

Mexico City, New York y Washington DC.
April 1st, 2020

Mr. Diego García-Sayán
Special Rapporteur on the Independence of Judges and Lawyers
Office of the High Commissioner on Human Rights
United Nations

Re: Submission of concerning information regarding the prosecutors' offices in Mexico

Dear Rapporteur García-Sayán,

The signatory organizations and persons defending human rights, listed below, recognizing your interest in the promotion of specific standards for prosecutors and prosecutors' offices, wish to share some relevant and concerning developments that seem to undermine the independence of federal and state prosecutors' offices in Mexico. In particular, we would like to highlight increasingly alarming trends we have observed regarding the new national Prosecutor General's Office (*Fiscalía General de la República*) and the State's Prosecution services.

Introduction

Violence and corruption are rampant phenomena in Mexico, and cases of public officials' involvement, collusion, or complicity with the commission of violent crimes are well documented.¹ Because of this widespread corruption, accountability for the commission of grave crimes and atrocities is rare, and the majority of crimes in Mexico go un-investigated and unpunished;² this is even more concerning when crimes involve social groups in situations of extreme vulnerability, such as migrants, journalists, human rights defenders, women, or children.

Concerns about impunity were the driving force behind the overhaul of the prosecutorial system in Mexico and its transformation from the *Procuraduría General de la República (PGR)*, which functioned largely as an organ of the executive branch, to the present day *Fiscalía General de la República (Fiscalía or FGR)*. The transition from the PGR to the FGR began in 2014, when article 102 of the Constitution was reformed³ to outline procedures for establishing a system of autonomous prosecutors' offices in Mexico, starting with the creation of an autonomous *Fiscalía General* and its accompanying governing legislation. However, it was not until December 2018,

¹ Open Society Justice Initiative, *Corruption that kills: Why Mexico needs an international mechanism to combat impunity*, 2018. Available at: <https://www.justiceinitiative.org/uploads/5071ab37-003f-46b1-9e1f-700bbdae34a3/corruption-that-kills-en-20180502.pdf>

² México Evalúa, *Hacia una persecución penal estratégica (Policy Brief 001)*, 2020, available at: https://www.mexicoevalua.org/2020/02/05/hacia-una-persecucion-penal-estrategica-policy-brief-001/?utm_source=Proyecto+Justicia&utm_campaign=9b55db0400-EMAIL_CAMPAIGN_2019_05_30_06_31_COPY_01&utm_medium=email&utm_term=0_9cc418c441-9b55db0400-290768013

³ See *¿Por qué México necesita una reforma al 102 Constitucional? #Reforma102 Por una fiscalía autónoma, eficaz e independiente Aquí y Ahora*, available at: https://coparmex.org.mx/downloads/prensa/Por_que_Mexico_necesita_una_reforma_al_102_Constitucional_.pdf

following an extraordinary multiyear campaign by Mexican civil society groups (gathered mainly in the citizen groups *#FiscalíaQueSirva* and *#VamosPorMás*) pushing for the implementation of the article 102 reforms, that both houses of Congress passed the governing law of the Prosecutor General (*Ley Orgánica de la Fiscalía General de la República*, or LOFGR). The passage of the LOFGR was an unprecedented achievement of organized civil society, and amazingly Mexico's newly elected government supported the proposed reform in almost its entirety. Following the passage of the LOFGR, on January 18, 2019, Dr. Alejandro Gertz Manero assumed the office of the new *Fiscalía* as its first Prosecutor General.⁴

The creation of a new *Fiscalía*, along with its governing legislation, were critical steps for the Mexican criminal justice system. If new models of organization and investigation of macro-crimes are to develop, and there is to be any hope of combating impunity for grave crimes in Mexico, it is essential to have autonomous prosecutors who can conduct investigations and lead prosecutions independently of external influences.

However, over the course of the past year, the signatory organizations have observed a number of worrying trends within the new *Fiscalía* that appear to imperil the possibility of independent and effective prosecutors in Mexico at both the state and federal levels, including serious breaches by the Prosecutor General of the governing law he is responsible for implementing. This letter will summarize three of the most alarming trends we have observed:

1. Selection, appointment, and removal processes for high prosecutors at the state and federal level fail to meet the standards of transparency, meritocracy, and citizen involvement;
2. Lack of compliance in regard to oversight and accountability mechanisms, including those to ensure citizen participation within the *Fiscalía*; and
3. Failure to address a case of potential conflict of interest involving the Prosecutor General.

I. Selection, appointment, and removal processes for high prosecutors at the state and federal level fail to meet the standards of transparency, meritocracy, and citizen involvement required

At both the federal and state levels, appointment and removal processes for prosecutors fail to meet the international legal standards for ensuring that the prosecutors are independent.⁵

a. Federal level

Appointment and dismissal of the Federal prosecutor

⁴ Fundación para la Justicia y el Estado Democrático de Derecho, A.C., *¿Un año de justicia y autonomía de la FGR? Balance ciudadano a 1 año de gestión del Fiscal General de la República*, Dr. Alejandro Gertz Manero, 2020, at 9, available at: http://dplf.org/sites/default/files/final_digital_a_un_ano_de_justicia_y_autonomia.pdf

⁵ See *Guidelines on the Role of Prosecutors*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, from 27 August to 7 September 1990 (UN Doc. A/CONF.144/28/Rev.1), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>

The amendment to Article 102(a) of the Mexican Constitution made in February 2014 established a new appointment mechanism for the selection of the Prosecutor General. The appointment procedure under the amended Constitution is as follows: The Senate holds an open call for applications and from those it selects a list of 10 candidates. This list of ten is sent to the President; then from that list, the President chooses a shortlist of three final candidates; this shortlist is returned to the Senate for the selection of the Prosecutor General.⁶ Article 102(a) also lists certain requirements that the Prosecutor General must meet, including age, nationality, and legal training requirements, as well as having a “good reputation” and not have been convicted of a felony. Articles 15-18 of the LOFGR stipulate that the selection process for prosecutors (including the Prosecutor General via the procedures outlined in article 102) must be transparent, public, merit-based, equitable, non-discriminatory, and involve citizen participation.

