

POLICY AND PRACTICE NOTE

Mexico's National Protection Mechanism for Human Rights Defenders: Challenges and Good Practices

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Abstract

In April 2012 the Mexican Congress unanimously approved the Law for the Protection of Human Rights Defenders and Journalists, mandating the creation of a Protection Mechanism to provide protective and preventive measures to those defenders and journalists at risk. After more than three years of work by civil society organizations, the Law provides certain tools to tackle many of the particular issues of concern that have permitted different authorities to make excuses for the lack of protection. Although many challenges still remain, some lessons can be learned from the Mexican process which could be further analysed and adapted to other countries where human rights defenders are at risk. In particular, the obligation to prevent and the inclusion of civil society throughout the whole process make the Mexican Mechanism unique.

Keywords: human rights defenders; law; mechanism; Mexico; prevention; protection

Introduction

On 30 April 2012 the Mexican Congress approved the Law for the Protection of Human Rights Defenders and Journalists (the Law).¹ This Law mandates the creation of a National Protection Mechanism (the Mechanism) intended to address the increasing risks faced by human rights defenders (HRDs) and journalists and was the result of more than three years of wide-ranging civil society engagement with Mexican authorities.

As part of the group of civil society organizations (CSOs) that drafted the Law, I intend to analyse the efforts undertaken by civil society to create a National Protection Mechanism. Mexican CSOs consider a mechanism a key

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1 The Law for the Protection of Human Rights Defenders and Journalists can be consulted in Spanish at http://www.derechoshumanos.gob.mx/work/models/Derechos_Humanos/Resource/182/1/images/ley.pdf.

component of effective protection; however, many challenges are yet to be addressed in order to fully protect HRDs and journalists. Nevertheless, there are several lessons to be learned from the Mexican experience which can be further explored and adapted to other countries where HRDs are also facing increasing risks.

It is important to note that a number of other countries instituted mechanisms to protect HRDs before Mexico, such as Colombia, Guatemala and Nepal.² Mexico's Law is therefore the result of the lessons learned from the experiences in those countries, adapted to the contexts and experiences of Mexican HRDs and journalists.

Human rights defenders and journalists in Mexico: between aggression and impunity

The so-called 'war against organized crime', launched by President Calderón in December 2006, aggravated the levels of violence and insecurity around the country. With it, Mexico has also experienced an alarming increase in human rights violations in direct relation with the public security strategy based on the use of force and militarization. Cases of extrajudicial executions, enforced disappearances and torture have registered a sustained increase during recent years. (Human Rights Watch, 2011, 2012; Amnesty International, 2012).³

The context of insecurity has also meant that HRDs and journalists face increased risks precisely because of their work. Growing levels of violence and the militarization of public security have also augmented the number and magnitude of threats and attacks against those who have raised a voice against power.

According to the Inter-American Commission on Human Rights (IACHR), more than 60 HRDs in Mexico were assassinated between 2006 and 2011 and another four remain disappeared (IACHR, 2011a: 12). In particular, defenders of environmental rights, indigenous leaders and defenders of women's rights have been specifically targeted (ibid.). According to the National Commission for Human Rights (CNDH), from January 2005 to May 2011, a total of 523 files regarding attacks against HRDs were opened, with an annual rate of increase of over 100 per cent during the most recent years (CNDH, 2011: 24–5).

During the six years of the Calderón administration, Mexico also became one of the most dangerous countries in the world for journalists (O'Connor, 2011; International Press Institute, 2011). Between December 2006 and 2012, 48 journalists were killed and eight more were disappeared. Approximately 40 attacks against media facilities were registered. In 2012 alone, 137 attacks

2 To read more about local mechanisms for the protection of HRDs, see Eguren and Martin (2011).

3 For a broader understanding of the deterioration of the human rights situation in Mexico, see the annual reports by Human Rights Watch and Amnesty International.

against journalists or media facilities were documented (Article 19, 2012a: 22–4).

