

Open Government Partnership
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Mexican Civil Society Statement for OGP Steering Committee

May 23 2017

Open Government Partnership
Steering Committee

Ever since the start of the Open Government Partnership, Mexico has always reflected both the forthcoming innovations and challenges in a country's openness process. Our internal governance body, the Tripartite Technical Secretariat, is represented by Civil Society, the Executive branch of government (currently represented by the Ministry of Public Administration) and the National Institute of Access to Information and Data Protection (INAI). This secretariat has co-created and evolved over time, fostering the country's open government agenda and defining every Action Plan ambitious commitment building and follow-up mechanisms. Despite all complexities and the continuously adverse country context, the key for such positive co-creation process has been mutual trust, common conviction on the values of open government, and an equal alignment to the principles of the Open Government Partnership.

Unfortunately, we write to you today to let you know that the civil society organization nucleus has unanimously arrived to the conclusion that there are no longer conditions for truthful co-creation and honest dialogue within the Secretariat and to continue our participation in the country's mechanism and the 3rd Action Plan. The tipping point behind such decision is the evidence of high-technology surveillance attacks to Mexican civil society and the lack of involvement from our government counterparts at the Secretariat. Also, there has been an important loss of political will regarding the 3rd Action Plan as several government offices from the Executive branch have tried to decrease the scope or modify commitments and actions agreed upon after a wide co-creation process with over 300 participants in 2016.

On February 11th 2017, CitizenLab published a technical report detailing evidence of digital surveillance attack against three prominent research scientists and health advocates in Mexico, two of which actively participated in the open government commitment building process¹. This attack was done with high-end spyware Pegasus sold only to governments by

¹ See CitizenLab's report "Bitter Sweet: Supporters of Mexico's Soda Tax Targeted With NSO Exploit Links": <https://citizenlab.org/2017/02/bittersweet-nso-mexico-spyware/>

Israel-based cyber-warfare company NSO Group. Pegasus, as other sophisticated spyware, works under targeted individual infections that if successful can access and record a great variety of data, files and even use recording software of the victim's mobile device. Previous revelations had identified the Mexican government as an international top buyer of spyware technology from firms like NSO Group (estimated to be USD \$20 million) or Hacking Team (estimated to be over EUR €5 million)².

The New York Times published this story in the front page and the case has deeply shocked Mexican, Latin American and specialized international civil society, health and technology communities.³ The victims and local digital rights specialists (R3D, SocialTIC and Article 19) publicly demanded the Mexican government to explain their involvement in these cases and have clear transparency, accountability and safeguard mechanisms to avoid government-driven illegal and disproportionate surveillance⁴. Support letters from the civic-technology and health local and international have been signed by tenths of organizations and specialists. No public nor official response by any Mexican authority has been expressed.

The Open Government Civil Society group saw with outrage these revelations since they directly represent a threat to safe civic participation, government institution trust, legality and the values of open government. On February 16th 2017, the Mexican Civil Society Nucleus signed a letter to our partners at the Open Government Tripartite Technical Secretariat expressing profound concern on government-lead surveillance on civil society and demanded proactivity in order to clarify these actions and to make the necessary efforts to enable regulation, transparency and accountability controls that can prevent illegal and disproportionate surveillance⁵. So far, no public nor official response to address these issues has been expressed by any our counterparts at the TTS in 3 months.

Our main concern is that government-lead top-end technology purchases and illegal surveillance against activists, civil society and journalists is a constant activity. Despite the technical complexities to detect, assess, and track such sophisticated malware, there is evidence of its illegal purchases and use from government offices in the previous and current administration. CitizenLab's reports identify Mexico as the world's top users of NSO Group infrastructure ahead of UAE and Uzbekistan⁶. And after the attacks to health specialists was widely known in the country, several journalists, activists and civil society organizations have approached local NGOs with evidence of similar or even the same attack

² See Derechos Digitales's February 11 2017 report on "Hacking Team in Latin America"
<https://www.derechosdigitales.org/wp-content/uploads/HT-map.png>

³ See New York Times's "Spyware's Odd Targets: Backers of Mexico's Soda Tax":
<https://www.nytimes.com/2017/02/11/technology/hack-mexico-soda-tax-advocates.html>

⁴ See press brief and letter:

<http://elpoderdelconsumidor.org/saludnutricional/el-espionaje-del-gobierno-de-mexico-a-defensores-d-el-derecho-a-la-salud-no-debe-quedar-impune/>

⁵ See the letter: <https://goo.gl/z4reBU>

⁶ See CitizenLab August 24 2016 report "The Million Dollar Dissident: NSO Group's iPhone Zero-Days used against a UAE Human Rights Defender":
<https://citizenlab.org/2016/08/million-dollar-dissident-iphone-zero-day-nso-group-uae/>

patterns. These cases are being assessed by CitizenLab and have been kept confidential to safeguard the safety of the staff of these organizations.