Despite the above, the selection of Prosecutor General Alejandro Gertz Manero occurred within an unduly short period—between December 20, 2018 when the call for applications was opened, and January 18, 2019 when Dr. Gertz Manero was appointed by the Senate—and with extreme celerity at each step of the process. Fifty-two hopefuls responded to the Senate’s open call for candidates for Prosecutor General; the Senate’s Justice Commission reviewed their candidacies in just eight days and rejected 25, leaving 27 candidates remaining. Over the course of two days, January 14 and 15, 2019, those 27 were evaluated, and on January 16, 2019 the Senate sent the list of 10 to President Andrés Manuel López Obrador. The following day President López Obrador returned his shortlist of three candidates to the Senate and the Senate Justice Commission conducted the evaluation of the three candidates the same day, spending roughly two hours on each candidate. On January 18, 2019 the three candidates answered questions from members of the Senate, after which their candidacies were submitted to a vote; Dr. Gertz Manero won, with 91 out of 117 votes, and thus became Mexico’s first Prosecutor General.⁷

Due to the speed of the process, no candidate received the level of scrutiny warranted for the position. The entire process was characterized by a lack of thoroughness, a lack of transparency about the criteria used to eliminate and select candidates, and a dearth of meaningful citizen participation, all of which is in direct contradiction to the selection requirements outlined in both article 102 of the Constitution as well as the LOFGR.

The current process for removing a Prosecutor General is also of concern, primarily because removal depends almost entirely on the Executive power. According to article 102 (a)(iv) of the Constitution, the President may remove the Prosecutor General for “serious causes.” The Senate can object to a removal process begun by the President (via a majority vote), but only the President can initiate removal proceedings. It follows that, under the current policy, the President would be able to protect a Prosecutor General with whom he holds political or other interests in common from being subjected to removal proceedings even when there is a “serious cause” or reason to initiate removal.

⁶ Constitution of Mexico, Art. 102(a)(i-iii).

⁷ See Fundación para la Justicia y el Estado Democrático de Derecho, A.C., *¿Un año de justicia y autonomía de la FGR? Balance ciudadano a 1 año de gestión del Fiscal General de la República, Dr. Alejandro Gertz Manero*, 2020, at 12-15, available at http://dplf.org/sites/default/files/final_digital_a_un_ano_de_justicia_y_autonomia.pdf

Appointment of specialized prosecutors

The Constitution and the LOFGR establish that, in addition to the Prosecutor General, the federal prosecution service should be equipped with at least four specialized prosecutors (*fiscales especializados*) in the areas of human rights, electoral crimes, anticorruption, and internal affairs. Selection and appointment of specialized federal prosecutors, which are carried out by the Prosecutor General (with the Senate able to object within ten days), must be based on merit, as measured by candidates' experience and demonstrated professional abilities,⁸ and the selection process must be conducted with transparency, citizen participation, and public access to all information and documentation received regarding candidates.⁹

The selection and appointment processes for the specialized prosecutors under the current *Fiscalía* did not meet these criteria; appointments were carried out by the Prosecutor General Gerz Manero without any public input or a public justification for his selections. This utter lack of transparency raises serious doubts about the capacity of specialized prosecutors to function independently.

For example, on March 1, 2019, María de la Luz Mijangos Borja, a longtime associate of President López Obrador, was appointed Special Prosecutor on Anti-Corruption without any transparency, with the process failing to include any safeguards ensuring that the best, most qualified candidate was selected. During the presidential campaign, President López Obrador floated Mijangos' name as a potential candidate for the Anti-Corruption Special Prosecutor.¹⁰ Then, once President López Obrador had taken office and Dr. Gertz Manero became Prosecutor General, the latter ignored the requirements to hold an open call for applications and to include civil society in the selection process of the specialized prosecutor, and Mijangos' nomination was fast-tracked through the Senate, without further observation or analysis and without any objection.¹¹

Also troubling was the appointment of the Human Rights Special Prosecutor Sara Irene Herrerías Guerra. Under the PGR, Sara Irene Herrerías Guerra had held the position of Deputy Special Prosecutor for Human Rights; she was, in that capacity, put "in charge" of the office of the Special Prosecutor for Human Rights once the PGR was replaced with the FGR (a position which, according to some media sources, was ratified in August 2019).¹² The prosecutor General Gertz Manero then promoted Herrerías Guerra, designating her as the first Special Prosecutor for Human Rights, in a completely closed process. There was no public call for applications for the

⁸ See *Ley Orgánica de la Fiscalía General de la República*, Art. 22.

⁹ See *Ley Orgánica de la Fiscalía General de la República*, Art. 24-25.

¹⁰ See "Amlo revela sus propuestas para fiscal general anticorrupción y fepade," *El Sol del Pueblo*, January 29, 2018, available at: <https://www.elsoldepuebla.com.mx/mexico/politica/amlo-revela-sus-propuestas-para-fiscal-general-anticorrupcion-y-fepade-888039.html>

¹¹ The validity of Mijangos' appointment as Anti-Corruption Special Prosecutor was challenged in an *amparo* lawsuit, which was rejected. See Amparo 630/2019 submitted to Juez Décimo de Distrito en Materia Administrativa en la Ciudad de México by Derechos Humanos y Litigio Estratégico A.C. See also the Amicus brief submitted by Fundación para la Justicia y el Estado Democrático de Derecho, the Due Process of Law Foundation, and Open Society Justice Initiative, available at: <http://dplf.org/es/news/organizaciones-internacionales-presentan-amicus-curiae-cuestionando-la-designacion-de-la>

¹² See Gustavo Castillo, "Ratifican como subprocuradora de DH a Sara Irene Herrerías Guerra," *La Jornada*, August 7, 2019, available at: <https://www.jornada.com.mx/ultimas/sociedad/2019/08/07/ratifican-como-subprocuradora-de-dh-a-sara-irene-herrerias-guerra-8612.html>

position, nor was there any citizen participation in the selection process. In fact, not only did the appointment of Herrerías Guerra occur completely behind closed doors, only to become known publicly after she had already assumed the position, but also the Prosecutor General failed to submit her candidacy to the Senate for approval.¹³

b. State level

A number of alarming trends have been observed regarding prosecutorial independence at the state level. Among the most concerning phenomena is a lack of transparent and merit-based appointment processes for prosecutors. Outlined below are three examples that are emblematic of the problematic characteristics of the majority of state level designations.

