Red TDT analysis covers January 2012 and October 2018, while ours covers January 2012 to June 2018.

viii Additionally, after cross-checking the Veracruz conviction statistics with media sources, civil society analyses, and reports by the Veracruz State Commission for Attention and Protection to Journalists, we found several possible discrepancies, including the fact that some of the convictions reported have already been overturned. In Oaxaca, we are aware of at least one conviction for a journalist's killing, which was secured in March 2017 for the January 2016 murder of Marco Hernández Bautista, but the conviction was not reported in the response provided by Oaxaca authorities.

still ongoing. This makes it difficult to identify and rectify gaps in investigative practices and processes, and makes clear that prosecutors in these offices are not being evaluated based on their performance.

## IMPUNITY BY THE NUMBERS

### State Data

Figure 2 breaks down the status of investigations opened by state prosecutor's offices between 2012 and June 2018, according to authorities' responses to our information requests. **Concerningly, less than four percent of these cases were taken to court or resolved through reparation agreements.**

Thirty percent of the cases were archived—that is, they were temporarily put on hold in the initial phase of the investigation after prosecutors decided they did not have enough evidence to determine a line of investigation to pursue. While prosecutors can request to reopen a suspended case file once they have gathered more information, it appears that they rarely do so, as many cases from years ago remain archived.

In another 22 percent of investigations, prosecutor's offices decided not to press charges after determining that the case was subject to dismissal. Investigations may end this way when prosecutors determine the case lacks sufficient evidence to hold up in court, the evidence gathered suggests that the innocence of their suspect is clear, or the statute of limitations on the case has expired.

Another reason is that some of the most common forms of intimidation used to pressure journalists and human rights defenders to stop conducting their work—such as receiving non-criminal threats, being followed, or having their homes surveilled by strangers—do not constitute official crimes and therefore cannot be prosecuted.

While authorities can't press charges in these cases, it is important that they still investigate to determine who is responsible for the threats or harassment. This is critical to helping prevent situations from escalating into more serious crimes, yet victims have reported that when they report these instances, authorities often tell them there is nothing they can do.

### FIGURE 2

## STATUS OF STATE INVESTIGATIONS INTO CRIMES AGAINST JOURNALISTS AND HUMAN RIGHTS DEFENDERS, OFFICIAL FIGURES, 2012-JUNE 2018

ONGOING	ARCHIVED	DID NOT PRESS CHARGES	TAKEN TO COURT	REPARATION AGREEMENTS	OTHER
33%	22%	30%	3%	0.5%	11%

*This table refers only to investigations carried out in Chiapas, Chihuahua, Guerrero, Mexico City, Oaxaca (except those carried out by its "Special Prosecutor's Office for Crimes of Social Importance"), and Veracruz because these are the only prosecutor's offices that provided us with information on the status of their investigations.*

**Archived:** Cases classified as "reserva" in Mexico's old inquisitorial criminal justice system and those classified as "archivo temporal" in its current adversarial criminal justice system.

**Did not press charges:** Cases classified as "no ejercicio de la acción penal" in both the inquisitorial and adversarial criminal justice systems.

**Taken to court:** Cases classified as "consignada" in the old inquisitorial system and cases classified as "judicializada" in the current adversarial system.

**Reparation agreements:** Cases classified as "acuerdo reparatorio" in the new adversarial criminal justice system.

**Other:** This includes cases classified as "incompetencia" (lack of jurisdiction) and "acumulada" (cases that were incorporated into another case file) in both the inquisitorial and adversarial justice systems.

*Source: Responses to access to information requests*

In January 2017, 11 Mexican civil society organizations reported to the UN Special Rapporteur on the Situation of Human Rights Defenders that authorities often do very little to make progress in investigating cases of crimes against human rights defenders before they archive cases or allow the statute of limitations to pass.<sup>39</sup>

They reported that many investigations remain virtually inactive and that case files often only include information submitted by victims, lacking any indication that authorities took additional investigative action to determine possible motives or suspects.

This often forces victims to litigate their own cases in order to keep them open. For example, the Center for Women’s Human Rights (*Centro de Derechos Humanos de las Mujeres*, CEDEHM) has had to go to court on at least two occasions to challenge resolutions submitted by prosecutors to archive investigations into attacks against the organization.

Such problems are also evidenced in the case of the *Casa del Migrante de Saltillo*, a migrant shelter in the state of Coahuila. The migrant shelter has filed complaints for individuals trespassing on the shelter’s facilities, confiscating information, and threatening and injuring shelter staff. It has also filed complaints for defamation. Shelter staff reported in June 2018 that “since 2008, not one of the more than 35 complaints filed with authorities have seen any significant progress. In fact, the state prosecutor’s office has misplaced more than half of the complaints, and in many, the statute of limitations has expired due to authorities’ lack of action.”<sup>40</sup>

Due to these shortcomings, the vast majority of these crimes end in impunity. Figures 3 and 4 show the concerning low number of crimes against journalists and human rights defenders that resulted in conviction between 2012 and June 2018, compared to the number of investigations each office opened during that period.<sup>ix</sup>

**FIGURE 3**  
**CRIMES AGAINST HUMAN RIGHTS DEFENDERS:**  
**INVESTIGATIONS VS. COURT JUDGMENTS, OFFICIAL**  
**FIGURES, 2012-JUNE 2018**

STATE	INVESTIGATIONS	CONVICTIONS	ACQUITTALS
Guerrero	3	0	0
Oaxaca	122	0	1
Tamaulipas	9	1	0
Chihuahua	5	0	0
Michoacán	4	0	0
TOTAL	143	1	1

Source: Responses to access to information requests

<sup>ix</sup> The figures only include statistics from the states that provided us with enough information to make this assessment. It is possible that additional investigations, convictions, and acquittals exist, but they were not reported to us.

