

# DRL/WHA Talking Points and Background Papers on Key Human Rights Challenges in the Western Hemisphere

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### **Background**

On April 12, a judge in Trinidad and Tobago ruled that sections 13 and 16 of the country's Sexual Offences Act were unconstitutional. This law prohibits same-sex relations and criminalizes consensual same-sex activity; a "buggery" conviction carries a maximum sentence of 25 years in prison. DRL supports grassroots efforts to challenge this type of law, particularly in Caribbean countries. This challenge was initiated by a Trinidadian activist. While the ruling is a welcome step toward equality, there will likely be an appeal to the high court.

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**Background:**

As President of Nicaragua's Supreme Electoral Council, drawing a government salary of \$60,000 per year, Roberto Jose Rivas Reyes (Rivas) has been accused in the press of amassing sizeable personal wealth, including multiple properties, private jets, luxury vehicles, and a yacht. Rivas has been described by a Nicaraguan Comptroller General as "above the law," with investigations into his corruption having been blocked by Nicaraguan government officials. He has also perpetrated electoral fraud undermining Nicaragua's electoral institutions. His designation drew immediate and widespread attention from the media and political class in Nicaragua.

Angel Rondon Rijo is a politically connected businessman and lobbyist in the Dominican Republic who funneled money from Odebrecht, a Brazilian construction company, to Dominican officials, who in turn awarded Odebrecht projects to build highways, dams, and other projects. In 2017, Rondon was arrested by Dominican authorities and charged with corruption for the bribes paid by Odebrecht.

Julio Antonio Juarez Ramirez is a Guatemalan Congressman accused of ordering an attack in which two journalists were killed and another injured. Guatemalan prosecutors and CICIG allege that Juarez hired hit men to kill Prensa Libre correspondent Danilo Efrain Zapan Lopez, whose reporting had hurt Juarez's plan to run for reelection. Fellow journalist Federico Benjamin Salazar of Radio Nuevo Mundo was also killed in the attack and is considered a collateral victim. Another journalist was wounded in the attack.

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## **Background on Freedom of Expression in the Western Hemisphere**

Freedom of expression is, in the words of the Inter-American Democratic Charter, an “essential component” of the exercise of democracy. A diverse and independent press is crucial to holding governments accountable and promoting democracy around the world.

In the Western Hemisphere the major obstacles to Freedom of Expression can be grouped into three areas that occur in particular countries:

1. State interference and aggression, such as laws criminalizing libel or criticism of government policies or officials, prohibiting independent media, or preventing assembly that would allow citizens to freely interchange information and views.; this is most concentrated in Venezuela, Nicaragua, and Cuba. Ecuador still has restrictive media laws on the books, though President Lenin Moreno has reduced enforcement and the imposition of penalties against media outlets.
2. Non-state (criminal) aggression, which is most concentrated in Honduras and Mexico, and is largely responsible for most journalists’ deaths in the region; and
3. Weak democratic institutions, including lack of journalist protection mechanisms as well as inefficient law enforcement and judicial systems, which enables frivolous lawsuits to be filed to silence critical voices, as has happened in Guatemala.

The State Department monitors and reports on the state of press freedom and the challenges journalists face from governments and other actors, including through the annual Country Reports on Human Rights Practices and USAID’s Media Sustainability Index.

The Department conducts a variety of programs that provide training and technical assistance to journalists and media outlets both online and offline. Our programs increase journalists’ skills, enhance their capacity to share information with each other and provide tools to help them maintain both their physical and emotional security. We conduct exchange programs for journalists and government officials on Freedom of Expression themes, and produce public diplomacy tools for use by our posts overseas. We raise Freedom of Expression multilaterally, in the UN system and through our strong support for the Office of the Special Rapporteur on Freedom of Expression at the Organization of American States.



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### **Background**

(SBU) According to the UN Special Rapporteur on Extrajudicial and Summary Executions Philip Alston, Colombia experienced an epidemic of thousands of false positive killings between 2002 and 2008 as pressure for results intensified in Colombia's protracted internal conflict. The modality of these cases was as follows. Members of the military abducted civilians, often from poor or marginalized communities, transported them to their theater of operations, killed them, and staged the scene to appear as if the victims had been enemy combatants killed in combat, such as by dressing their bodies in guerrilla uniforms or placing weapons at the scene. Since 2008, extrajudicial killings in general and false positives in particular have fallen dramatically, although there are reports that they still occur.

(SBU) Alston did not find evidence that these killings were a state policy but he concluded that the geographic extension and number of cases led him to determine that false positives were a "systematic practice" of the Colombian Army.

(SBU) The United Nations Office of the High Commissioner for Human Rights in Colombia conducted a rigorous five-year analysis of the pattern of false positive cases committed under different commanders, and identified those with the highest tallies of false positive killings under their command. While the office does not make representations about guilt or innocence, this effort could lay the groundwork for holding commanders to account for gross violations of

human rights committed under their command. The main evidence of command responsibility in these cases is the number of killings committed in a given unit.

(U) Congress requires an annual human rights certification which includes language about accountability for officers who ordered, ignored, or covered up false positive killings.

