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Ms. María Claudia Pulido,
Executive Secretary
Inter-American Commission
on Human Rights (IACHR)

Ref: Petition P-1550-20

Distinguished Madame Secretary:

We Juanita Olaya Garcia, acting on my personal capacity as an international law expert and as lead of the UNCAC Coalition's Working Group on Victims of Corruption; and José Ugaz, acting on my personal capacity, as a Criminal Law expert partner of Benites Vargas & Ugaz Law Firm, former Special State Attorney and former Chair of Transparency International, respectfully address the Illustrious Inter-American Commission on Human Rights (hereinafter "the Commission"), in support to the request for reconsideration presented by Estefanía Medina Ruvacalba and Luz Adriana Mercedes Greaves Muñoz (who also undertake their activities under the organisation named TOJIL) on January 22, 2021 registered with the number P-1550-20.

The UNCAC Coalition is a global network of over 350 civil society organizations in over 100 countries committed to promoting the ratification, implementation and monitoring of the UN Convention against Corruption. TOJIL, the organisation through with Mrs. Medina Ruvacalba and Mrs. Greaves Muñoz work, is a member of the Coalition.

I. Context

1. On July 20, 2020, Mrs. Medina Ruvacalba and Mrs. Greaves Muñoz presented a petition to the IACHR calling for the international responsibility of the Mexican State for the violation of the rights to judicial guarantees, political rights, freedom of association and judicial protection, established in Articles 8.1, 16.1 , 23.1 a) and 25.1 of the American

Convention on Human Rights (ACHR), in relation to the obligations enshrined in Article 1.1 of the same instrument; to their detriment.

2. On December 23, 2020, the IACHR notified them that it was lacking the characterisation to process the petition because the provided information was not considered to meet the requirements established in its Regulations and other applicable instruments. In particular, considered that “the information presented does not reveal the necessary elements to determine that it is a possible violation of the rights protected by the IACHR.”

3. Consequently, and considering that the petition did comply with the characterisation requirements, on January 22, 2021, Mrs. Medina Ruvacalva and Mrs. Greaves Muñoz (TOJIL) submitted a request to review the admission of the case under the IACHR.

II. Considerations

In our view, the petition submitted by Mrs. Medina Ruvacalva and Mrs. Greaves Muñoz complies with the characterisation requirement of presenting for consideration possible human rights violations. We consider that the petition provides sufficiently and specific information about the illegal act and its direct link with the alleged human rights violations. In other words, it is noted that in the specific case, several acts have been specified and **constitute human rights violations, specifically referring to the Mexican State’s refusal to recognise the petitioners as victims of corruption.**

In this regard, the IACHR itself has argued in its report on Corruption and Human Rights of 2019 that every State must adopt the necessary measures to facilitate the access — both for victims and for those who report acts of corruption— not only to adequate and effective means to report these crimes, but also to effective means to achieve a proper damage reparation and thus contribute to avoid its repetition. Likewise, during the process of investigation and prosecution of such cases, the victims must have wide opportunities to participate and be heard, both in the clarification of the facts and in the punishment of those responsible, as well as in the search for fair remedy.

The Commission has also indicated that, especially in cases of grand corruption States are obliged to identify the victims —who may be social groups represented by human rights defenders—, to ensure a fair reparation of the damage since corruption is not an abstract crime without a passive subject. On this basis, any person whose enjoyment of any human right because of a corrupt practice is entitled to be recognized as a victim. In this case, the petitioners’ right to an effective access to judicial means was affected and through this its right to seek enforcement and reparation of the damage caused by corrupt practices.

Because corruption affects human rights, this individual right of access to justice and due process is also connected to the protection of collective and fundamental rights. The public administration is in charge of delivering public goods that secure the fulfilment and protection of citizen’s fundamental rights through the non-discriminatory use an investment of public funds. There is therefore a collective right and a legally protected interest in the good and righteous public administration, so those public goods are secured

and a non-discriminatory access is ensured. Corruption affects directly fundamental rights among others through a biased and discriminatory public administration that fails to fulfil its duty. There is therefore a direct connection between the citizen's rights to access to justice and freedom of association to defend the collective interests, and the protection of their collective rights damaged or at risk in a corruption case. Assuming citizens or civil society organisations are not entitled to be represented in a corruption case would imply that they are not victims or not entitled to represent victims of violations to collective rights.

In our view, the final and restrictive interpretation that the Mexican State is giving to the Article 4th the Mexico's Victims General Law (in Spanish Ley General de Victimas) violates de civil rights of Mrs. Medina Ruvacalva and Mrs. Greaves Muñoz as they exercise them also through their activities in TOJIL as a CSO association to access to justice and seek remedy for the damage to collective interests caused to corruption and to due process **by not recognising them as victims in a grand corruption case**. This also violates international obligations acquired by the Mexican State to grant such access under the United Nations Anti-Corruption Convention (UNCAC). By denying both petitioners the character of victims also violates their human rights under Article 25.1 of the American Convention, which states that any State has the general obligation to provide **effective judicial means to victims of human rights violations** (Article 25), which must be substantiated in accordance with the rules of due legal process (Article 8.1).

Mrs. Medina Ruvacalva and Mrs. Greaves Muñoz's petition is also based in accordance to Article 35 of the United Nations Convention against Corruption (UNCAC) under which State Parties are under the obligation to "ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation". The UNCAC makes thus no distinction between individuals en legal entities, individual or collective damages to recognise their character of victims of corruption. There is also the States' obligation under UNCAC's Article 13 to "promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption". On this basis, the Working Group on Asset Recovery of the UNCAC Convention has argued that "while the Convention does not provide a definition of who is a victim of corruption, it is important to adopt a broad and inclusive approach, recognising that individuals, entities and States can be considered victims of corruption and furthermore, civil society and non-governmental organizations play an important role in ensuring that victims are represented in corruption proceedings, and as such should be able to report crimes, give evidence, represent victims or bring public interest litigation".¹

Under these considerations, we find that Mrs. Medina Ruvacalva and Mrs. Greaves Muñoz's request to the IACHR seeks to ensure the protection of civil society's rights to access justice, freedom of association, and due process, to obtain remedy from the violations of human rights that result from corruption, according to national and international law. We

¹ Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation, Open-ended Intergovernmental Working Group on Asset Recovery Vienna, 25-26 August 2016, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>

respectfully urge the Commission to consider and resolve positively their request to review the admission of the case under the IACHR.

We also want to express our willingness to elaborate and provide further detail to these arguments should the Commission consider it helpful.

Respectfully,

Dr. Juanita Olaya Garcia
(submitted via e-mail)

José Ugaz
(submitted via e-mail)