FIGURE 4

## CRIMES AGAINST JOURNALISTS: INVESTIGATIONS VS. COURT JUDGMENTS, OFFICIAL FIGURES, 2012-JUNE 2018

STATE	INVESTIGATIONS	CONVICTIONS	ACQUITTALS
Veracruz*	276	9	0
Guerrero	37	1	2
Oaxaca	98	0	1
Tamaulipas	16	0	0
Chihuahua	33	0	0
Michoacán	4	0	0
<b>TOTAL</b>	<b>464</b>	<b>10</b>	<b>3</b>

\* Veracruz statistics refer only to cases reported by the state's "Special Prosecutor's Office for Electoral Crimes and Crimes Involving Journalists".

Source: Responses to access to information requests

### COMMON INVESTIGATIVE DEFICIENCIES

One factor contributing to such low prosecutorial success rates is that many investigations into cases where public officials are implicated are marred with irregularities and obstruction of justice.

This is particularly concerning given the frequency in which Mexican authorities are involved in attacks against journalists and human rights defenders: **"abuse of authority" was the second-most common crime prosecutor's offices reported investigating between 2012 and June 2018.** The Mechanism's statistics corroborate this finding: public officials were determined to be the likely aggressors in 39 percent of cases the Mechanism has overseen.<sup>41</sup>

Another obstacle hindering investigations is that while journalists and human rights defenders are frequently targeted specifically in retaliation for their work, attacks against these actors are often investigated as everyday crimes—written off as a byproduct of generalized violence—rather than

orchestrated attempts to silence critical voices and curb social movements.

Part of the problem is that most prosecutors and investigative police lack specialized training on how to analyze crimes within the context of victims' journalism, advocacy, or legal defense activities.

Prosecutor's offices appear to instead prioritize motives such as domestic violence and familial disputes,<sup>42</sup> robberies and attempts at extortion,<sup>43</sup> or simply being in the wrong place at the wrong time.<sup>44</sup> There have also been cases where public officials have made unfounded claims that the journalist or defender was attacked for having ties to organized crime or being involved in other illicit activities, publicly criminalizing the victim and revictimizing their loved ones.<sup>45</sup>

Additionally, investigations frequently fail to consider how advocacy or journalistic work carried out by women, indigenous, LGBTI, and other particularly vulnerable groups may present specific types of risks. As the Mesoamerican Initiative of Women Human Rights Defenders has documented, women journalists

and defenders, for example, are often attacked by public officials, religious groups, and even their own family members because their work challenges deeply embedded gender norms and expectations.<sup>46</sup> Indigenous journalists and human rights defenders dedicated to opposing large-scale development projects that threaten the livelihood of their lands and communities are frequently targeted by extractive industries and other corporate interests, sometimes with the support or acquiescence of local authorities.<sup>47</sup>

In such cases, an investigative approach centered on analyzing the specific risks related to the context of victims' journalistic or human rights work is essential to uncovering who may have targeted them and why.

On a more fundamental level, a 2017 report by the Mexican think-tank México Evalúa found that most of Mexico's law enforcement officials lack the training

needed to carry out basic criminal probes. One reason many cases remain unresolved is because authorities failed to properly preserve the crime scene, interview key witnesses in a timely manner, or collect sufficient evidence to bring the case to court.<sup>48</sup>

Additionally, in the rare instance that a perpetrator is convicted, it rarely means that full justice has been served. In most cases that lead to an arrest, only the material authors of crimes are identified and detained, allowing accomplices and intellectual authors to walk free.

Furthermore, the UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment remarked in 2017 that the use of torture to coerce confessions continues to be a widespread practice in Mexico, raising serious concerns about the credibility of many criminal investigations.<sup>49</sup>

### BOX 3

## THE NARVARTE CASE

In July 2015, photojournalist Rubén Espinosa and activist Nadia Vera were found shot execution-style in Vera's apartment building in Colonia Narvarte, Mexico City, alongside Vera's three roommates, Mile Virginia Martín, Yesenia Quiroz Alfaro, and Alejandra Negrete.<sup>50</sup> Both Espinosa and Vera had both recently fled to Mexico City after facing numerous threats and attacks in Veracruz state,<sup>51</sup> where they were well-known critics of then-Governor Javier Duarte (who is currently in prison for criminal association and money laundering).<sup>52</sup>

In one instance, Espinosa was beaten and threatened by authorities while photographing police violently repressing protestors participating in a student rally. In an interview with Mexican press about the incident, he reported that a government official grabbed him by the shirt and told him to stop taking photos unless he wanted to "end up like Regina," a Veracruz reporter that had recent been murdered.<sup>53</sup> Espinosa later decided to flee when he realized strangers were following him and keeping watch on his home. Similarly, Vera decided to leave Veracruz after her home was ransacked one day while she was out.<sup>54</sup>

Despite these prior instances, the Mexico City Prosecutor's Office has primarily investigated the case as a robbery, largely dismissing the possibility that the murders could have been politically motivated. Throughout the investigation, authorities violated legal procedures and the victims' rights by leaking their personal information, photographs of their bodies at the crime scene, and other confidential information, and spreading the criminalizing narrative that Martín and Quiroz were sex workers or drug dealers.<sup>55</sup>

The hypothesis disseminated by Rodolfo Ríos Garza—the prosecutor leading the investigation at the time—was that those who perpetrated the murders were clients of Martín and Quiroz, and had killed all of the victims in order to steal a package of drugs.<sup>56</sup> According to this narrative, Vera and Espinosa



were simply unlucky bystanders in the crime. In a private meeting with press freedom groups two days after the incident, Ríos insinuated that Espinosa couldn't have been targeted for his journalism because he was currently unemployed and hadn't been murdered while performing his profession.<sup>57</sup>

Three individuals have been detained in relation to the case, and one has been sentenced, but all three have alleged that they were tortured while detained.<sup>58</sup> The legal team representing Espinosa from the organization Article 19 had to wait two and a half years to gain access to a key piece of evidence included in the case file—video footage recorded the day of the murder, showing the street where Vera's apartment building was located. When the lawyers were finally granted access to the video, they found various discrepancies between the footage and the testimonies given by police agents and the detainees that were originally used to justify the arrests.<sup>59</sup>