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### **Background**

(SBU) The Department was informed by William Browder, an activist who advocated for the Sergei Magnitsky and Global Magnitsky Acts, of allegations of CICIG and Guatemalan government collusion with Russian actors regarding the case of the Bitkov family. Igor Bitkov, his wife Irina, and daughter Anastasia, were prosecuted and sentenced to 14-19 years in prison on charges related to obtaining fraudulent identity documents in Guatemala. CICIG supported the prosecution, which included the conviction of 36 other government and private individuals involved in an identity fraud ring. Our embassy continues to investigate the allegations against CICIG but thus far, has not corroborated them. Mr. Browder has advocated for the Bitkovs on

the Hill and Senator Rubio has tweeted that he “supports the idea behind CICIG” but that there are signs of how “it is being manipulated by the radical left & even Putin”.

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## **Background on Emblematic Human Rights Trials in Central America**

**El Mozote Massacre (El Salvador):** Despite very little cooperation from the Ministry of Defense, the trial is ongoing against 18 former military officers accused of planning the 1981 El Mozote massacre in which over 800 were killed. In July 2016, the Constitutional Chamber of the Supreme Court of El Salvador struck down the 1993 Amnesty Law on the grounds that it violated citizens' constitutional right to justice and the right to compensation for crimes against humanity and war crimes. In September 2016, in response to a petition by the victims, a judge issued an order to reopen the investigation into the massacre.

**Rios Montt and Jose Rodriguez (Guatemala):** On October 13, 2017 two separate trials began against former Guatemalan head of state Efraim Rios Montt and former intelligence chief Jose Mauricio Rodriguez Sanchez in the case of genocide involving the Maya Ixil community. While Rodriguez's trial continues, on April 1, 2018 Rios Montt died, thereby ending his prosecution. In 2013, Rios Montt was found guilty of genocide and crimes against humanity during his presidency (1982-83) and sentenced to 80 years in prison. His conviction was overturned days later on procedural grounds and he was ordered retried.

**CREOMPAZ (Guatemala):** More than a year since a judge determined that there is sufficient evidence to send eight retired senior Guatemalan military officials to public trial in the CREOMPAZ enforced disappearance case, the proceedings remain tied up in appeals and legal motions. CREOMPAZ is a training site for UN peacekeeping operations. During Guatemala's internal armed conflict, the site was a military base. Since 2012, 565 bodies have been exhumed from within the confines of the military base. Of these, 143 have been identified through DNA tests as victims of the internal armed conflict who died between 1981 and 1987. Guatemalan Attorney General Thelma Aldana has described CREOMPAZ as one of the largest cases of enforced disappearance in Latin America.

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### **Background on Torture and Forced Disappearance**

A new law passed in 2017 stiffened penalties for the crime of forced disappearance and provided for a national registry and search commission, and another new law formally barred the use of evidence obtained through torture from use in Mexico's courts. These were important developments and provide a foundation for us to urge Mexico to improve enforcement and eradicate both crimes.

Mexican government statistics indicate that more than 30,000 people are missing; many of them are presumed to be victims of forced disappearance, though no one knows how many. This is a human rights crisis. The Inter-American Court for Human Rights will hear a case against Mexico on April 26 that is believed to be the first international human rights case related to forced disappearance in the context of international drug trafficking. The Inter-American Commission for Human Rights forwarded the case to the Court because Mexico had failed to comply with the measures it had ordered to investigate and sanction perpetrators of the crime of



forced disappearance, or to protect family members from reprisal as they search for their loved ones.

The Merida Initiative is designed to support Mexico's efforts to complete the transition to a more transparent, fair, and effective oral accusatorial justice system.

Under the Merida Initiative, the United States has a partnership with the Government of Mexico to disrupt organized criminal groups, institutionalize reforms to sustain the rule of law and support for human rights, create a 21st century border, and build strong and resilient communities. Bilateral efforts expand assistance to state level law enforcement and justice sector personnel; support democratic institutions, especially police, justice systems, and civil society organizations; expand our border focus beyond interdiction of contraband to include facilitating legitimate trade and travel; and build stable communities able to withstand the pressures of crime and violence.

A report by the United Nations High Commissioner for Human Rights released in March revealed that in the early stage of the federal investigation into the disappearance of the 43 students from Iguala/Ayotzinapa, in at least 34 cases, there is strong evidence that authorities tortured people into confessing. The report implicated Federal Ministerial Police working under the direction of Mexico's Attorney General's office in these cases of torture, which included anal rape, electric charges, and asphyxiation with plastic bags, simulated drowning, and threats to rape or kill family members unless they confessed.

## **Mexico: Background on Emblematic Cases**

**(SBU) Tanhuato:** On May 22, 2015, federal police killed 42 alleged armed criminals in a gunfight near Tanhuato, in the state of Michoacan; one police officer was also killed. Although authorities claimed they returned fire to subdue the crowd, a review by the National Commission on Human Rights (CNDH), a semi-independent government body, determined that the federal police had in fact initiated the operation, deliberately executed 22 of the 42 civilians who were killed, tortured at least two other men, and altered the crime scene. Although President Peña Nieto dismissed the chief of federal police in the wake of the report, no federal police agents have been charged.