Former President Calderón and his government publicly and repeatedly declared that crimes against HRDs and journalists were committed by organized crime, denying any involvement of the state.⁴ On several occasions, even before investigations were carried out, government officials were already holding organized crime responsible. But, contrary to statements made by several authorities, attacks against HRDs and journalists in Mexico are not perpetrated by isolated individuals; rather they occur in a context of stigma and criminalization by high-ranking officials (ONUDH – Mexico, 2009, 2010 and 2013; Article 19, 2013: 15–16). Often the attacks are committed with the acquiescence and complicity of a wide range of public officials at all levels of government, federal, state and municipal. Public officials perpetrated over 40 per cent of all registered attacks against journalists during 2012, which was double the number of attacks committed by organized crime (Article 19, 2012b: 5 – 6). Particularly in states where the army has been deployed, such as Chihuahua or Guerrero, the authorities not only did not stop the attacks committed against HRDs, but in many cases even requested criminal gangs to do the ‘dirty work’ (ONUDH – Mexico, 2009: 16).

Impunity for all these attacks is practically absolute. According to the Office in Mexico of the UN High Commissioner for Human Rights (OHCHR), more than 96 per cent of these cases remained unpunished (ONUDH – Mexico, 2013: 16). Mexican authorities have been unable or unwilling to fully investigate and punish those responsible for attacking and harassing HRDs and journalists, sending a message that these attacks are permitted. The context of impunity perpetuates the cycle of violence against HRDs and journalists.

The road to a National Protection Mechanism

The alarming increase in attacks against HRDs and journalists in Mexico has put the country in the spotlight of the international community. Constant news of murders of HRDs and journalists has intensified the pressure on the Mexican government to guarantee their protection. Since 2006, Mexico has received 24 recommendations from international human rights bodies relating to the protection of HRDs and 38 other recommendations with regard to journalists.⁵ During this period, Mexico has also become the country with the most requests to the IACHR for precautionary measures (IACHR, 2013: 70).

4 Even during the public act where Calderón formally signed the Law, he declared: ‘This Law seeks to mitigate the violence experienced by journalists and HRDs, mainly through criminal actions. . .’. For the full speech in Spanish see <http://mediosenmexico.blogspot.mx/2012/06/fch-firma-decreto-para-protoger.html>.

5 For all international recommendations issued to Mexico on human rights, see the database on international recommendations to Mexico, <http://www.recomendacionesdh.mx>.

During recent years, the UN Special Rapporteur on the situation of human rights defenders has expressed her concern about the increasing attacks against HRDs in Mexico.⁶ The Special Rapporteur called on Mexico to effectively protect HRDs immediately, since ‘they continue to suffer killings, attacks, harassment, threats, stigmatization and other serious human rights violations’ (OHCHR, 2012). After a joint visit to Mexico in 2010, the Special Rapporteurs on freedom of expression of both the IACHR and the UN reported the increasing levels of violence against HRDs and journalists and the prevalent impunity for such cases, urging Mexico to implement a protection mechanism to guarantee their work in a safe environment (IACHR, 2010 and 2011b: 263; UN Human Rights Council, 2011: 10 – 11). Previously, in 2009, the OHCHR issued its first analysis of the situation of HRDs in Mexico (ONUDH – Mexico, 2009), and several recommendations by other countries during the Universal Periodic Review (UPR) of Mexico addressed this matter.⁷

In this climate of increased concern for the security of HRDs and journalists and mounting pressure on the authorities, Mexican NGOs took the initiative by preparing a first draft of a National Protection Mechanism that was then shared with the Ministry of Interior for further discussion.⁸ As a direct response to the constant pressure,⁹ in 2010 the Ministry of Interior agreed to set up a dialogue with CSOs to establish an administrative mechanism for the protection of HRDs and journalists. On February 2010 the Ministry convened, for the first time, a meeting with a wide range of CSOs from all around the country (including human rights organizations and journalists) and various authorities. The aim of the meeting was to discuss the possibilities for creating a mechanism based on the previous experience of Colombia. Therefore, Colombian experts were also invited, who years before had designed and implemented the Colombian mechanism. The meeting proved relevant for sharing information and allaying many of the doubts of state authorities.

After the meeting, authorities decided to separate the process, to develop specific mechanisms for HRDs and for journalists. Although in the beginning this seemed reasonable, it proved detrimental. In the end, combined efforts by HRDs and journalists built a critical mass that forced different authorities to support the idea of installing a single mechanism endorsed by law.

6 For the annual reports of the Special Rapporteur on the situation of human rights defenders and the yearly summaries of individual cases, see <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx>.