In June 2017, the Mexico City Human Rights Commission issued a report detailing the shortcomings of the nearly two-year probe.<sup>60</sup> Upon release of the report, the Commission's then-president criticized the Mexico City Prosecutor's Office for not considering that the motive could have been related to the victims' "gender, nationality, or practice of journalism or human rights advocacy," and recommended that authorities prepare to follow new lines of investigation to rectify these deficiencies.<sup>61</sup>

However, to this day, the prosecutor's office has failed to fully explore the possibility that other individuals participated in the crime, or to determine who may have ordered the murders.<sup>62</sup> The victims' lawyers have pushed for the investigation to take into consideration the fact that it is now well-documented that while Javier Duarte governed Veracruz, parapolice groups frequently kidnapped, tortured, and disappeared individuals like Espinosa and Vera who were openly critical of the government. While evidence suggests these parapolice groups operated under the command of Arturo Bermúdez Zuria, then-Secretary of Public Security of Veracruz (who is currently being investigated for the crime of enforced disappearance),<sup>63</sup> his possible involvement in the crime has not yet fully been investigated.<sup>64</sup>



Posters remembering the victims of the Narvarte killings—Alejandra Negrete, Rubén Espinosa, Nadia Vera, Mile Martín, and Yesenia Quiroz—outside the apartment building where their bodies were found in Colonia Narvarte, Mexico City.



## FEDERAL INVESTIGATIONS FALL SHORT

In response to widespread outcry about shortcomings in investigations into crimes against journalists, in 2010 the Mexican government established the Special Prosecutor's Office for Crimes against Freedom of Expression (FEADLE) within the PGR.<sup>65</sup> It is important to note that while FEADLE investigates crimes against journalists and media outlets, it does not oversee crimes that occur within the context of social protest or other attacks against freedom of expression. There is no special prosecutor's office at the federal level for investigating crimes against human rights defenders.<sup>x</sup>

## MINIMAL RESULTS

While the creation of FEADLE was widely heralded by press freedom and human rights groups, over eight years later it has made little progress in combating impunity. Of the 1,077 cases FEADLE investigated between 2012 and June 2018, less than 13 percent were taken to court or resolved through reparation agreements (see Figure 5). **Only five cases—less than one percent—resulted in convictions, and only one of the convictions was for homicide.**<sup>xi</sup>

It is worth mentioning that under the leadership of current FEADLE head Ricardo Sánchez del Pozo, who took office in May 2017, five additional convictions were secured through December 2018, after the June 2018 cut-off date we established for analyzing data for this report.<sup>66</sup> However, none of those convictions involved crimes such as homicides, disappearances, or kidnappings, nor is it yet clear whether any of the convictions will be successfully appealed.<sup>xii</sup>

## THE “POWER TO ASSUME”

In most cases, FEADLE aims to support state-level authorities by sharing its expertise and carrying out a parallel probe into the crime they are investigating. However, a constitutional amendment passed in 2013 also gave FEADLE the power to assume full control

over certain cases when there is reason to believe the integrity of a state-level investigation has been compromised; for instance, when evidence suggests a public official was involved in the crime, or when the state prosecutor's office has not handled the case with due diligence. It also allows federal authorities to assume power over cases classified as “grave crimes” under Mexican law.

When FEADLE exercises this so-called “power to assume” (*facultad de atracción*), the state prosecutor's office must end its investigation, and federal judges must rule on the case if it reaches the courts.<sup>67</sup>

## RELUCTANCE TO INVESTIGATE

Aside from FEADLE's overall poor track record in effectively prosecuting cases, the office has also frequently been criticized for failing to take advantage of its power to assume cases when state prosecutors are not handling them with due diligence. Between May 2013—when the amendment granting FEADLE this power was adopted—to June 2018, federal authorities took over just 54 cases from state prosecutor's offices, 10 of which were homicide cases. FEADLE assumed power over just one case in 2017 (see Figure 6), even though that year was the second-deadliest on record for journalists in Mexico, with at least 12 media workers killed in apparent retaliation for their work.<sup>68</sup>

Victims have often had to resort to legal action via constitutional complaints (*amparos*) to force FEADLE to assume their case, which was the case for journalist Moisés Sánchez Cerezo, who was kidnapped and murdered in Veracruz in January 2015. Under the leadership of then-Special Prosecutor Ricardo Nájera Herrera, FEADLE refused to assume the case, arguing that Sánchez only practiced journalism sporadically and spent most of his time working as a taxi driver.<sup>69</sup>

This determination failed to take into account that Sánchez was well-known in his community Medellín de Bravo for his advocacy and reporting, and had founded

<sup>x</sup> However, Mexico will soon have a Special Prosecutor's Office for Human Rights within its new National Prosecutor's Office, which will investigate crimes against both journalists and human rights defenders. Under this new structure, FEADLE will cease to exist. (See page 26).

<sup>xi</sup> The five convictions were for: 1) possession of firearms in 2012, 2) abuse of authority in 2016, 3) homicide in 2016, 4) torture in 2017, and 5) aggravated abuse of authority and injuries in 2018.

<sup>xii</sup> The five additional convictions secured after June 2018 were for: 1) against the administration of justice, 2) injuries, 3) abuse of authority, 4) unlawful persecution and arbitrary detention, and 5) abuse of authority.

a local newspaper focused on crime, corruption, and public services, which frequently criticized the mayor of the town.