i. Guanajuato

One way to bypass transparent and merit-based appointment processes for prosecutors at the state level is through the phenomenon of automatic appointments (*pase automático*). This occurs when the previous State Attorney General is automatically ushered in as the new Prosecutor General without being submitted to any kind of screening or selection process. In the state of Guanajuato, for example, the state Constitution was amended in order to permit the use of *pase automático*; subsequently Carlos Zamarripa Aguirre—the State Attorney General under the previous government—was made State Prosecutor General through a *pase automático*.¹⁴

ii. Baja California

In the state of Baja California, the state Governor Jaime Bonilla Valdez handpicked the current Prosecutor General, Juan Guillermo “Titi” Ruiz Hernandez, bypassing procedural norms that dictate that the State Prosecutor General be selected by Congress. Prosecutor General Ruiz Hernandez is Governor Bonilla Valdes’ former attorney as well as his close friend.¹⁵ Similar to the abovementioned case of Guanajuato, state legislation was changed in order to facilitate the new state Prosecutor General’s appointment. Prior to Dr. Ruiz Hernandez’s selection Baja California’s state constitution was modified to change the maximum age requirement for State Prosecutor General, thus allowing him to enter as a candidate.

iii. Mexico City

A law published on February 14, 2019, organized a new independent *Fiscalía* for Mexico City to replace the *Procuraduría General de Justicia*. Ernestina Godoy was temporarily appointed as Prosecutor General, pending the appointment of new *Fiscal General* by December 15, 2019. According to article 44 of the Constitution of Mexico City, anyone who had held a political

¹³ Due to these failures to adhere to the procedural requirements outlined in the LOFGR, the appointment of Herrerías Guerra was also challenged through an *amparo* lawsuit in an administrative law court in Mexico. The *amparo* was rejected. See Amparo 639/2019-I submitted to Juez Primero de Distrito en Materia Administrativa en la Ciudad de México by Derechos Humanos y Litigio Estratégico A.C.

¹⁴ An *amparo* case was filed to challenge his appointment. An amicus brief was submitted by the Due Process of Law Foundation and the Fundación para la Justicia y el Estado Democrático de Derecho. See http://www.dplf.org/sites/default/files/2019_08_26_amicus_fiscal_general_guanajuato_dplf_fjedd_final_0.pdf

¹⁵ See <https://zetatijuana.com/2019/11/designan-a-guillermo-titi-ruiz-como-fiscal-general/>

position within the previous three years could not run for the office of *Fiscal General*. Ernestina Godoy, a longtime political ally and close friend of President López Obrador,¹⁶ had been a member of Mexico's Congress for the Morena political party from September 1, 2015 until August 31, 2018, so under the article 44 requirements she was ineligible for the position of *Fiscal General*.

On October 22, 2019, at the initiative of members of congress belonging to the Morena party, article 44 of the Mexico City Constitution was modified to change the requirement that candidates could not have held political office or led a political party during the three previous years, reducing the amount of time to just one year.¹⁷ This amendment made it possible for Ernestina Godoy to be appointed *Fiscal General* of Mexico City, which she was; her appointment was approved by a majority of the Plenary of Congress of Mexico City on December 10, 2019.¹⁸ The governor of Mexico City, Claudia Sheinbaum, supported the article 44 reform, stating that requiring candidates to wait three years after leaving office before becoming eligible to run for *Fiscal General* would exclude people with relevant knowledge and experience.¹⁹ Governor Sheinbaum had previously appointed Godoy as the Attorney General of the *Procuraduría General de Justicia* of Mexico City, in 2018,²⁰ and expressed her support for Godoy's appointment as Prosecutor General of the *Fiscalía*.²¹

II. Lack of compliance in regard to oversight and accountability mechanisms, including those to ensure citizen participation

One year after the LOFGR went into effect, in addition to demonstrating a clear policy of isolation from and “closed doors” towards civil society organizations²² and groups of victims’

¹⁶ See “¿Una ‘fiscal carnal’ en la CDMX? Esta es la pelea entre Morena y la oposición,” *Expansión Política*, October 29, 2019, available at: <https://politica.expansion.mx/cdmx/2019/10/29/una-fiscal-carnal-en-la-cdmx-esta-es-la-pelea-entre-morena-y-la-oposicion>

¹⁷ See Karla Mora, “Aprueba Congreso capitalino modificar requisitos para ser fiscal,” *La Razón*, October 22, 2019, available at: <https://www.razon.com.mx/ciudad/aprueba-congreso-capitalino-modificar-requisitos-para-ser-fiscal/>

¹⁸ See “Ernestina Godoy será la nueva fiscal de CDMX; oposición acusa cercanía con Sheinbaum,” *Animal Político*, December 10, 2019, available at: <https://www.animalpolitico.com/2019/12/ernestina-godoy-primera-fiscal-cdmx/>

¹⁹ See Sara Pantoja, “Sheinbaum defiende reforma que abre la puerta a Godoy para convertirse en ‘fiscal carnal,’” *Proceso*, October 23, 2019, available at <https://www.proceso.com.mx/604405/sheinbaum-defiende-reforma-que-abre-la-puerta-a-godoy-para-convertirse-en-fiscal-carnal>

²⁰ Georgina Olson, “Ernestina Godoy, la próxima fiscal general de la Ciudad de México,” *Excelsior*, November 22, 2018, available at: <https://www.excelsior.com.mx/comunidad/ernestina-godoy-la-proxima-fiscal-general-de-la-ciudad-de-mexico/1280205#view-1>

²¹ See “Sheinbaum porque Godoy va a Fiscalía: ‘da gusto el reconocimiento,’” *Político MX*, December 10, 2019, available at: <https://politico.mx/minuta-politica/minuta-politica-metropolitano/sheinbaum-porque-godoy-va-fiscal%C3%AD-da-gusto-el-reconocimiento/>

