

## The protection of human rights defenders (HRDs) after two years of Gabino Cué's government

### 1. Introduction

As of December 2012, Gabino Cué Monteagudo will celebrate two years as governor of Oaxaca. During this time, several reforms and legislative initiatives have been undertaken, and over 14 laws have been passed. Among them are the Organic Law of the Executive Branch of the State of Oaxaca (*Ley Orgánica del Poder Ejecutivo del Estado de Oaxaca*), the Organic Law of the Judicial Branch of the State of Oaxaca (*Ley Orgánica del Poder Judicial del Estado de Oaxaca*), the Law of the Human Rights Ombudsman's Office of the State of Oaxaca (*Ley de la Defensoría de los Derechos Humanos del Estado de Oaxaca*), or the Organic Law of the State Attorney General's Office (*Ley Orgánica de la Procuraduría General de Justicia del Estado*). Some of these legislative changes have created new institutions which, either directly or indirectly, contribute to the protection of human rights defenders (HRDs). Many were proposed and promoted by Oaxaca's civil society.

In the context of Oaxaca's social conflict of 2006-7, the government of Ulises Ruiz Ortiz committed serious human rights violations, the majority of which remain in impunity<sup>1</sup>. At the start of Gabino Cué's new administration in 2010, the incoming government declared that it had a strong commitment to introducing reforms which would impact on the respect for, protection of and guarantee of the human rights of the population at large, and of the people who defend these rights.

Because of the risk facing HRDs in Oaxaca, PBI has maintained a permanent team there since 2008. In the last two years, PBI has maintained ongoing dialogue with the Oaxacan government regarding the concerns of civil society organisations, and the risks these organisations face. PBI recognises the openness shown by Cué government towards the protection of HRDs, but warns that the number of attacks against them continue to be alarmingly high. The most recent report by Urgent Action for Human Rights Defenders (*Acción Urgente para los Defensores de los Derechos Humanos*, ACUDDEH) notes that, in the first quarter of 2012, Oaxaca experienced the highest number of attacks against HRDs in Mexico, whilst in 2011 it came second only to the state of Chihuahua<sup>2</sup>. In the last year, HRDs in Oaxaca have suffered death threats, harassment, defamation, criminalisation, physical attacks, raids on property and murder<sup>3</sup>. PBI also continues to be concerned with the high levels of impunity and the delay in the administration of justice in cases of attacks against HRDs.

<sup>1</sup> Tribunal Pleno de la Suprema Corte de Justicia de la Nación, Crónica de la facultad de investigación 1/2007, Investigación de posibles violaciones graves a los derechos humanos "Caso Oaxaca", 2007, available only in Spanish: <http://www.scjn.gob.mx/Cronicas/Cronicas%20del%20pleno%20y%20salas/cr-caso-oaxaca.pdf>.

<sup>2</sup> Acción Urgente Para los Defensores de Derechos Humanos, A.C (ACUDDEH), *Informe de violaciones de derechos humanos cometidas contra las personas defensoras de los derechos humanos en el periodo 2011-primer trimestre de 2012*, Mexico, 2012. Available only in Spanish from <http://acuddeh.vela-do.net/spip.php?article2581>.

<sup>3</sup> Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todas y Todos" (Red TDT) and Peace Brigades International (PBI), *Concluye Misión de defensores y defensoras de derechos humanos a Oaxaca* (Press release), Oaxaca (Mexico), 3 October 2012, available only in Spanish from: [http://redtdt.org.mx/d\\_comunicados.php?pageNum\\_menuComunicados=2&totalRows\\_menuComunicados=1067&id\\_comunicado=1169&descargable=](http://redtdt.org.mx/d_comunicados.php?pageNum_menuComunicados=2&totalRows_menuComunicados=1067&id_comunicado=1169&descargable=).