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**While journalists and human rights defenders are frequently targeted specifically in retaliation for their work, attacks against these actors are often investigated as everyday crimes—written off as a byproduct of generalized violence—rather than orchestrated attempts to silence critical voices and curb social movements.**

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Sánchez's family went through a nearly two-year legal battle to force FEADLE to assume the case rather than leaving it languishing in the hands of state prosecutors. In January 2016, a federal court found that FEADLE's refusal to acknowledge the victim's work as a journalist contravened national and international standards of freedom of expression.<sup>70</sup> The ruling also highlighted that FEADLE had ignored evidence pointing to the participation of local authorities in the victim's killing—evidence which was supposed to mandate federal officials to take over the case. FEADLE challenged the ruling, but the court upheld the original sentence in September 2016.<sup>71</sup>

Sánchez's case highlights how investigations can be severely weakened when FEADLE takes too long to assume power over cases it should. By the time federal officials took over the case, the window of opportunity to gather crucial evidence and information had already passed. Many of the key suspects had already gone into hiding, including the mayor of Medellín de Bravo, Omar Cruz, who was identified as an intellectual author behind the crime by one police officer detained in relation to the case.<sup>72</sup> Since then, two individuals have been convicted for the crimes of homicide and breach of a legal duty, but Omar Cruz and other suspected intellectual authors remain at large.<sup>73</sup>

Since Special Prosecutor Sánchez del Pozo took office, various civil society groups have welcomed that he is more open than his predecessors to dialogue with

and hear the concerns of victims and human rights organizations. However, they also maintain that FEADLE remains too slow—and often reluctant—to exercise its “power to assume” cases.

This was recently seen in the case of investigative journalist Miroslava Breach, who was murdered in March 2017 in Chihuahua. While FEADLE immediately initiated a parallel investigation, federal officials were slow to take the case out of the hands of Chihuahua state authorities, despite concerns about the impartiality of the Chihuahua State Prosecutor's Office and the fact that state authorities were violating the rights of the victim's family members by denying them access to the case file. It wasn't until over a year later that FEADLE at last asserted jurisdiction over the case, after an extensive legal battle and intensive pressure by the Breach family's legal team from the organization Propuesta Cívica.<sup>74</sup>



Another question is whether FEADLE is over-hasty in claiming lack of jurisdiction over cases. As seen in Figure 6, in 49 percent of cases that passed through FEADLE between 2012 and June 2018, the agency decided that the case fell outside its jurisdiction. In the vast majority of these cases, FEADLE sent the case over to state prosecutor's offices, which are generally less professionalized, more susceptible to corruption and political influence over investigations, and lack personnel specialized in investigating crimes against freedom of expression.<sup>xiii</sup>

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<sup>xiii</sup> During this period, FEADLE claimed lack of jurisdiction over 405 investigations, 386 of which were sent to state prosecutor's offices. The 19 cases that involved federal crimes were transferred internally or to other units within the PGR.

**FIGURE 5**

**STATUS OF FEADLE INVESTIGATIONS, OFFICIAL FIGURES, 2012-JUNE 2018**

LACK OF JURISDICTION	ONGOING	DID NOT PRESS CHARGES	TAKEN TO COURT	ARCHIVED	REPARATION AGREEMENTS	OTHER
38%	23%	14%	12%	5%	1%	7%

**Lack of jurisdiction:** Cases classified as "incompetencia" in Mexico's old inquisitorial criminal justice system and those classified as "incompetencia externa", "incompetencia interna", and "despachos a otras áreas de PGR" in Mexico's current adversarial criminal justice system.

**Did not press charges:** Cases classified as "no ejercicio de la acción penal" in both the old inquisitorial system and the current adversarial system.

**Taken to court:** Cases classified as "consignado" in the old inquisitorial system and those classified as "judicializado" in the current adversarial system.

**Suspended:** Cases classified as "reserva" in Mexico's old inquisitorial criminal justice system and those classified as "archivo temporal" in its current adversarial system.

**Reparation agreements:** Cases classified as "acuerdo reparatorio" in the new adversarial system.

**Other:** This includes cases classified as "acumulaciones" (cases that were incorporated into another case file) in both the inquisitorial and adversarial systems.

Source: Responses to access to information requests

**FIGURE 6**

**STATE CASES TAKEN OVER BY FEADLE VS. CASES FEADLE TRANSFERRED TO STATES, OFFICIAL FIGURES, 2012-JUNE 2018**

YEAR	STATE CASES TAKEN OVER BY FEADLE	CASES FEADLE TRANSFERRED TO STATES
2012	N/A	129
2013	9	74
2014	21	53
2015	14	42
2016	4	65
2017	1	14
2017	5	9
<b>TOTAL</b>	<b>54</b>	<b>386</b>