²² See Fundación para la Justicia y el Estado Democrático de Derecho, A.C., *¿Un año de justicia y autonomía de la FGR? Balance ciudadano a 1 año de gestión del Fiscal General de la República*, Dr. Alejandro Gertz Manero, 2020, at 7, available at: http://dplf.org/sites/default/files/final_digital_a_un_ano_de_justicia_y_autonomia.pdf (“A partir de esto, consideramos que en la práctica, en la FGR está dándose una interpretación errónea de la autonomía. La autonomía no significa aislarse, no colaborar con otras insti - tuciones, no rendir cuentas, no tener contacto con las familias de las víctimas y sobre todo, no cumplir con su propia ley,”); see also Arturo Angel, “Omisiones y opacidad marcaron el primer año de Gertz como fiscal general: informe,” *Animal Político*, January 15, 2020, (“Incumplimiento flagrante de disposiciones legales, distanciamiento de los ciudadanos y del escrutinio público, dudosa y mal entendida autonomía y una opacidad cada vez mayor marcan el primer año de la gestión de Alejandro Gertz Manero al frente de la Fiscalía General de la República (FGR)”), available at: <https://www.animalpolitico.com/2020/01/omisiones-opacidad-gertz-fgr-informe/>

families,²³ the Prosecutor General and the Senate have been reluctant to implement the accountability mechanisms outlined in the law. If key elements that are at the heart of LOFGR in order to ensure accountability—especially those related to citizen participation—go unimplemented or ignored, it will be impossible to achieve a fully autonomous *Fiscalía* in Mexico.

- a. Failure to establish a Citizen Council (*Consejo Ciudadano*) as an advisory board to the Prosecutor General

One essential accountability mechanism in the LOFGR is the establishment of a Citizen Council (*Consejo Ciudadano*), a body of five citizens of the utmost integrity, selected by the Senate, and intended to serve in an advisory capacity to the Prosecutor General. The role of the *Consejo Ciudadano* as envisioned in the LOFGR is to provide feedback on the performance of the Federal Prosecutor’s Office generally, and, more specifically, the content and implementation of policies such as the Criminal Prosecution Policy (discussed in the next section). The Citizen Council is intended to safeguard citizen participation in the office of the new Prosecutor General and ensure that it remains accountable.

The members of the Citizen Council were supposed to be elected by the Senate as of March 1, 2019, a deadline which was not met, and as of the writing of this letter a *Consejo Ciudadano* has still not been appointed. In November 2019 the first attempted public call for applications to the Citizen Council was issued the day before the application period opened for one week; the Senate Justice Commission reported that that call for applications had yielded only four eligible candidates, and therefore would need to be redone.²⁴ The failure to promote the establishment of a *Consejo Ciudadano* – a required element for the creation of the *Fiscalía General*’s Criminal Prosecution Policy – has drawn widespread criticism of the FGR, including from some members of the Senate.²⁵ It was only following this increased criticism and intense pressure from civil society that finally, on February 20, 2020, a second public call for applications for the Citizen

²³ With respect to Fiscal General Gertz Manero’s approach to victims’ relatives, in general it has been very difficult for them to obtain a meeting with him, and for the vast majority of the meeting requests that he *has* accepted, Gertz Manero has requested that the meetings not be announced to the public. The meetings that *have* been publicized, with relatives of victims in the cases of *Ayotzinapa*, *Le Barón*, and the *Guardería ABC*, have all occurred as a result of pressure or intervention from the Executive branch. In the first two cases, relatives met with the *Fiscal General* as one among the group of authorities they questioned as part of their cases, and in the case of *Guardería ABC*, at the specific request of and with arrangement by President López Obrador.

²⁴ On April 23, 2019, the Senate Plenary approved the “*Acuerdo de la Junta de Coordinación Política, por el que se designa a la Comisión de Selección que llevará a cabo el proceso de elección de los integrantes del Consejo Ciudadano de la Fiscalía General de la República.*” On November 7, 2019 a call for applications was issued; the application period was opened the following day, November 8, 2019, and closed one week later on November 15, 2019. The Justice Commission reports that only four eligible applications were received. On December 5, 2019 the Selection Commission issued an Agreement to terminate the application proceedings because the number of applicants who met the requirements for membership in the Consejo Ciudadano was less than the required number of members, and agreeing to hold a new public call for applications at some point.

²⁵ See *Proposición con Punto de Acuerdo* submitted by Senator Indira de Jesús Rosales San Román, published in the *Gaceta del Senado* on February 11, 2020 (Full title: “Proposición con punto de acuerdo de urgente y obvia resolución, por el que se exhorta al titular de la Fiscalía General de la República para informar a esta soberanía las razones por las cuales no ha convocado procesos abiertos para el diseño del Plan de Persecución Penal, ni ha aprobado la metodología prevista en la Ley Orgánica de la Fiscalía General de la República. Asimismo, para que manifieste las razones por las cuales ha diseñado el Plan de Persecución Penal sin la opinión y recomendaciones del Consejo Ciudadano de la Fiscalía”), listed in the Senate Order of the Day for February 11, 2020 at: https://www.senado.gob.mx/64/gaceta_del_senado/documento/103869

Council was announced, with the application period to run from February 24, 2020 to March 13, 2020.²⁶

- b. Failure to adopt or implement an adequate Criminal Prosecution Policy (*Plan de Persecución Penal*, or PPP) according to legal requirements

Article 6 of the LOFGR requires that the Prosecutor General present a criminal prosecution policy (PPP) to the Senate no later than January 18, 2020. The PPP is the main instrument of accountability for the *Fiscalía*, because it identifies the main criminal phenomena in Mexico and presents the priorities and strategies of the Prosecutor General's Office for addressing them. The PPP is of critical importance because it lays out the Prosecutor General's plans to tackle macro-criminality, thereby allowing the Senate and, most importantly, the Mexican people, to oversee the *Fiscalía*'s activities and whether they are in conformity with the Plan.

Article 6 clearly states that the PPP must be designed in consultation with civil society, in particular with the *Consejo Ciudadano*, as well as with the input of other security, law enforcement and judicial system agencies. While Prosecutor General Gertz Manero did present a proposal for the PPP to the Senate, he did so behind closed doors, and it was only made public knowledge that he had done so after the fact.²⁷ The initiative was never published in the Senate *Gaceta* as part of the "Order of the Day," as is required for all legislative policy proposals in Mexico on the day they are presented. According to the document's registration, the PPP was presented to the legislature within the legal timeframe (by the January 18, 2020 deadline stipulated in the LOFGR); however, it should be clear that the *Fiscalía*'s failure to comply with the legal publication requirements invalidate that presentation.