This document analyses the four instruments created by the legislative branch during the Gabino Cué government, which PBI and the organisations it accompanies consider the most relevant for the protection of HRDs. The analysis contained in this document is based on interviews conducted in October and November 2012, when PBI team members interviewed Alba Cruz Ramos, lawyer with the Gobixha Committee for the Comprehensive Defence of Human Rights (*Comité de Defensa Integral de Derechos Humanos Gobixha, A.C.*; CODIGO-DH); Nora Minerva Martínez, coordinator of the ‘Bartolomé Carrasco Briseño’ Regional Human Rights Centre (*Centro Regional de Derechos Humanos ‘Bartolomé Carrasco Briseño’*, BARCA-DH); and Padre Alejandro Solalinde Guerra, coordinator of the ‘Hermanos en el Camino’ Migrant Shelter (*Albergue del Migrante ‘Hermanos en el Camino’*). Each of these HRDs is accompanied by PBI because of the risks they face in carrying out their work. The purpose of this document is to allow civil society to voice constructive criticism and proposals regarding the entities analysed, and to demand their implementation, strengthening and greater efficiency.

## 2. Protection instruments

### **2.1 Special Prosecutor's Office for Investigations into Crimes of Social Transcendence (*Fiscalía de Investigaciones en Delitos de Trascendencia Social, FIDTS*):**

On 18 February 2011, Gabino Cué issued the agreement (*acuerdo*) which created the FIDTS as a means of responding “to the social demand to improve victims’ access to justice and fair treatment, to reparations, and to assistance, and to clarify the alleged legal responsibility of those who committed or ordered crimes which constitute grave human rights violations; events which occurred recently or in the quite recent past and which, because of the context in which they were committed, caused commotion in Oaxacan society”<sup>4</sup>. The government thus responded to a societal demand to investigate the crimes against social leaders, trade-union representatives and HRDs in general, but particularly those committed during the social crisis of 2006.

In Oaxaca, the great majority of crimes against HRDs remain unresolved<sup>5</sup>. Not one of the cases of attacks against individuals accompanied by PBI has seen a guilty party brought to justice. Currently, and at the request of the victims, cases of crimes committed against HRDs can be transferred from other areas of Oaxaca State Attorney General’s Office (*Procuraduría General de Justicia del Estado, PGJE*) to the FIDTS. This transfer has already been requested by a large number of at-risk HRDs in the state, in the hope of seeing more efficient progress made.

#### 2.1.1 Concerns

Although the creation of the FIDTS has been widely celebrated by Oaxacan civil society, serious concerns exist in regard to its capacity and its autonomy. Organisations in Oaxaca point to certain advances in particular cases, and they appreciate the great willingness exhibited by the FIDTS’ staff. However, since its establishment, local organisations have had to exert a constant political pressure in order to ensure that the FIDTS has been even partially equipped with the resources and trained staff necessary to properly carry out the institution’s functions. Similarly, Oaxacan HRDs have questioned the autonomy granted to the FIDTS by the PGJE, having noted that many obstacles and delays seem to have their source in the State Attorney General’s Office.

<sup>4</sup> 'Consideraciones del Acuerdo del gobernador Constitucional del estado libre y soberano de Oaxaca por el que crea la Fiscalía de Investigaciones en Delitos de Trascendencia Social' (referenced in the 'Acuerdo del procurador general de justicia del estado de Oaxaca por el que se crea la Fiscalía de Investigaciones en Delitos de Trascendencia Social', Oaxaca de Juárez, 11 May 2011). Original Spanish: “a la demanda social de mejorar el acceso de las víctimas de delitos a la justicia y a un trato justo, a la reparación y a la asistencia, y esclarece la presunta responsabilidad penal de quienes cometieron o dieron las órdenes para ejecutar crímenes que constituyeron graves violaciones a los derechos humanos, hechos acontecidos recientemente o en tiempos relativamente pretéritos y que por las circunstancias en las que se cometieron causaron conmoción en la sociedad oaxaqueña”. (Translation: PBI).

<sup>5</sup> Red TdT and PBI, *Concluye Misión de defensores y defensoras de derechos humanos a Oaxaca* (Press release).

### 2.1.2 Proposals

The proposals are of a technical nature. The organisations agree on the need for greater human resources and financing. They specifically underline:

- a) The need for trained special investigators, with relevant training and knowledge; for example an understanding of the nature of human rights defence work in Mexico, or training in the Istanbul Protocol;<sup>6</sup>
- b) The need to establish a comprehensive protocol for attention to victims and witnesses;
- c) The need for a protocol for investigations into crimes against HRDs, developed together with HRDs;
- d) An audit of the PGJE which would evaluate its efficiency and detect its faults;
- e) The need for police attached to the FIDTS to be trained in human rights, treatment of victims and how to ensure the security of the FIDTS staff when carrying out their investigations.