Source: Responses to access to information requests

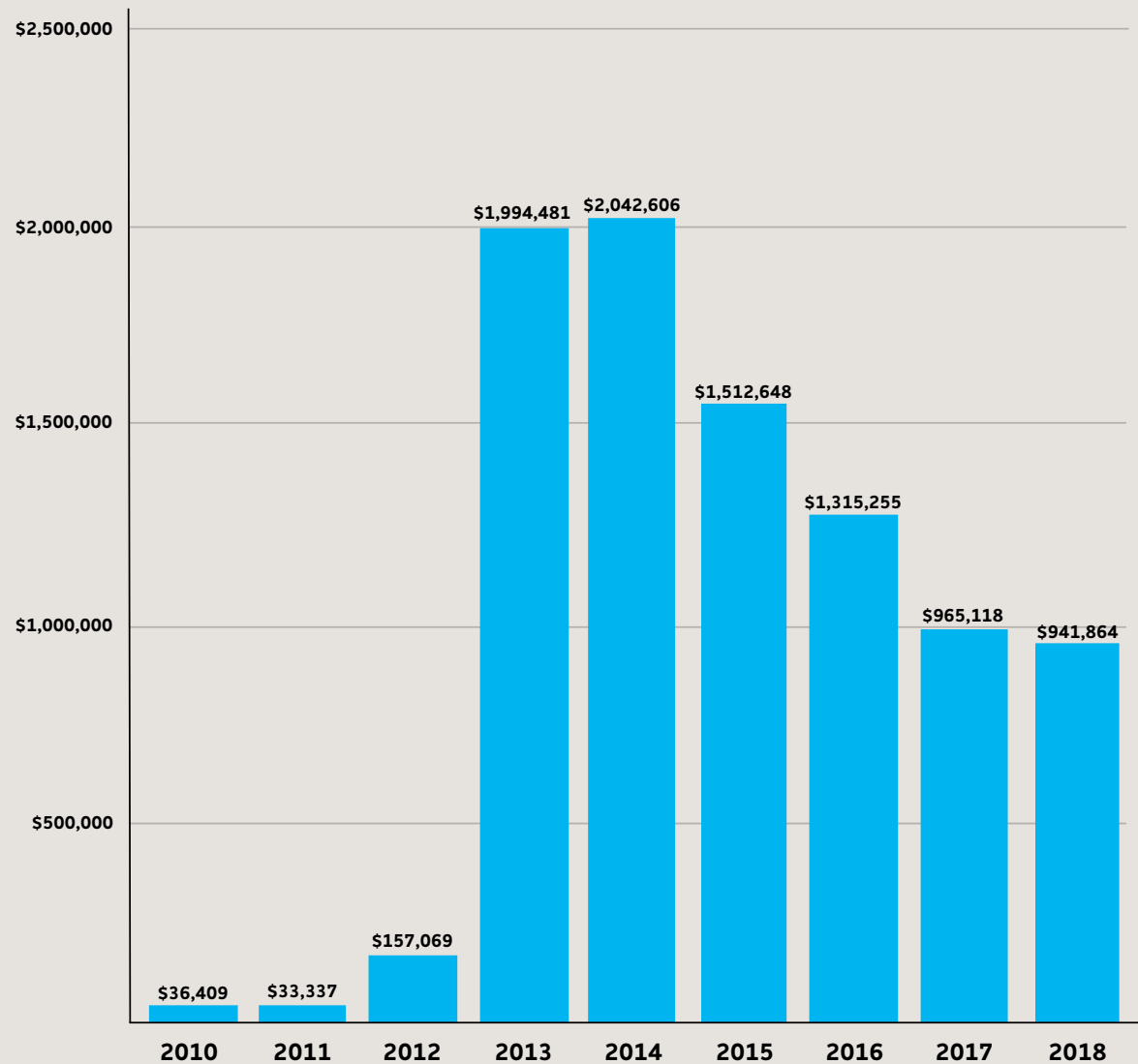
**HUMAN AND FINANCIAL RESOURCES**

Even if FEADLE were willing to take on every case that falls under its jurisdiction under Mexican law, its capacity to do so would be severely limited by a lack of human and financial resources, a problem that has also contributed to the office's low prosecutorial success rate. FEADLE's budget fell by 54 percent between

2014 and 2018, from over USD\$2 million to around \$942,000,<sup>75</sup> and the agency only has 22 prosecutors and 15 investigative police officers on staff.<sup>76</sup>

In June 2018, the UN and IACHR Special Rapporteurs for freedom of expression called attention to how these shortcomings “undermin[e] even modest attempts to carry out the office’s legal mandate.”<sup>77</sup>

**FIGURE 7**  
**FEADLE'S BUDGET, U.S. DOLLARS, 2010-2018**



Source: <https://bit.ly/2TzdbvH>

## BOX 4

### THE SPYWARE CASE

Investigations carried out in 2017 by several digital rights groups,<sup>78</sup> and made public by the *New York Times*,<sup>79</sup> revealed that government-owned spyware had been used to illegally surveil prominent journalists, activists, and human rights defenders in Mexico.

The spyware, known as Pegasus, was sold to the Mexican government by the Israeli cyberarms manufacturer NSO Group, which says it sells the tool exclusively to governments under the express condition that it only be used against suspected terrorists and criminal organizations.

According to the reports, three federal agencies purchased the spyware: the federal Attorney General's Office (PGR), the Ministry of Defense, and Mexico's now defunct national intelligence agency (*Centro de Investigación y Seguridad Nacional*, CISEN).<sup>xiv</sup>

Pegasus targets smartphones by sending a malicious link that turns the victim's phone into a powerful surveillance device when opened. An infected phone gives the hacker the power to monitor all aspects of the victim's cell phone activity, including calls, texts, and emails, and can even use the microphone and camera to surveil and record the victim.

Those targeted by the spyware were some of the Peña Nieto government's most prominent and vocal critics, including journalists who uncovered corruption scandals involving the former president's wife and inner circle, anti-corruption and other activists, as well as human rights lawyers representing victims of some of the most grave and emblematic cases of human rights violations that marred his six-year term. This includes the lawyers of the victims of the Narvarte case (see Box 3),<sup>80</sup> as well as those representing the families of the 43 students from Ayotzinapa, Guerrero who were forcefully disappeared by Mexican security forces in 2014.<sup>81</sup>

When news of the illegal surveillance came to light, the Peña Nieto administration affirmed that the PGR was investigating the case. But during the nearly 18 months that the investigation was carried out during Peña Nieto's presidency, officials failed to provide information on the results of any inquiry.<sup>82</sup>

In February 2018, a follow-up investigation by the *New York Times* revealed that senior U.S. officials had rejected the Peña Nieto government's request to collaborate in the investigation, wary that Mexican authorities had little interest in resolving the case and only sought to use U.S. participation to give legitimacy to the investigation, which otherwise lacked credibility.<sup>83</sup>

In March 2019, Citizen Lab (one of the digital rights groups involved in the initial investigation) revealed that even after the scandal, the Peña Nieto administration continued to use Pegasus as late as September 2018.<sup>84</sup>

Whether progress on the case will be made during López Obrador's government remains to be seen.