The PPP presented to the Senate by the Prosecutor General's office was drafted without the consultation of a *Consejo Ciudadano* (since, as of yet, a *Consejo Ciudadano* does not exist), in violation of the LOFGR. This despite the fact that on December 10, 2019, in response to an *amparo* suit regarding the nonexistence of a Citizen Council, the FGR had informed a federal judge that a definitive PPP had not yet been elaborated precisely because its construction required the involvement of a *Consejo Ciudadano*.²⁸ The fact that a PPP was drafted and presented to the Senate without the awareness and participation of Mexican civil society, and specifically without the existence or input of a *Consejo Ciudadano*, should automatically call into question its legality.²⁹

²⁶ The agreement of the Selection Commission for the *Convocatoria Pública para Integrar el Consejo Ciudadano de la Fiscalía General de la República* was submitted to the Secretary General of Parliamentary Services on February by the Junta de Coordinación Política in *Oficio No. JCP/ST/LXIV/794/* on February 20, 2020.

²⁷ The notice of submission of the *Plan de Persecución Penal* published on the Senate platform is dated February 5, 2020, and stated that the PPP had been submitted directly to the Senate Justice Commission; the PPP document itself was not published with the notice of submission.

²⁸ See Arturo Angel, "Senado revisa plan anticrimen del fiscal Gertz; ONG advierten que es ilegal," *Animal Político*, February 10, 2020, available at: <https://www.animalpolitico.com/2020/02/senado-revisa-plan-anticrimen-fiscal-gertz-ong-ilegal/>

²⁹ See Comunicado de Grupo Parlamentario Senado de la República de PAN, "Plan de Persecución Penal presentado por la FGR es ilegal y sin participación ciudadana: Julen Rementería," February 6, 2020, available at: <https://www.pan.senado.gob.mx/2020/02/plan-de-persecucion-penal-presentado-por-la-fgr-es-ilegal-y-sin-participacion-ciudadana-julen-rementeria/>; see also Arturo Angel, "Senado revisa plan anticrimen del fiscal Gertz; ONG advierten que es ilegal," *Animal Político*, February 10, 2020, available at: <https://www.animalpolitico.com/2020/02/senado-revisa-plan-anticrimen-fiscal-gertz-ong-ilegal/>

On February 10, 2020, a civil society request for an official copy of the definitive PPP presented to the Senate by the FGR was made,³⁰ as no official copy of the Plan had been published or made available. The Senate Justice Commission responded to the request on March 5, 2020 indicating that a definitive PPP would not be approved until the *Consejo Ciudadano* was formed, citing Article 6 of the LOFGR, which requires the FGR to consult with the *Consejo Ciudadano* prior to presenting the PPP to the Senate.³¹ In their communication, the Justice Commission provided a link to the *Fiscalía General de la República*'s "Provisional PPP" (*Plan de Persecución Penal Provisional*) dated March 14, 2019.³² It was not made clear whether the content of this Provisional PPP, dated nearly a year earlier, is the same or bears any similarity to the PPP presented to the Senate by Fiscal General Gertz Manero in January 2020. There has also been no clear information provided about how the PPP will be implemented (to date, the documents presented by the *Fiscalía General* are: the PPP, which was constructed and presented without conforming to legal requirements; a Strategic Transition Plan; a 2019 Annual Report; and a report of results from the internal control body).³³

c. Failure to consult civil society about potential modifications to the governing legislation of the *Fiscalía* (LOFGR) and other potential reforms

Prosecutor General Gertz Manero has publicly announced that he plans to present proposals for reforms to the LOFGR.³⁴ If this is so, the LOFGR requires that if the governing law has been in effect for over a year, it can only be modified in consultation with Mexican civil society.³⁵ Any proposed reforms to the normative framework of the LOFGR must be made within the context of a public and transparent debate, where Mexican citizens can play a role in the design of any future legislative modifications. Thus far, Prosecutor General Gertz Manero has not started any

³⁰ The request for access to public information, *Oficio No. UETAIP/LXIV/0336/2020*, sent to the Senate Comisión de Justicia through the *Plataforma Nacional de Transparencia* with the invoice number 01300001940, stated: "En la plataforma del Senado aparece publicado (con fecha 5 de febrero de 2020) el Oficio con el que remite el PLAN de PERSECUCIÓN PENAL, de la Fiscalía General de la República. Aparece después la leyenda SE INFORMÓ QUE CON FUNDAMENTO EN LOS ARTÍCULOS 67, PÁRRAFO 1, INCISO B) DE LA LEY ORGÁNICA DEL CONGRESO GENERAL DE LOS ESTADOS UNIDOS MEXICANOS Y 176 DEL REGLAMENTO DEL SENADO, SE TURNÓ DE MANERA DIRECTA A LA COMISIÓN DE JUSTICIA. Sin embargo, no está disponible el documento, ni hay algún enlace que permita su consulta. Con motivo de ello, solicito el documento consistente en el oficio y el PLAN DE PERSECUCIÓN PENAL remitidos por la Mesa Directiva de este Senado a la Comisión de Justicia."

³¹ Comisión de Justicia *Oficio No. CJ/LXIV/198/2020*, sent from the Secretario Técnico de la Comisión de Justicia to the Coordinadora General de la Unidad de Transparencia del Senado de la República on March 5, 2020.

³² *Fiscalía General de la República, Plan de Persecución Penal (Provisional)*, dated March 14, 2019, available at: https://www.gob.mx/cms/uploads/attachment/file/537437/PPP_Provisional_Versi_n_Final_Firmada_con_Anexo.pdf

³³ See "Ricardo Monreal dijo que el fiscal Gertz entregó en tiempo y forma el plan estratégico de transición, el informe anual de actividades y el de resultados del Órgano Interno de Control," *López-Dóriga Digital*, January 25, 2020, available at: <https://lopezdoriga.com/nacional/gertz-manero-entrego-en-tiempo-y-forma-plan-de-transicion-de-la-fgr-asevero-monreal/>

³⁴ See "Gertz Manero anuncia reforma para cerrar la 'puerta giratoria' a detenidos," *Expansión Política*, January 9, 2020 ("Al participar en la Reunión de Embajadores y Cónsules 2020 –realizada este miércoles– Gertz Manero adelantó que será la próxima semana cuando entregue al Senado su proyecto de reformas a la Ley Orgánica y Estructural de la Fiscalía General de la República,") available at: <https://politica.expansion.mx/mexico/2020/01/09/gertz-manero-anuncia-reforma-para-cerrar-la-puerta-giratoria-a-detenidos>

