

September 19th, 2017

Dear Open Government Partnership Steering Committee,

On May 23 2017, the Mexican Civil Society Core Group in the national open government process unanimously arrived to the conclusion that there were no longer conditions of truthful co-creation and honest dialogue with the open government process counterparts. These civil society organizations decided to abandon the Technical Tripartite Secretariat (TTS) and its participation in the Third National Action Plan (3NAP) mainly due to:

1. the lack of response from the National TTS government counterparts (the Ministry of Public Function and the National Institute for Access to Information and Personal Data Protection) to act upon the case of government illegal digital surveillance against health advocates participating in the 3NAP¹
2. the lack of political will from the Mexican Government to uphold the level of ambition and the scope of the commitments collectively co-created 2016's 3NAP process

The Mexican civil society group did not only demand its counterparts to explain and start inquiries on the surveillance cases but saw in the TTS the adequate co-creation platform to proactively engage in the joint construction of mechanisms to guarantee transparency, accountability and legal controls for governmental surveillance. Unfortunately, the Ministry of Public Function did not give an official or public response to the letter.

Illegal Digital Surveillance in Mexico Update

In June 19th 2017, another illegal digital surveillance revelation shocked Mexico and the international community as technical proof of the same high-end malware Pegasus was intended to infect renowned Mexican human rights defenders, investigative journalists and anti-corruption civil society members including Civil Society OGP Steering Committee founding member, Juan Pardinás.² As no proactive inquiry on the surveillance cases had started from any Mexican government institution, many of the targets started a criminal investigation to the Mexican Attorney Office Special Prosecutor on Crimes Against Freedom of Expression.

Different and erratic statements were said by government officials after the scandal was made public. Initially, a presidential spokesman denied any government responsibility and

¹ See February 11 2017 CitizenLab's technical surveillance report <https://goo.gl/QW3bQa> and February 16th 2017 Mexican civil society letter to the TTS <https://goo.gl/z4reBU>

² See CitizenLab's report <https://goo.gl/FZ78EV>, New York Times cover story <https://nyti.ms/2sGmhJ0> and R3D, Article19 and SocialTIC report #GobiernoEspia <http://r3d.mx/gobiernoespia>

three days later the President Enrique Peña Nieto minimized the impact of surveillance in Mexico, admitted that the country owns surveillance technology, identified as false the accusations and threatened the journalists, civil society organizations and alleged surveillance victims for spreading false rumors. The president publicly took back his statement on June 23rd.

As of today, over 100 Pegasus spyware attempts to 22 members of civil society including human rights lawyers, journalists, opposition parties, and even independent researchers of the Ayotzinapa case have been identified and technically verified by CitizenLab.³ Furthermore, investigative journalists have revealed proof of the purchase of NSO Group's Pegasus malware by the Attorney General Office. The criminal investigation is currently undergoing with skepticism by the victims and civil society organizations as an independent and external specialist commission has not been installed and many of the inquiries have not been responded by the authorities.

The only undergoing collaboration between civil society and a Mexican government institution is with the National Institute for Access to Information and Personal Data Protection (INAI) who drafted the "Proactive Transparency Intervention Proposal on Hiring the Specialized Services and Personal Data Protection Regarding Surveillance" document that currently being reviewed by civil society organizations in order to establish joint inquiry work groups.

Implementation of the Third Action Plan Update

Ever since the First Action Plan, the Mexican civil society organizations have established a partnership among equals and co-creation. The creation of Technical Tripartite Secretariat (TTS) as the open government process governing body set the co-creation standards and guided each of the National Action Plans to the extent that it has been recognized as innovative by OGP's international community.

Without the participation of the Core Civil Society Group in the TTS, the implementation of the commitments of the 3NAP remain as a commitment of the Mexican government and shall report publicly and to OGP all its progress. However, our we keep our initial concern regarding the Mexican government delivering partially and aiming to modify the scope of the commitments agreed upon in 2016 3NAP co-creation process.

After almost 4 months of our suspension from the Mexican open government process, the Civil Society Core Group sees with great worry that as the country context worsens, not only with the increasing surveillance revelations but other core elements needed to reach true open government, such as violence against

³ See all technical reports: <https://citizenlab.ca/category/research/targeted-threats/>

journalists, violence, corruption and impunity. The Mexican Government's lack of action continues to undermine the openness process and the Open Government Partnership's legitimacy.

If there is still any hope in repairing the open government process, more proactive and stronger actions are needed. Thus, Civil Society Core Group asks the following:

1. Request on behalf of the CSO Core Group to the Mexican Government to excuse itself from OGP's Steering Committee.
2. Share with the OGP Steering Committee the CSO Core Group's concern regarding the delay of the Steering Committee's mission to Mexico and our hope that it is rescheduled in the next weeks.
3. Request the OGP's Steering Committee to define and implement a Rapid Response Mechanism agreed in the past July 28 2017 working level meeting in order to promptly address country situations such as the ones we are currently living in Mexico's open government process.