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<sup>xiv</sup> López Obrador dismantled CISEN and replaced it with the National Intelligence Center (*Centro Nacional de Inteligencia*, CNI)

## TRANSITION TO AN AUTONOMOUS NATIONAL PROSECUTOR'S OFFICE

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The spyware case is one of many that illustrated the PGR's lack of independence and autonomy to conduct impartial investigations into cases involving powerful political actors.<sup>85</sup> In a positive development, Mexico's Constitution was reformed in 2014 to overhaul the PGR and replace it with an autonomous National Prosecutor's Office (*Fiscalía General de la República*), separate from the executive branch.<sup>86</sup>

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**One factor contributing to such low prosecutorial success rates is that many investigations into cases where public officials are implicated are marred with irregularities and obstruction of justice.**

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Mexico is currently in the middle of phasing out the PGR and fully establishing the new office. Citizens' collectives that have closely followed this process, such as *#FiscalíaQueSirva* and *#VamosPorMás*, have expressed serious concerns along the way regarding the staffing and structure of the National Prosecutor's Office, and have raised questions about how autonomous the new office will truly be.<sup>87</sup>

One concern is that the current reforms do not prevent PGR officials from being automatically transferred over to the new institution without being properly vetted for previous misconduct. Another is that the Mexican Senate fast-tracked the selection of the first head of the National Prosecutor's Office, Alejandro Gertz Manero (a close ally of López Obrador), who will serve in the position for the next nine years.<sup>88</sup>

Despite these concerns, a fully functioning National Prosecutor's Office could arguably pave the way towards more effective investigations into crimes against journalists and human rights defenders. The Implementation Law (*Ley Orgánica*) that establishes the structure and function of the new office mandates the following: 1) creating more flexible investigative teams to handle complex cases, 2) establishing a Criminal Prosecution Plan that directs resources

towards investigative priorities, and 3) creating four new special prosecutor's offices (for internal affairs, electoral crimes, corruption, and human rights).<sup>89</sup>

Under this new structure, FEADLE will cease to exist, and cases involving human rights defenders and journalists will be investigated by prosecutors working under the forthcoming Special Prosecutor's Office for Human Rights (*Fiscalía Especializada en Materia de Derechos Humanos*). Lessons learned through FEADLE should be applied to this new special prosecutor's office.

## STATE-LEVEL SPECIAL PROSECUTOR'S OFFICES

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A handful of state governments have also established special prosecutor's offices for investigating crimes against journalists and/or human rights defenders. Like FEADLE, the state-level offices generally lack sufficient personnel and financial resources to manage their caseloads, and the officials appointed to head them often lack the experience, qualifications, and political will to effectively do their jobs.

Another problem is that these state-level offices have little capacity to be effective so long as law enforcement officials in the states where they operate continue to lack professionalization and remain poorly trained.

In Guerrero, for example, journalists have called attention to the impunity that persists despite the 2017 creation of a "Special Prosecutor's Office for Crimes against Journalists, Human Rights Defenders, and Freedom of Expression". They denounced the fact that the special prosecutor lacks the certification necessary to prosecute cases under Mexico's new adversarial criminal justice system, and that she—as well as some 300 investigative police agents, forensic experts, and personnel within the state prosecutor's office—have not passed their vetting examination (*examen de control de confianza*), a basic requirement for officials operating within the criminal justice system.<sup>90</sup>

On the other hand, the state of Chihuahua's experience has shown hopeful signs of progress. Human rights groups in the state have expressed cautious optimism that the new "Special Prosecutor's Office for Human



Rights Violations and Forced Disappearance" will yield real results, given the apparent political will of the recently-named special prosecutor, who took office in October 2018.

The agency is investigating the case of Julián Carrillo (see Box 1), and in an important and positive move, it is pursuing lines of investigation related to Carrillo's role as a human rights defender as well as how the case may be connected to killings of other human rights defenders from the Coloradas de la Virgen Community in Chihuahua's Sierra Tarahumara Mountains. In January 2019, the special prosecutor announced that two suspects had been detained in relation to the case.<sup>91</sup> An important challenge in this and other cases will be investigating both the material and intellectual authors of the attacks against the victim.

## **STANDARDIZED PROTOCOLS FOR INVESTIGATION**

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In a December 2018 interview with WOLA, FEADLE head Ricardo Sánchez del Pozo emphasized that installing special prosecutor's offices is less important than guaranteeing that existing agencies have personnel with specialized training on how to properly investigate crimes against freedom of expression.<sup>92</sup>

In a welcome step forward, in October 2018 the National Law Enforcement Conference passed the Standardized Protocol for the Investigation of Crimes against Freedom of Expression, a mandatory investigative methodology that prosecutors at the federal and state level must follow when handling these cases.<sup>93</sup>

The result of over a year of collaboration between FEADLE, press freedom and human rights groups, Mexico's National Human Rights Commission (CNDH), and the Mexico office of the UN Office of the High Commissioner for Human Rights (OHCHR), the protocol is a comprehensive document. It outlines how to fully explore all lines of inquiry related to the exercise of freedom of expression, as well as how to approach investigations from a gender, cross-cultural, and geographical perspective.<sup>94</sup>

While the passage of the protocol is certainly a positive development, its effectiveness will depend on its implementation. According to Sánchez del Pozo,

the certification process will be a critical effort in the coming year, as prosecutors in every state will have to be trained on its content and accountability measures capable of ensuring compliance must be put in place.

While civil society organizations have been pushing for a similar protocol for investigating crimes against human rights defenders, their efforts have not been as successful. With support provided to the PGR by the U.S. Agency for International Development (USAID), some steps have been taken to design a protocol, but each of the drafts presented so far have been deemed insufficient by human rights groups. The drafts have lacked an assessment of common risks faced by human rights defenders, and have failed to outline specific investigative actions needed to clarify crimes against them. The drafts also failed to establish coordination mechanisms between the different institutions responsible for handling these cases.

## **CRIMINALIZATION INSTEAD OF INVESTIGATION**

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Apart from the fact that Mexican authorities have demonstrated a troubling lack of capacity and political will to investigate and sanction attacks against journalists and human rights defenders, it is also alarming that these actors are often criminalized for carrying out legitimate journalistic and human rights work.