³⁵ See "Pronunciamiento conjunto: Fiscal General de México debe hacer convocatoria pública y abierta para debatir y justificar sus propuestas de reforma a la legislación orgánica de la Fiscalía," August 19, 2019, available at: <https://www.wola.org/wp-content/uploads/2019/08/2019-08-19-MX-Pronunciamiento-Reformas-a-la-LOFGR-Final-Draft.pdf>

such debate or given any indication that he will engage in dialogue with civil society about potential reforms. Instead, in a meeting of justice system authorities in on January 15, 2020, the Prosecutor General announced his plan to present a package of extensive judicial system reforms³⁶ that would include the modification of multiple articles of the Constitution and six existing laws, including the LOFGR, as well as the creation of two new laws.³⁷ On January 14, the day before the January 15 meeting, drafts of nine reform initiatives attributed to the FGR were leaked anonymously online.³⁸ While Gertz Manero denied that the leaked reforms came from the FGR,³⁹ they caused immediate alarm among legal experts and civil society because the measures they contained, taken together, signaled an extreme regression from the current accusatory criminal system back to an inquisitive one, a setback that would implicate a serious threat to human rights protections and due process guarantees.⁴⁰ Should the reforms outlined in the leaked drafts come to fruition, they would effectively eliminate spaces for citizen participation, and do away with the already fragile paths to access to justice that are available to people in situations of extreme vulnerability (e.g. relatives of immigrants who are disappeared or missing).

Another reform proposed by the Fiscal General has sparked fierce criticism: at the January 29 plenary session of the Morena party, again without prior citizen consultation, Gertz Manero suggested eliminating the criminal classification of femicide and reclassifying femicides as homicides.⁴¹ This tone-deaf proposal, made in the midst of the worst crisis of femicide and gender violence in Mexico's history, indicates a Fiscalía that is devoid of a gender perspective and alarmingly disconnected from the realities of Mexico's current context. It should call into question the Fiscal General's ability to assess and confront the patterns of macrocriminality underlying violence in Mexico, as well as his commitment to achieving accountability for victims of grave crimes and human rights violations. Were femicide to be reclassified as

³⁶ See Notimex, "Gertz Manero explica en Senado propuestas de reforma judicial," *20 Minutos*, January 15, 2020, available at: <https://www.20minutos.com.mx/noticia/851599/0/gertz-manero-explica-en-senado-propuestas-de-reforma-judicial/>

³⁷ See Juan Omar Fierro, "Presidencia y FGR presentan reforma judicial sin documentos de cambios jurídicos," *Aristegui Noticias*, January 15, 2020, available at: <https://aristeguinoticias.com/1501/mexico/presidencia-de-amlo-y-fgr-presentan-reforma-judicial-sin-documentos-de-cambios-juridicos/>

³⁸ See Juan Omar Fierro, "Presidencia y FGR presentan reforma judicial sin documentos de cambios jurídicos," *Aristegui Noticias*, January 15, 2020, available at: <https://aristeguinoticias.com/1501/mexico/presidencia-de-amlo-y-fgr-presentan-reforma-judicial-sin-documentos-de-cambios-juridicos/>

³⁹ See Marcus Muedano, "Gertz Manero se deslinda de criticada reforma judicial," *La Silla Rota*, January 22, 2020, available at: <https://lasillarota.com/nacion/gertz-manero-se-deslinda-de-criticada-reforma-judicial-gertz-manero-amlo-mexico/354937>

⁴⁰ See Comunicado de la Académica Mexicana de Ciencias Penales, A.C., available at: <https://www.academiamexicanadecienciaspenales.com.mx/pdfs/docs/contrarreforma.pdf>; see also Mariana León, "La reforma al sistema de justicia prende alarmas y el gobierno...la retiene," *Expansión Política*, January 16, 2020, available at: <https://politica.expansion.mx/mexico/2020/01/16/la-reforma-al-sistema-de-justicia-prende-alarmas-y-el-gobierno-la-retiene>; see also: Alejandro Jiménez Padilla, "¿La reforma que viene? Buscar la paz con un proceso penal autoritario," *Nexos*, January 20, 2020, available at: https://eljuegodelacorte.nexos.com.mx/?author_name=alejandro-jimenez-padilla; see also Kirk Semple, "Más violencia, menos reos: la reforma judicial en México," *The New York Times*, January 31, 2020 ("...los borradores que se filtraron en días recientes han enfurecido a los expertos jurídicos, quienes afirmaron que contenían cambios que desmantelarían las garantías de un juicio justo y las protecciones a los derechos humanos que con tanto esfuerzo se consiguieron.... 'Es un revés completo', dijo María Novoa, coordinadora del programa de justicia de México Evalúa, un grupo de investigación que analiza las políticas gubernamentales. 'Es una contrarreforma,'" available at: <https://www.nytimes.com/es/2020/01/31/espanol/america-latina/reforma-judicial-mexico.html>

⁴¹ Claudia Ramírez, "Los frentes de Gertz Manero: reforma judicial, femicidios e ineficiencia de la FGR, lo tienen en el ojo del huracán," *Infobae*, February 7, 2020, available at: <https://www.infobae.com/america/mexico/2020/02/07/los-frentes-de-gertz-manero-reforma-judicial-femicidios-e-ineficiencia-de-la-fgr-lo-tienen-en-el-ojo-del-huracan/>

homicide, it would leave femicide victims without effective recourse, virtually ensuring that cycles of violence and impunity are never broken.

III. Failure to address a potential case of conflict of interest regarding the Federal Prosecutor General

In June 2019, the media revealed the possible existence of a conflict of interest for Prosecutor General Gertz Manero. The Prosecutor General's lawyers, father and son Javier Coello Trejo and Javier Coello Zuarth, who Prosecutor General Gertz Manero hired to help investigate the death of his brother, also serve as the personal attorneys for Emilio Lozoya, the former director of the petroleum company Pemex. Lozoya is currently under investigation by the Prosecutor General's office for money laundering and corruption in connection with the Odebrecht case.⁴² The Coellos continue to represent Dr. Gertz Manero legally in the case of his brother; yet, now, as Prosecutor General, Dr. Gertz Manero is up against them as they represent Emilio Lozoya, who was recently captured after an extended period as a fugitive.