7 During the UPR of Mexico in 2009, 11 recommendations relating to HRDs and journalists were issued by Azerbaijan, Bangladesh, Belgium, Bolivia, Denmark, Germany, Netherlands, Norway, Peru, Russia, Sweden and the United Kingdom. For an explanation of the UPR process, see the UN Human Rights website at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>.

8 The first proposal can be consulted at http://acuddeh.org/IMG/pdf/Mecanismo_de_DDH_y_Periodistas.pdf.

9 For more on how international pressure has had a direct effect on the actions taken by the Mexican government see Anaya (2009: 35–58).

For HRDs, the Ministry of Interior organized a series of round tables between several human rights organizations and federal authorities. But the process was slow and a lack of governmental commitment constantly marred the dialogue. On 28 July 2011, only a day before an important meeting to approve guidelines for implementing the mechanism, the Minister of the Navy declared before former President Calderón:

There are criminal groups trying to smear the reputation of state institutions by using citizens' groups who, through deceitful tactics, try to make these institutions victims of the criminals' perverse game, since by using the banner of human rights, they seek to damage the image of our institutions, with the evil purpose of obstructing the government's anti-crime actions so as to have the field open to their wickedness. (see [letter from CSOs to UN and IACHR Special Rapporteurs on the situation of human rights defenders, 2011](#))

Such public statements by high ranking authorities increased the vulnerability of HRDs and journalists and obliged CSOs to withdraw from the process until there was public recognition of the relevance of their work as a way to demonstrate the government's commitment to their protection.

On the other hand, the mechanism for the protection of journalists was under the charge of the Attorney General's Office. In November 2010 a Presidential Decree was signed, creating a protection protocol for journalists, but civil society was not included in the process. As CSOs critically pointed out at the time (*La Jornada*, 2011), its possibilities were very limited, its budget was restricted and it was based only on simplistic police-oriented strategies that ignored several issues concerning journalists' protection (*Centro Nacional de Comunicación Social (CENCOS)*, 2011). Journalists had no trust in the mechanism, which meant in the end that it became impossible to establish it.

The lack of support in law for both processes allowed the authorities to delay the establishment of any mechanism while threats and attacks continued. After more than a year and a half of both processes being stalled, CSOs decided to take the discussion to the Congress with the intention of approving a law that would guarantee the creation of a mechanism for the protection of both journalists and HRDs. Despite the differences in the work done by journalists and by HRDs, there are convergences in that both are critical voices and have been constantly threatened and harassed, so the necessary measures of protection can be analysed together.¹⁰

10 When the law was being discussed, CSOs pushed for broad definitions to cover a wide range both of HRDs and journalists. In the end, article 2 of the Law provided very inclusive definitions. For HRDs, it incorporated the definition of the UN Declaration on human rights defenders (adopted by UN General Assembly resolution 53/144 on 9 December 1998). For journalists, the Law was outstanding in including those engaged in new ways of exercising freedom of expression, such as bloggers and those using Twitter and community radio.

The little progress since 2010 showed that any protection mechanism required political will and no pressure had been put on the government to progress with its establishment; approving a law would bind the authorities to do so. Although drafting and approving a law does not always seem the quickest process, it proved effective for raising awareness among all state actors. However, a strong and practical strategy was needed for moving forward on this process.

A group of CSOs began working with Congress, backed by a coalition of more than 200 national organizations around the country. The group also included the active participation of international organizations such as Amnesty International and Peace Brigades International (PBI). The Mexico Office of the OHCHR (ONUDH – Mexico) was also part of the process, providing technical support for including international standards and highlighting some good practices drawn from experiences of other countries in the implementation of such mechanisms, like Colombia, Guatemala and Brazil.

CSOs engaged with advisers to Congressmen from the three major parties for more than three months, providing their experience and expertise for the draft and design of the Law. It was very important that parties from the different political backgrounds joined the process, thus preventing the law from appearing partisan. The critical mass built by so many CSOs endorsed the project, allowing the Law to be swiftly and unanimously approved by Congress.

The Law was finally approved in April 2012, and served also as a public recognition of the important work done by HRDs and journalists in Mexico. Representatives from all political parties made important statements acknowledging the increasing risks and called for the effective implementation of the Law. Legislators also used the occasion of the approval of the Law to recognize HRDs and journalists who had been killed during recent years and observed a minute of silence in their memory.