Numerous national and international human rights bodies, including the CNDH,<sup>95</sup> IACHR,<sup>96</sup> and UN,<sup>97</sup> have called attention to the deliberate misuse of criminal law to silence critical voices and curb social movements in Mexico. For instance, there have been cases where public officials unhappy with media articles exposing their corruption and illicit acts have sued journalists for libel or defamation. Broad terminology in Mexican legislation, such as "attacks on public roadways" or "attacks on national wealth" has increasingly been manipulated to hinder social protest, and some human rights defenders participating in peaceful, lawful assembly have been arrested on charges such as disrupting the peace.

It is also well-documented that authorities sometimes subject activists and journalists to fabricated criminal

charges completely unrelated to their journalism or advocacy work. The UN Working Group on Arbitrary Detention has issued several official opinions to the Mexican government ordering the immediate release of journalists and human rights defenders who were arbitrarily detained and whose judicial processes have been characterized by irregularities.<sup>98</sup>

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Family members and other loved ones of journalists and human rights defenders have also been targeted. This happened in the case of Martha Esthela Solorzano, whose anti-corruption and human rights work implicated municipal police officers in San Luís Río Colorado, Sonora. In 2012, her son was arrested and eventually sentenced to 11 years in prison for allegedly committing several serious crimes, including attempted homicide. He wasn't released until 2015,

when the Sonora Supreme Court acquitted him due to clear contradictions in the testimonies used to sustain his conviction.<sup>99</sup>

Conscious of how the Mexican government misuses its punitive powers to hinder legitimate journalistic and human rights work, when we submitted our information requests to prosecutors' offices, we also requested information on investigations into crimes allegedly committed by journalists and human rights defenders.

While many offices reported that their databases do not disaggregate cases in this way, the Chihuahua State Prosecutor's Office reported that between 2012 and June 2018, it opened 87 case files where journalists and human rights defenders were the alleged aggressors, more than double the 33 investigations it opened into crimes committed against them. While it is impossible to know from the information we received whether or not these investigations are substantiated, such figures and case examples raise concerns about the potential use of law enforcement agencies to criminalize journalists and human rights defenders rather than guaranteeing their protection and access to justice.

## U.S. SUPPORT

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U.S. Members of Congress have expressed ongoing concerns about the situation of journalists and human rights defenders in Mexico, including through multiple public and private letters to the Mexican government.

In a December 2018 letter sent to President López Obrador, the co-chairs of the Tom Lantos Human Rights Commission (TLHRC) within the House of Representatives expressed support for Mechanism, urging López Obrador "to ensure full funding for the Mechanism and to take measures to strengthen capacities to investigate these crimes and effectively prosecute those responsible."<sup>100</sup>

Additionally, USAID has provided important technical and financial assistance to the Mexican agencies charged with addressing violence against journalists and human rights defenders. USAID helped draft the 2012 law that established the national Protec-

tion Mechanism, and has provided at least USD\$6.6 million to Mexico to support freedom of expression efforts. This includes \$5.1 million that were provided to Freedom House-Mexico from 2011 to 2016 to strengthen the Mechanism, train over 1,400 journalists on self-protection and digital security, and increase civil society involvement in issues related to freedom of expression.<sup>101</sup>

In September 2017, USAID initiated another \$7.1 million project called ProVoces, which has an initial base period of two years with the possibility of being extended. ProVoces consultants worked with FEADLE to develop the Standardized Protocol for Investigating Crimes against Freedom of Expression and is currently supporting the elaboration of a protocol for investigating crimes against human rights defenders. The project has organized training and mentoring activities to help improve Mechanism staff's

critical analysis skills when evaluating the provision and implementation of physical protection measures, and has carried out a qualitative and technical analysis to identify main shortcomings in the Mechanism's

risk assessment processes. ProVoces also aims to strengthen coordination between prosecutor's offices, federal and state-level protection mechanisms, and civil society organizations.<sup>102</sup>

## A WAY FORWARD

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The Mechanism was designed to provide immediate protection to human rights defenders and journalists at risk and to identify broader policies to support these individuals and prevent future attacks. However, the Mechanism in and of itself is incapable of holistically tackling violence against this population. Unless crimes against journalists and defenders are properly investigated and sanctioned, attacks will only continue. While the Peña Nieto administration failed to combat the root causes behind the risks posed to these groups, the López Obrador administration has an important opportunity to do more.

In January 2018, the CSO Space called attention to the fact that killings of journalists and defenders have continued at an alarming pace since López Obrador took office.<sup>103</sup> In light of recent attacks, member organizations called on the government to develop a comprehensive public policy that includes provisions on protection, prevention, investigation, punishment, and reparation for crimes against journalists and human rights defenders.<sup>104</sup>

Several civil society organizations have proposed legal initiatives for how to do this. One proposal—backed by the organizations Comité Cerezo, Urgent Action for Human Rights Defenders (*Acción Urgente para Defensores de Derechos Humanos*, ACUDDEH), and others—is to replace the federal law that created the Mechanism with a more comprehensive “general law”. Unlike a federal law, a general law could address some of the current gaps in coordination, given that these laws are binding for the states. A draft general law was presented to Mexico's Congress in November, and three public working meetings were held in November and December 2018 to debate and adjust the draft. These working meetings continued in February 2019.<sup>105</sup> Organizations have asked Congress to open the debate to civil society groups through regional and national forums in order to ensure broad and inclusive input.<sup>106</sup>

# RECOMMENDATIONS

## FOR THE MEXICAN GOVERNMENT:

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### PROTECTION

- **The federal government should guarantee the Mechanism has the human and financial resources necessary to properly carry out its functions.** Each year, Mexico's Congress should take into consideration the Mechanism's growing caseload as it decides how much funding to allocate for the federal trust that funds the implementation of protection measures. It should also increase funding for the Ministry of the Interior's Human Rights Unit so that the Mechanism can hire more staff.
- **Mechanism officials should continue to improve their risk analysis practices.** Risk analysis assessments should incorporate differentiated perspectives in order to effectively meet the varying protection needs of female, rural, indigenous, and other particularly vulnerable journalists and defenders. Processes for determining and implementing collective protection measures for communities, human rights organizations, and media outlets must also be improved. The Mechanism's Governing Board should frequently meet with and consider insight from civil society organizations on how to improve risk analysis protocols.
- **Agencies charged with addressing violence against journalists and human rights defenders should strengthen avenues of coordination.** Public prosecutor's offices, the federal Mechanism, state-level protection units, the Executive Commission for Attention to Victims (*Comisión Ejecutiva de Atención a Víctimas*, CEAV), the CNDH, and state-level human rights commissions should increase their capacity to share information and provide holistic attention and protection to victims.
- **The Ministry of the Interior should reconsider the privatization of protection measures in the Mechanism.** The Mexican government should consider alternatives to contracting private companies to implement protection measures, and the Mechanism should be more transparent regarding the details of these contracts.