### **2.2. Law of the Human Rights Ombudsman's Office of the State of Oaxaca (*Ley de la Defensoría de los Derechos Humanos del Pueblo de Oaxaca*) and internal regulations:**

As a result of the 2001 Constitutional Reform, on 13 January 2012 the Oaxacan State Congress passed the Law of the Human Rights Ombudsman's Office of the State of Oaxaca (Decree No. 823). As the law itself notes, "it is the outcome of multiple social and civilian efforts and a broad-based process of consensus building" between human rights organisations and government entities.<sup>7</sup> Oaxacan civil society demanded the radical transformation of Oaxaca's State Human Rights Commission (*Comisión Estatal de Derechos Humanos de Oaxaca*), so that it become an efficient and autonomous entity. While the head of the previous Commission was chosen by the executive branch of Oaxaca's government, the appointment is now approved by the Congress with greater transparency.

The Ombudsman's Office is defined as a public, *citizenised* body which enjoys full autonomy. Among its roles are: receiving and obtaining evidence, information and documents; receiving complaints and requests for investigations – on the behalf of the complainant or of the office itself – into alleged human rights violations; formulating public recommendations; requesting, from authorities or appropriate public employees, the preventative or precautionary measures (*medidas precautorias y cautelares*) needed to protect an individual's human rights, including those of HRDs; establishing early response mechanisms for serious cases and those for which it is impossible to make reparations; or presenting draft laws before the Oaxaca State Congress.

#### 2.2.1. Concerns

The process of naming the organisation's head and contracting its staff has been questioned by some organisations, which has generated a degree of distrust in the institution from the very beginning. The organisations accompanied by PBI have expressed their concerns at the apparent lack of knowledge and commitment of the Ombudsman's staff, and the occasional lack of leadership demonstrated by its head.

At the same time, the lack of funding available to the Ombudsman's Office has undermined its ability to act. With an ambitious set of internal regulations recently established, greater funding is necessary to allow the organisation to develop all of its areas of attention throughout the state of Oaxaca.

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<sup>6</sup> UN High Commissioner for Human Rights (2001), *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

<sup>7</sup> [http://www.codigodh.org/wp-content/uploads/2012/04/ley\\_defensoria\\_oaxaca\\_2012.pdf](http://www.codigodh.org/wp-content/uploads/2012/04/ley_defensoria_oaxaca_2012.pdf).

Original Spanish: "es el resultado de múltiples esfuerzos sociales y civiles y un amplio proceso de consensos" (Translation: PBI).

### 2.2.2. Proposals

The proposals are related to staff training and financial requirements. The organisations accompanied by PBI consider that the Ombudsman's Office has strong potential to contribute to Oaxacan society, but certain measures are necessary:

- a) Re-establishment of work areas and the use of open, transparent application processes for positions;
- b) Capacity building for management and employees, through workshops and ongoing training on human rights and the treatment of victims, so they might develop a greater understanding and application of their work;
- c) Provision of larger funds which would allow the development of the organisational structure established in the new regulations, and therefore provide adequate thematic and territorial coverage with an ample number of trained staff.

### **2.3. Constitutional Court (*Sala de lo Constitucional*):**

This Court was created as part of the 2011 Oaxacan Constitutional Reform (Decree No. 397). Its competencies are set out in article 106B, including section V, which states that it is to: “conduct the trial/s necessary for the protection of human rights, when there is a lack of compliance with recommendations made to authorities by the Human Rights Ombudsman of the People of Oaxaca (*Defensoría de los Derechos Humanos del Pueblo de Oaxaca*)”<sup>8</sup>. This opens the door for the Constitutional Court to take the Ombudsman's Office's recommendations which have not been implemented by government bodies, and hand down binding sentences in those cases. It raises the recommendations of the Ombudsman's Office to the judicial sphere.

#### 2.3.1. Concerns

This entity raised high hopes among civil society organisations when it was first introduced, but it has yet to be implemented, nor have any regulations been issued which would outline its functions.

#### 2.3.2. Proposals

- a) The creation and provision of adequate operational resources for the Constitutional Court by the Superior Court of Justice (*Tribunal Superior de Justicia*);
- b) The development of internal regulations which detail the Court's functions, competencies and procedures. These should be emitted by the Superior Court of Justice.