**(SBU) Iguala/Ayotzinapa (43 Students):** On September 26, 2014, forty-three students from the Raul Isidro Burgos Rural Teacher's College of Ayotzinapa were forcibly disappeared from the city of Iguala, Guerrero State. To date the whereabouts of 42 of the 43 students remain unknown. An Interdisciplinary Group of Independent Experts (GIEI) was created in November 2014 through an agreement between the Inter-American Commission on Human Rights (IACHR), the Government of Mexico, and the families of the disappeared students, due to widespread concerns about the government's handling of the case. The experts released a final report that eviscerated the government's handling of the case, offered new lines of investigation, and hundreds of policy recommendations, including the passage of a law against forced disappearance and the creation of a national missing persons registry (a law was passed in 2017). In 2016 authorities arrested the former police chief of Iguala, Felipe Flores, who, authorities claim, was the mastermind of the crime. Authorities had indicted 168 individuals and arrested 128 as of 2017, including 73 police officers from the towns of Cocula and Iguala, and 55 alleged members of the drug trafficking organization Guerreros Unidos on charges related to organized crime. There have been no prosecutions for forced disappearance in the case. In March 2017, the UN released a report indicating that federal authorities tortured at least 34 people into providing confessions that aligned with the government's narrative of what transpired, using anal rape, electric charges, asphyxiation, waterboarding, and threats to rape or kill family members. The report also identified major due process violations including the presence of a federal official with one of the suspects at a riverbank the night before a bag of incinerated remains was "discovered" there; his visit was not recorded in any investigation files.

**(SBU) Tlatlaya:** On June 30, 2014, soldiers opened fire on suspected drug cartel members in a warehouse at Tlatlaya, Mexico State, killing 22 civilians. In 2015 the Sixth Military Court convicted one soldier and acquitted six others on charges of military disobedience in the case. In 2016 a civilian federal court acquitted seven military members of murder charges, citing insufficient evidence. On August 1, 2017, a judge ordered federal authorities to investigate whether army commanders played a role in the killings. The judge ruled that the Attorney General's Office had failed to investigate a purported military order issued before the incident in which soldiers were urged to "take down criminals under cover of darkness." In January 2017 a civilian court convicted four Mexico State attorney general's investigators on charges of torture, also pertaining to the Tlatlaya case. Nongovernmental organizations (NGOs) continue to denounce the perceived failure to investigate the chain of command and the lack of convictions.

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### **Background**

The Departments of State and Defense collaborated over several months to remediate the 79<sup>th</sup> Infantry Battalion and on March 26 the Secretary certified this decision, thereby removing a prohibition on U.S. training and assistance. Remediation is rare and it sent a powerful signal to Mexico that security cooperation to tainted units can resume when governments take corrective action.

The battalion in question was suspended after the Embassy uncovered credible information that members of the battalion had, while in uniform, extorted, robbed and killed five civilians.

Mexican authorities subsequently arrested and tried the soldiers responsible in civilian courts, following proper procedures to ensure that justice was served.

Implementing the Leahy law is not without challenges. Mexico's Attorney General's Office (PGR) briefly suspended bilateral cooperation after a U.S. law enforcement agency prematurely and erroneously warned the PGR that it would be barred from all U.S. training and assistance after a March 15 report by the United Nations High Commissioner for Human Rights documented 34 cases of torture of persons in PGR custody in the early investigation of the disappearance of 43 student teachers from Iguala/Ayotzinapa. In fact, the UN report identified the divisions of the PGR that were implicated in the allegations of torture (they are known by their Spanish acronyms SEIDO and AIC) and DRL has urged the Embassy to seek guidance from the Government of Mexico and the UN as to organizational structure of these divisions in order to narrow the taint to the units directly responsible, in line with standard vetting procedures.

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### **Mexico: Background on Cyber Attacks on Human Rights Defenders/Spyware**

(SBU) An investigation by Citizen Lab at the University of Toronto revealed that at least 10 journalists and human rights defenders in Mexico, including a U.S. citizen, were targets of an attempt to infiltrate their smartphones with spyware. Evidence pointed to an Israeli program called Pegasus that is sold only to governments. The Mexican government denies responsibility for the attacks, which were first reported in The New York Times in June 2017, and publicly claims an investigation is ongoing by the special prosecutor for freedom of expression (FEADLE). FEADLE told us in December 2017 that the investigation was stalled because the victims refused to turn over their phones to investigators, though it is unclear why possession of the physical phones would be necessary. Several agencies in the Mexican government have contracts with Pegasus for security purposes.

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(SBU) Human rights defenders continue to face violence for their work. The head of the Baja California Sur state human rights commission was killed by gunmen November 20, 2017. Just four days later, an official from the Jalisco human rights commission was kidnapped. Since 2012, more than 15 missionaries or priests have been murdered, in some cases for their human rights advocacy. In August 2017 the CMC called Mexico the most violent country for priests in Latin America for the ninth year in a row.

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