### PREVENTION

- **Federal and state authorities should continue supporting the implementation of Chihuahua's Contingency Plan.** Officials from all levels of government should maintain participation in the Contingency Plan's working group meetings and fulfill their commitment to implement each of the actions items outlined in the plan.
- **Each state-level protection unit should work with local civil society organizations to conduct a detailed assessment of the risks posed to journalists and defenders in their state.**

# RECOMMENDATIONS

- **The Mechanism's Prevention, Follow-up, and Analysis Unit should complete and publish a detailed "risk map" that identifies the root causes of violence and most common forms of crime against journalists and human rights defenders in each state.** This risk map should be used to develop targeted violence prevention programs and to determine which protection measures may be most appropriate for beneficiaries in each state.
- **Federal, state, and municipal governments should carry out public campaigns recognizing the work of journalists and human rights defenders.** These campaigns should raise awareness about the causes human rights defenders fight for and the dangers and risks journalists and defenders face for their work. They should also raise awareness about the root causes behind those risks, such as corruption, organized crime, human rights abuses, and the overexploitation of natural resources.

## INVESTIGATION

- **The new National Prosecutor's Office should ensure adequate resources for the investigation of crimes against journalists and human rights defenders.** The forthcoming Special Prosecutor's Office for Human Rights should be provided the funding and staffing levels necessary to properly fulfill its mandate. The National Prosecutor's Office's Criminal Prosecution Plan should outline a specific strategy for investigating these crimes.
- **The first head of the Special Prosecutor's Office for Human Rights should be carefully selected through a public and participatory process that takes civil society input into account.** The special prosecutor should have experience working on human rights issues and investigating and prosecuting complex cases. He or she must have the political will and autonomy to carry out serious and impartial investigations into crimes against journalists and human rights defenders, including in cases involving powerful political, criminal, and economic interests.
- **State governments in states with special prosecutor's offices for investigating crimes against journalists and/or human rights defenders should guarantee the proper functioning of these offices.** State congresses should establish procedures with clear criteria for appointing and removing the heads of special prosecutor's offices. These offices should be guaranteed the human and financial resources needed to be successful.
- **Personnel within prosecutor's offices at the federal and state level should receive specialized training on how to analyze crimes within the context of victims' journalism or advocacy activities.** Prosecutor's offices across the country should promptly be certified on the recently-passed Standardized Protocol for the Investigation of Crimes against Freedom of Expression. The National Prosecutor's Office should collaborate with civil society organizations to develop a Standardized Protocol for Investigating Crimes against Human Rights Defenders that includes detailed information on the risks posed to defenders, lays out investigative actions needed to clarify cases, and outlines interinstitutional coordination mechanisms.

# RECOMMENDATIONS

- **Prosecutor's offices should maintain databases with disaggregated information on crimes against journalists and human rights defenders, as well as the status and results of their investigations into these attacks.** These figures should be used to draw patterns and connections between cases, identify common shortcomings in investigative processes, and address the factors resulting in low prosecutorial success. These statistics should be made public in order to improve transparency and strengthen civil society organizations' capacity to engage on these issues.
- **Prosecutor's offices should develop oversight and accountability mechanisms that hold accountable prosecutors that do not manage cases with due diligence.** The heads of each prosecutor's office should develop policies that disincentivize prosecutors from prematurely archiving cases or allowing the statute of limitations on their investigations to pass.

## FOR THE U.S. GOVERNMENT:

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- **Members of Congress and State Department officials should continue to condemn attacks against journalists and human rights defenders.** Through public statements and public and private communications to the Mexican government, U.S. officials should express concern for threats and attacks against journalists and defenders as well as Mexican authorities' lack of progress in investigating these cases.
- **USAID should continue to provide financial and technical assistance to the Mexican agencies charged with addressing violence against journalists and human rights defenders as well as civil society organizations working on this issue.** U.S. officials should consult with the Civil Society Organizations' Space for the Protection of Journalists and Human Rights Defenders (CSO Space) and other human rights and press freedom groups to determine future funding priorities.
- **U.S. officials should make official visits to journalists and defenders at risk.** By making official visits to journalists, defenders, media outlets, and human rights organizations that have been threatened or attacked, U.S. officials can give important visibility to their work.



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The Washington Office on Latin America (WOLA) is a leading research and advocacy organization advancing human rights in the Americas. We envision a future where public policies in the Americas protect human rights and recognize human dignity, and where justice overcomes violence.

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Peace Brigades International (PBI) is a nongovernmental organization with 30 years of experience in international accompaniment. PBI has maintained a permanent presence in Mexico since 1999 and aims to protect spaces for people and organizations that non-violently promote human rights and who suffer from repression as a result of their work.

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## **ACKNOWLEDGMENTS**

Elyssa Pachico, WOLA Communications Consultant, as well as Hannah Matthews, Melissa May, Mar Saiz, and the PBI team provided valuable insights and additions to the content of this report. Ximena Suárez-Enríquez, former Assistant Director for Mexico, assisted with the preliminary research.

This report would not have been possible without the generous support of the MacArthur Foundation and the Ford Foundation.