The latest report by Mexican digital right's specialist NGO R3D labels the surveillance as "out of control"⁷. The problematic goes beyond specific cases and it is embedded in Mexico's core government practices that systematically foster impunity, abuse of power, and even attacks against dissidents. In a 21st Century open government context, surveillance affects not only the safety and privacy of civil society, but also every day operations of the attacked organizations and lives of the people working for civic causes. It is impossible to have an open, secure, and free civic space and co-creation environment under digital surveillance. This systematic actions in Mexico should worry all OGP members since illegal and disproportionate digital surveillance is increasingly becoming a characteristic of authoritarian, undemocratic, and opaque governments.

The Mexican OGP process has always highlighted the different factors that can strengthen and weaken open government. Mexico is a country with a solid legal framework, a strong civil society, and a mature institutional ecosystem that when led with true and powerful political will, champions the open government agenda which can become a real transformative inertia. Mexico has shown the world that co-creation is possible and that it can reach specific outcomes, like some identified in our 2nd Action Plan. On the other hand, however, we live in a country with systemic handicaps such as corruption, impunity, conflict of interests, violence, attacks on the media, and human right violations that constitute key factors for a secure, free, and participatory civic space.

In 2015's OGP International Summit, Mexican Civil Society expressed deep and visible concerns on how the Mexican government would showcase the open government agenda but achieving very little change at home regarding the most profound country issues and would even act with total incongruence to open government values and principles⁸. Mexican civil society has constantly demanded that the Mexican Government embraces openness at the highest level and leads by example, beyond specific commitments.

Mexico's 3rd Action Plan was an ambitious effort to achieve in-depth solutions to some of the country's deepest problems. The commitments were aligned with the Sustainable Development Goals (SDGs) in order to reach mid-term impact. The participation process to define the commitments was also extense in order to reach out to a larger and more diverse stakeholders that would not only define impactful commitments but also support the implementation process. The 3rd Action Plan was published at the OGP last November. A specific report on the changes introduced by the government will be described in the next IRM.

⁷ See R3D's November 2016 Report "Estado de Vigilancia en México":

<https://r3d.mx/wp-content/uploads/R3D-edovigilancia2016.pdf>

⁸ See Mexican civil society statement at the 2015 OGP Summit in Mexico:

<http://fundar.org.mx/urgente-que-la-alianza-para-el-gobierno-abierto-se-convierta-en-una-plataforma-efectiva-para-ayudar-a-resolver-los-grandes-problemas-que-enfrenta-mexico/?ID=12>

Our current disappointment and frustration expressed in this letter is not a sudden reaction nor a loss in the battle for government openness in Mexico. The civil society organisations that write this letter have committed to continue fostering the open government agenda in Mexico and pursue many of the activities we do to engage with local civil society, other powers in government, and in-depth reflections on how to make openness part of the government's DNA beyond commitments and OGP events. We look forward to continue working with OGP at a regional and international level. And locally, we shall build new and stronger strategies so that an ambitious 4th Action Plan can be successfully co-created in 2018 or 2019. We are also strongly considering the possibility of submitting an action to initiate the Response Policy within the OGP framework. We would very much like for this Mexican issue to be addressed at the next meeting of the OGP Committees in Washington, D.C.

We are deeply committed to the OGP agenda and values. As difficult as these decisions may appear, we are convinced they are necessary for maintaining the trust in the initiative in the long run.

Sincerely yours,

Ana Cristina Ruelas - Article 19

Edna Jaime - CIDAC, Centro de Investigación para el Desarrollo

Ernesto Gómez - Contraloría Ciudadana

Tomás Severino - Cultura Ecológica

Haydeé Pérez - Fundar, Centro de Análisis e Investigación

Alejandro González - GESOC, Agencia para el Desarrollo

Juan E. Pardinás - IMCO, Instituto Mexicano para la Competitividad

Francisco Rivas - Observatorio Nacional Ciudadano

Juan Manuel Casanueva - SocialTIC

Eduardo Bohórquez - Transparencia Mexicana