### **2.4. Coordination for the Attention to Human Rights (*Coordinación para la Atención de los Derechos Humanos*):**

The Coordination for the Attention to Human Rights was created in March 2012 as part of the reform of the Organic Law of the Executive Branch of the State of Oaxaca. It replaces the Commissioner for Human Rights (*Comisionada de Derechos Humanos*), which had been created by an agreement (*acuerdo*) from Gabino Cué in January 2011.

<sup>8</sup> [http://www.congresoaxaca.gob.mx/lxi/l\\_estatal.html](http://www.congresoaxaca.gob.mx/lxi/l_estatal.html) .

Original Spanish: “sustanciar el juicio para la protección de los derechos humanos, por incumplimiento de las recomendaciones hechas a la autoridad por la Defensoría de los Derechos Humanos del Pueblo de Oaxaca” (Translation: PBI).

Among the functions contemplated in the law for this auxiliary body are: coordination of publications and communication with national and international authorities which promote and protect human rights; attention to the requirements formulated by the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH), the Human Rights Ombudsman of the People of Oaxaca and competent international bodies; promotion and consolidation of actions which generate the full guarantee of human rights; contribution to the implementation of policies for the protection and improvement of human rights; formulation of programs and proposals of actions in coordination with competent government agencies; and promotion of mechanisms for dialogue and work in coordination with civil society.

#### 2.4.1 Concerns

One of the strongest criticisms is the lack of clarity in the definition of the body's functions and responsibilities. Many organisations have seen favourable actions conducted by the Coordination, and they recognise the willingness of its current head. However, it is concerning that she appears to act on a discretionary basis, and this has led to an belief in the need for a greater institutionalisation of the Coordination's workload. One example mentioned by some organisations is the manner in which proceedings for requests, implementation, coordination and follow-up of protective measures for HRDs from or through the Coordination's office are managed.

Equally, all the Oaxacan organisations interviewed recognise that there is a serious lack of coordination between Oaxacan governmental bodies. The Coordination should act in an integrated manner to ensure coordinated actions, rather than dealing with cases separately through each entity, and thus ensure that human rights are mainstreamed and institutionalised. Lastly, there is sometimes a suspicion that the Coordination is a body created to enhance the image of the Oaxacan executive branch, rather than to achieve real results.

#### 2.4.2 Proposals

Among the proposals, the most noteworthy are a greater institutionalisation of the Coordination and the creation of public policies for human rights. In detail:

- a) That the Coordination's functions are institutionalised; that concrete communication and action protocols be developed to ensure better coordination between state entities; and that an annual program or work plan with clear objectives be created for the Coordination;
- b) That a program of public policies for human rights be developed. The most important aspects are:
  - Implementing the National Protection Mechanism created by the Law for the Protection of Human Rights Defenders and Journalists (*Ley de Protección a Personas Defensoras de Derechos Humanos y Periodistas*), given that Oaxaca is a signatory to the law's agreement (*convenio*). Its application in Oaxaca should be a priority, and it should be done with the full participation of civil society;
  - Gender mainstreaming in all public policies;
  - Human rights training and evaluation programs in human rights and citizen protection for all public security forces and all staff who work in government agencies;
  - Establishing a comprehensive protocol for the treatment of victims, which is incorporated into the state Ministry for Public Security (*Secretaría de Seguridad Pública*, SSP) and all bodies concerned with the administration of justice;
  - Internal audits on the respect, protection and guarantee of human rights within the Coordination itself.

### **3. Conclusion**

PBI recognises the efforts made by the executive and legislative branches of the Oaxacan government to transform certain civil society demands into the creation of new entities for the protection of human rights and human rights defenders. However, PBI highlights the urgent need for a genuine implementation of these entities, for the provision of material and human resources, and for greater political will to ensure that each of these instruments comprehensively fulfils their functions.

PBI calls on Oaxaca's state institutions to take into account the recommendations made by the organisations PBI accompanies. This document is a starting point for a deeper reflection on the protection of human rights defenders, which should be coordinated together with the civil society of Oaxaca. We therefore invite the government of Oaxaca to address these protection issues in an inclusive and participative manner which ensures that the concerns and contributions of Oaxacan society at large are heard.