The Law established a National Protection Mechanism consisting of three main bodies: 1) the Governing Board, as the main decision-making body; 2) the Advisory Council, composed of civil society representatives empowered to issue recommendations for the Mechanism; and 3) the National Coordination, within the Ministry of Interior, mainly in charge of all the operational and administrative tasks.

The construction of the Mechanism, where members of the federal government and civil society representatives are together on the Governing Board, is intended to favour dialogue among authorities responsible for ensuring protection and those facing risks on the ground. Representatives from civil society are also part of the Advisory Council, where many other recommendations from the ground can be put forward for improving the situation.

Some positive aspects still to be implemented

Over a year since the Law came into force, it is still to be effectively implemented. Highlighting some positive aspects of the Law, as well as some of the remaining challenges and obstacles, could help in drawing upon some important lessons learned by HRDs through this process in Mexico that can be further built upon and adapted to other countries.

The Law contains several provisions aimed at overcoming arguments that in recent history have been used by authorities to justify the lack of implementation of protective measures. Further, by including many recommendations issued by international human rights mechanisms and adapting some lessons learned from other similar initiatives, the Mexican Mechanism provides new ideas and responses to HRDs in other countries who want to install their own mechanism.

When seeking protection from the state, a constant obstacle has been the lack of clarity in regard to the institution responsible for ensuring protection and paying for the measures. When a person is at risk, time is precious, leaving no room for uncertainty. The lack of clear protocols on the implementation of measures regularly delays their being put into effect, to a point where it seems virtually impossible to prevent the attack.

The Mexican Law clearly establishes the ultimate responsibility of the Ministry of Interior for the operation of the Mechanism and provides specific time limits for granting protective measures. This implies that, when a certain authority does not comply with the protection orders of the Mechanism, federal authorities must take all appropriate actions to safeguard the integrity of the HRD or journalist at risk.

The lack of clarity about responsibility is often aggravated by the lack of time limits within which the authorities are required to provide protection measures. Arguing lack of cooperation and low budgets, authorities delayed implementing any measure, taking as long as six months to provide only an emergency cellphone. The Law, in order to address this problem, defines the process to deliver protection measures by establishing an extraordinary protocol for urgent cases, which sets a maximum period of 12 hours for providing the necessary protection.

Mexico's political division has constantly revealed lack of coordination and cooperation among the different levels of government as justification for failure to enact protection measures. Therefore, the Law also contains provisions to facilitate coordination and cooperation between federal and local authorities. Different authorities have constantly put the responsibility to protect HRDs on each other, ultimately leaving the HRDs unprotected. The Law tries to deal with this by encouraging local governments to subscribe to collaboration agreements to expedite protection measures. Nevertheless, such agreements are not legally binding, and to date have not proved to solve the problems faced when implementing measures at a local level. In the end, if

local authorities show no willingness to protect HRDs and journalists, the agreement remains unheeded.

Budgetary issues have also too often delayed the implementation of protection measures. The Law addresses this by creating a special Fund for purchasing the necessary protective measures. The Law also requires the President and Congress to provide resources each year to the Fund and sets out special rules to prevent its misuse. Third parties, such as local governments and foreign countries, can give contributions to the Fund. It will be fundamental that each year the Mechanism's budget approved by Congress will be based on its real needs, and not politically driven.

The uniqueness of Mexico's protection mechanism

There are two other relevant respects in which Mexico's Mechanism stands out. The first is the inclusion of civil society throughout the process of design and implementation of the Mechanism. The second is the inclusion of the obligation to prevent attacks against HRDs and journalists and to change structural patterns.

The inclusion of civil society during the drafting process of the Law and in all decision-making processes has been fundamental. As previously mentioned, a broad group of CSOs worked together with Congress with the intention of forming a group of experts and activists to draft a law reflecting the situation on the ground, which in the end would provide a specific response based upon their own needs and experiences. The involvement also of Amnesty International, PBI and the OHCHR permitted the construction of a solid base of trust amongst civil society organizations themselves.