Prosecutor General Gertz Manero stated that the fact that he is simultaneously both a client and an adversary of the same legal team did not constitute a conflict of interest and confirmed his intention to continue employing the same attorneys.⁴³ President Andrés Manuel Lopez Obrador appeared to support Prosecutor General Gertz Manero by saying that while the situation was perhaps immoral, it was not illegal, and thus he could not issue any instructions to the Prosecutor General – an independent institution – on the subject. Perhaps most alarmingly is that there has been no further investigation into the possible existence of a conflict of interest. This raises a serious concern that the Prosecutor General will not be able to operate neutrally and independently, because of, among other reasons, his own personal legal interests.

Conclusions and Petitions

In light of the concerns shared in this communication regarding current threats to the independence of the *Fiscalía*, the signatory organizations respectfully request that as Special Rapporteur of on the Independence of Judges and Lawyers, and pursuant to the functions of your mandate, you request information urgently from the Mexican State regarding issues concerning the *Fiscalía*, in particular:

- 1) The *Fiscalía*'s progress on the implementation of key aspects of their governing law, the LOFGR, and plans for the implementation of as-yet unrealized provisions of the law as it currently exists;
- 2) The Prosecutor General's planned legislative reform proposals, and how, specifically, the proposed reforms will ensure that standards of judicial independence are upheld, including through citizen participation and oversight mechanisms;

⁴²See Andrea Cárdenas y Arturo Ángel, "Emilio Lozoya y Alejandro Gertz: acusado y fiscal tienen el mismo abogado," *Animal Político*, available at <https://www.animalpolitico.com/2019/06/lozoya-gertz-mismo-abogado/>; see also Andrea Cárdenas y Arturo Ángel, "Omisiones, faltas administrativas y riesgo de conflicto de interés por nexo Gertz-Coello: expertos," *Animal Político*, available at: <https://www.animalpolitico.com/2019/06/conflicto-de-interes-gertz-coello-expertos/>

⁴³See Redacción Animal Político, "Abogado que defiende a Lozoya por lavado de dinero seguirá representando a Gertz Manero," *Animal Político*, available at <https://www.animalpolitico.com/2019/06/gertz-manero-representando-coello-trejo/>

- 3) The actions being undertaken by the Mexican State following the news of the alleged conflict of interest of the Prosecutor General.

Thank you in advance for your consideration of this request.

Sincerely,

Signatory organizations:

Open Society Justice Initiative (OSJI)
Fundación para la Justicia y el Estado Democrático de Derecho (FJEDD)
Due Process of Law Foundation (DPLF)

ARTICLE 19 Oficina para México y Centroamérica; Causa en Común A.C. ; Comisión Mexicana de Defensa y Promoción de Derechos Humanos (CMDPDH); Fundación para la Justicia y el Estado Democrático de Derecho (FJEDD); Instituto de Justicia Procesal Penal (IJPP); Instituto Mexicano de Derechos Humanos y Democracia A.C. (IMDHD); Centro de Derechos Humanos Fray Bartolomé de las Casas (FRAYBA); México Unido Contra la Delincuencia A.C. (MUCD); Servicios de Asesoría para la Paz (SERAPAZ); Centro de Derechos Humanos de las Mujeres A.C.; Organización Nacional anticorrupción; El Día Después; Denise Dresser; Maite Azuela; Layda Negrete; Eliana García; Mariclaire Acosta; María Novoa; Miguel Sarre; Iván Gidi Blanchet; Jorge Javier Romero Vadillo; Pablo Girault; Daniel Vázquez; José Mario de la Garza Marroquín; Marcela Villalobos; Raymundo Sandoval; Arnoldo Cuellar; Sabuesos Guerreras A.C.; Fuerzas Unidas por Nuestros Desaparecidos en Coahuila (FUUNDEC), integrada por familiares de personas desaparecidas en el estado de Coahuila; Diana C. Iris García; Buscando Desaparecidos México (BUSCAME); Laguneros por la Paz, Renacer Lagunero (Coah.); FUNDEJ (Jalisco); Ma. Gpe. Aguilar Jáuregui; Zacatecanas y Zacatecanos por La Paz; Fundación para el Debido Proceso (DPLF); Oficina en Washington para Asuntos Latinoamericanos (WOLA); Observatorio Designaciones Públicas; Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todas y Todos”(conformada por 86 organizaciones en 23 estados de la República mexicana); Academia Hidalguense de Educación y Derechos Humanos A.C. (ACADERH) (Hidalgo); Agenda LGBT (Estado de México); Alianza Sierra Madre, A.C. (Chihuahua); Aluna Acompañamiento Psicosocial, A.C.(Ciudad de México); Asistencia Legal por los Derechos Humanos, A.C. (AsiLegal) (Ciudad de México); Asociación Jalisciense de Apoyo a los Grupos Indígenas, A.C. (AJAGI) (Guadalajara, Jal.); Asociación para la Defensa de los Derechos Ciudadanos “Miguel Hidalgo” (Jacala Hgo.); Bowerasa, A.C. “Haciendo Camino” (Chihuahua, Chih.); Casa del Migrante Saltillo (Saltillo, Coah.); Católicas por el Derecho a Decidir, A.C. (Ciudad de México); Centro de Capacitación y Defensa de los Derechos Humanos e Indígenas, Asociación Civil (CECADDHI) (Chihuahua); Centro “Fray Julián Garcés” Derechos Humanos y Desarrollo Local, A. C. (Tlaxcala, Tlax.); Centro de Apoyo al Trabajador, A.C. (CAT) (Ciudad de México); Centro de Derechos de la Mujeres de Chiapas (San Cristóbal de Las Casas, Chis.); Centro de Derechos Humanos “Don Sergio” (Jiutepec, Mor.); Centro de Derechos Humanos “Fray Bartolomé de Las Casas”, A. C. (San Cristóbal de Las Casas, Chis); Centro de Derechos Humanos “Fray Francisco de Vitoria O.P.”, A. C. (Ciudad de México); Centro de Derechos