But it is also important to note that the Law establishes an Advisory Council as one of the main organs of the Mechanism intended to represent civil society at the Mechanism and ensuring their participation at all times. This Council will also allow the Mechanism to enrich all decisions with the practical and technical experience of those who have been at risk on the ground and have lived the actual consequences of it.

The other point is that Mexico has been the first country to explicitly provide a legal framework intended to prevent attacks against HRDs and journalists. The Law contains a specific chapter outlining particular actions to be taken in order to decrease the levels of risk. Prevention is essential to change structural circumstances that put HRDs and journalists at risk and may be the best way to guarantee their protection ([UN Special Rapporteur on the situation of human rights defenders, 2011: 10](#)).

For instance, the Law mandates high-ranking authorities at the various levels of government to make statements on the relevance of the work carried out by HRDs and journalists in order to raise awareness and give explicit legitimacy to their work. This becomes necessary in the context of criminalization, considering recent statements by government and military officials vilifying the work of HRDs and accusing civil society organizations of being manipulated by

organized crime.¹¹ Such declarations increase the risks they face, delegitimize their actions and generate suspicion among the general population.

Moreover, the National Coordination has the power to recommend law reforms or certain public policies as relevant prevention measures. This will also allow for analysing and changing structural patterns that put HRDs and journalists at risk.

The way forward: the remaining challenges

This Law is without a doubt a significant achievement by Mexican civil society, made possible by the coordination and combined efforts of a wide range of organizations and other political actors that pushed for its realization. However, promulgating a law does not solve the problem by itself.

Certainly, there are still many challenges remaining in order to provide effective protection for HRDs and journalists in Mexico, and particularly to ensure the implementation of the Mechanism envisioned by the Law. The obstacles faced in its implementation during the first year have already shown some of its weaknesses. Addressing these challenges must be a priority for all authorities in the near future or the Mechanism will collapse.

Full operability of the Mechanism is essential. As of today, less than one third of the staff has been hired, thus creating a significant backlog of cases. For the staff who have been hired, it is essential to build their capacity in human rights law in order for them to give adequate attention to victims and provide comprehensive protection, going beyond the frequently limited police-oriented measures.

Better ways for local authorities to collaborate with the Mechanism must be endorsed. All collaboration agreements must be fully implemented and where authorities have not yet subscribed to them, they should be called on to do so without delay. If local authorities are not fully involved in the decisions of the Mechanism, protection will never reach the beneficiaries on the ground.

The application of the provisions relating to prevention must be addressed immediately. Authorities have shown reluctance to implement the chapter on prevention. A year after the Law entered into force, the Prevention, Analysis and Monitoring Unit has not been yet set up. Authorities have only focused on reactive measures, apparently ignoring long-term actions to change structural patterns.

Finally, but perhaps most important, is fighting impunity. The Law does not include measures to ensure proper investigations and sanctions on those who attack, harass or threaten HRDs and journalists. The Mechanism is intended to tackle an emergency situation, but by no means solves the structural patterns of the problem. The best prevention and protection measure is punishing

11 Just a few weeks before the declarations by the Minister of the Navy (see above), the General Director for Human Rights at the Ministry of Defence declared that criminal gangs were filing most of the complaints against the armed forces in order to discredit state institutions and obstruct the fight against organized crime.

those responsible, which necessarily requires proper investigations. The Law and the Mechanism facilitate coordination between authorities responsible for ensuring the safety of those at risk requesting state intervention. However, justice and accountability should be parallel routes that the state has the obligation to implement. If perpetrators are not duly sanctioned, it sends a message that their actions are permissible, allowing them to continue in their quest to put an end to those uncomfortable voices.

Conclusion

The militarization of public security and a failed strategy to combat organized crime have had an unfortunate impact on human rights in Mexico, in particular aggravating the risks previously faced by HRDs and journalists.

The Law for the Protection of Human Rights Defenders and Journalists provides sufficient tools for all authorities to grant effective protection. Now, the most necessary ingredient to put these tools into action is political will. The table is set to start building a new reality for HRDs and journalists in Mexico that will, in the end, rebuild a stronger democratic state under the rule of law. The experience of taking the lead from civil society through Congress has proved an effective path for installing a Protection Mechanism in Mexico.

If implemented adequately, the Mexican Mechanism will prove to be an effective tool which other HRDs and journalists at risk around the world can look to so as to adapt it to their local contexts.

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