Humanos “Fray Matías de Córdoba”, A.C. (Tapachula, Chis.); Centro de Derechos Humanos “Juan Gerardi”, A. C. (Torreón, Coah.); Centro de Derechos Humanos “Miguel Agustín Pro Juárez”, A. C. (Ciudad de México); Centro de Derechos Humanos de la Montaña, Tlachinollan, A. C. (Tlapa, Gro.); Centro de Derechos Humanos de las Mujeres (Chihuahua); Centro de Derechos Humanos de los Pueblos del Sur de Veracruz “Bety Cariño”, A.C. (Tatahuicapan de Juárez, Ver.); Centro de Derechos Humanos Digna Ochoa, A.C (Tonalá, Chis.); Centro de Derechos Humanos Paso del Norte (Cd. Juárez, Chih.); Centro de Derechos Humanos Toaltepeyolo (Orizaba, Veracruz); Centro de Derechos Humanos Victoria Diez, A.C. (León, Gto.); Centro de Derechos Humanos Zeferino Ladrillero (CDHZZL) (Estado de México); Centro de Derechos Indígenas “Flor y Can-to”, A. C. (Oaxaca, Oax.); Centro de Derechos Indígenas A. C. (Bachajón, Chis.); “Centro de Estudios Sociales y Culturales Antonio de Montesinos, A.C.” (CAM) (Ciudad de México); Centro de Investigación y Capacitación Propuesta Cívica A. C. (Propuesta Cívica) (Ciudad de México); Centro de Justicia para la Paz y el Desarrollo, A. C. (CEPAD) (Guadalajara, Jal.); Centro de los Derechos del Migrante (Ciudad de México); Centro de Reflexión y Acción Laboral (CEREAL-Guadalajara) (Guadalajara, Jal.); Centro Diocesano para los Derechos Humanos “Fray Juan de Larios”, A.C. (Saltillo, Coah.); Centro Juvenil Generando Dignidad (Comalcalco, Tabasco); Centro Kalli Luz Marina (Orizaba, Ver.); Centro Mexicano de Derecho Ambiental (CEMDA) (Ciudad de México); Centro Mujeres (La Paz, BCS.); Centro Regional de Defensa de DDHH José María Morelos y Pavón, A.C. (Chilapa, Gro.); Centro Regional de Derechos Humanos “Bartolomé Carrasco”, A.C. (BARCA) (Oaxaca, Oax.); Centro Universitario por la Dignidad y la Justicia Francisco Suárez, S.J. (CUDJ)(Guadalajara, Jal.); Ciencia Social Alternativa, A.C. KOOKAY (Mérida, Yuc.); Ciudadanía Lagunera por los Derechos Humanos, A.C. (CILADHAC) (Torreón, Coah.); Colectivo contra la Tortura y la Impunidad (CCTI) (Ciudad de México); Colectivo Educación para la Paz y los Derechos Humanos, A.C. (CEPAZDH) (San Cristóbal de Las Casas, Chis.); Comisión Ciudadana de Derechos Humanos del Noroeste (Mexicali, Baja California); Comisión de Derechos Humanos y Laborales del Valle de Tehuacán, A.C. (Tehuacán, Pue.); Comisión de Solidaridad y Defensa de los Derechos Humanos, A.C. (COSYDDHAC) (Chihuahua, Chih.); Comisión Regional de Derechos Humanos “Mahatma Gandhi”, A. C. (Tuxtepec, Oax.); Comité Cerezo (Ciudad de México); Comité Cristiano de Solidaridad Monseñor Romero (Ciudad de México); Comité de Defensa de las Libertades Indígenas (Palenque, Chis.); Comité de Defensa Integral de Derechos Humanos Gobixha A.C. (CODIGODH) (Oaxaca, Oax.); Comité de Derechos Humanos “Fr. Pedro Lorenzo de la Nada”, A. C. (Ocosingo, Chis.); Comité de Derechos Humanos “Sierra Norte de Veracruz”, A. C. (Huayacocotla, Ver.); Comité de Derechos Humanos Ajusco (Ciudad de México); Comité de Derechos Humanos de Colima No Gubernamental A. C. (Colima, Col.); Comité de Derechos Humanos de Comalcalco, A. C. (CODEHUCO) (Comalcalco, Tab); Comité de Derechos Humanos de Tabasco, A. C. (CODEHUTAB) (Villahermosa, Tab); Comité de Derechos Humanos y Orientación Miguel Hidalgo, A. C. (Dolores Hidalgo, Gto.); Comité de Familiares de Detenidos Desaparecidos “Hasta Encontrarlos”(Ciudad de México); Comité Sergio Méndez Arceo Pro Derechos Humanos de Tulancingo, Hgo A.C. (Tulancingo, Hgo.); Consultoría Técnica Comunitaria AC (CONTEC) (Chihuahua); El Caracol, A.C (Ciudad de México); Estancia del Migrante González y Martínez, A.C. (Querétaro, Qro.); Frente Cívico Sinaloense. Secretaría de Derechos Humanos (Culiacán, Sin.); Fundación para la Justicia y el Estado Democrático de Derecho (Ciudad de México); Indignación, A. C. Promoción y Defensa de los Derechos Humanos (Mérida, Yuc.); Instituto de Derechos Humanos Ignacio Ellacuría, S.J. Universidad Iberoamericana- Puebla (Puebla, Pue.);

Instituto Mexicano de Derechos Humanos y Democracia (Ciudad de México); Instituto Mexicano para el Desarrollo Comunitario, A. C. (IMDEC) (Guadalajara, Jal.); Justicia, Derechos Humanos y Género, A.C. (Ciudad de México); La 72, Hogar Refugio para Personas Migrantes (La 72) (Tenosique, Tabasco); Mujeres Indígenas por la Conservación, Investigación y Aprovechamiento de los Recursos Naturales, A. C. (CIARENA) (Oaxaca); Promoción de los Derechos Económicos, Sociales y Culturales (PRODESCAC) (Estado de México); Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC) (Ciudad de México); Proyecto sobre Organización, Desarrollo, Educación e Investigación (PODER) (Ciudad de México); Red Solidaria de Derechos Humanos, A.C. (Morelia, Michoacán); Respuesta Alternativa, A. C. Servicio de Derechos Humanos y Desarrollo Comunitario (San Luis Potosí); Servicios de Inclusión Integral, A.C. (SEIINAC) (Pachuca, Hgo.); Tequio Jurídico A.C. (Oaxaca, Oax.); Uno de Siete Migrando A. C.(Chihuahua, Chih.); VIHas de Vida (Guadalajara, Jal.); Voces Mesoamericanas, Acción con Pueblos Migrantes AC (San Cristóbal de las Casas, Chiapas).