

THE IMPLEMENTATION OF THE LAW FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS AND JOURNALISTS

The need for a Protection Mechanism:

- In Mexico, human rights defenders (HRDs) and journalists suffer high levels of assassination, disappearance, harassment, surveillance, threats, attacks and criminalization.¹
- The current response of the Mexican State has been inefficient: the beneficiaries of protection measures - granted by the National and State Human Rights Commissions or the Inter-American Human Rights System - have registered worrying weaknesses: a lack of adequate implementation agreed upon with the beneficiaries (according to their socio-cultural context and situation of risk) and a lack of coordination between different government entities.²
- HRDs and journalists who have registered threats and aggressions, and who are the beneficiaries of protection measures, continue to be the victims of new aggressions³
- In the first 100 days of the government of Enrique Peña Nieto, 37 aggressions against HRDs and 56 against journalists were registered, including one assassination.⁴
- In 2011 there were at least 209 human rights violations committed against HRDs.⁵

Towards a Governmental Protection Mechanism:

- In 2010, a broad range of human rights organizations and journalists united to form the Civil Society Organizations Group (CSO Group, *Espacio OSC*) which developed a *Mechanism Proposal* in October 2010.⁶
- Since then, this group has driven the debate regarding the development of a Mechanism, meeting with the federal government on many occasions to discuss the issue.
- In November 2010 and July 2011, former President Felipe Calderón signed Presidential Decrees authorising the development and implementation of Mechanisms for journalists and HRDs.⁷

The Legislative Process:

- In a process parallel to the one carried out with the executive branch of government, and with the aim of giving the Mechanism a legal base obliging its implementation by any future federal administration, the CSO Group proposed a project to create a Bill in the Mexican Senate.
- In an example of international best practise, CSO Group representatives designed and drafted the Law for the Protection of Human Rights Defenders and Journalists, together with technical advisors from the Senate's three majority political parties.⁸
- The Office in Mexico of the UN High Commissioner for Human Rights (OACNUDH), Peace Brigades

¹ OACNUDH, *Defender los derechos humanos: entre el compromiso y el riesgo*, octubre 2009 y su actualización de 2010.

² Afirmaciones de diversas organizaciones de la sociedad civil en correspondencia sobre la implementación de medidas de protección.

³ Todos los defensores acompañados por PBI han denunciado amenazas y agresiones en su contra, y todos han recibido nuevas amenazas y agresiones. En la mayoría de los casos, siguen siendo víctimas de agresiones a pesar de haber sido otorgados medidas de protección del Sistema Interamericano.

⁴ National Center for National Communication, A.C (Cencos), 2013, <http://cencos.org/node/30784>.

⁵ Acción Urgente para Defensores de los Derechos Humanos (Acuddeh AC), *Informe de violaciones de derechos humanos cometidas contra las personas defensoras de los derechos humanos en el periodo 2011-primer trimestre de 2012*, 2012.

⁶ El 'Espacio OSC' está conformado por Acción Urgente para Defensores de los Derechos Humanos (Acuddeh AC), Asociación Mundial de Radios Comunitarias-México, Centro de Derechos Humanos de la Montaña, Tlachinollan, A. C., Centro de Derechos Humanos "Miguel Agustín Pro Juárez", A. C., Centro de Derechos Humanos Fray Francisco de Vitoria, O.P. A.C., Centro Mexicano de Derecho Ambiental, A.C. (CEMDA), Centro Nacional de Comunicación Social (CENCOS), Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C. (CMDPDH), Servicios y Asesoría para la Paz, A.C. (SERAPAZ), Dimensión Pastoral de la Movilidad Humana, y la Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todos y Todos". Está asesorado y acompañado por Peace Brigades International (PBI) México y Amnistía Internacional México, y busca incorporar las aportaciones de otras organizaciones, personas defensoras y periodistas a través de foros, difusión y consultas digitales.

⁷ La sociedad civil han criticado la deficiente implementación de ambos Mecanismos. El Mecanismo para periodistas por su falta de transparencia y eficacia (Artículo 19, Análisis del marco normativo para un mecanismo de protección a quienes ejercen el periodismo en México, 2011), mientras el Mecanismo para personas defensoras nunca se concretizó en acciones o procesos específicos.

⁸ El Partido de Acción Nacional (PAN), el Partido Revolucionario Institucional (PRI), el Partido de la Revolución Democrática (PRD).

International (PBI) and Amnesty International (AI) accompanied and endorsed the process in which the law was developed; here, examples of other international mechanisms and the security experiences of Mexican and international HRDs and journalists were incorporated.

- On June 22nd 2012, Felipe Calderón signed the decree which promulgated the law, which had been passed unanimously in both chambers of the Mexican Congress.
- On December 11th, 2012, the Sub-Secretary for Human Rights, Lía Limón, recognized the risk situation faced by HRDs and journalists and the State's responsibility to protect them. She committed to prioritizing the strengthening of the Protection Mechanism within the new administration.

The Law for the Protection of Human Rights Defenders and Journalists: characteristics

- The law responds to the 2011 recommendation from the UN Special Rapporteur for HRDs.⁹
- The law defines HRDs according to the UN Declaration 53/144 of 1998.
- The law provides a legal basis for the coordination between the different governmental agencies responsible for the protection of HRDs and journalists.
- The law ensures the participation of civil society organisations in the implementation of the Mechanism and its decision-making processes. It also guarantees the right of the beneficiary to participate in the analysis of his/her risk and the definition of his/her protective measures.
- The law contemplates prevention measures, preventative measure, protective measures and urgent protective measures (*medidas de prevención, preventivas, de protección, and urgentes de protección*).
- The law defines an extraordinary process for emergency response in less than 12 hours.
- The law includes collaboration agreements (*convenios de colaboración*) with state level governments in order to ensure their participation in the Mechanism.
- The law establishes the 'subsidiarity principle', obliging the Interior Ministry (*Segob*) to assume responsibility for the implementation of protective measures in cases of municipal or state level incapability or when these levels of Government are shown to be related to the existent threat.
- The law ensures that public officials who do not implement the measures ordered by the Mechanism will be legally sanctioned.
- The law establishes a complaints procedure for cases in which the beneficiary is not in agreement with the measures authorised or when these measures are implemented in a deficient manner.

Structure of the Protection Mechanism

- The Governing Board (*Junta de Gobierno*): The maximum organ of the Mechanism, and made up of representatives – of Junior Minister (*Subsecretario*) level or equivalent – from the Interior Ministry (*Segob*), the National Security Commission (*CNS*), the Foreign Affairs Ministry (*SRE*), The Federal Attorney General's Office (*PGR*), the National Human Rights Ombudsman (*CNDH*), and four representatives of the Consultative Council (*Consejo Consultivo*). The Governing Board is chaired by the Interior Ministry representative, who has ultimate responsibility for the good functioning of the Mechanism and the correct implementation of its protective measures. The Governing Board was formally installed on November 12th, 2012.
- The Consultative Council (*Consejo Consultivo*): Nine volunteer members of civil society (representatives of HRDs and journalists) who comply with the requirements established by the law and who were elected by civil society itself on October 19th 2012. They monitor the mechanism and send representatives to its Governing Board.
- National Executive Coordination (*Coordinación Ejecutiva Nacional*): Responsible for coordinating actions between the different organs of the Mechanism. The person currently responsible is Juan Carlos Gutiérrez Contreras, Head of the UPDDH in Segob.
- Unit for the Reception of Cases and Rapid Reaction (*Unidad de Recepción de Casos y Reacción Rápida*); Risk Evaluation Unit (*Unidad de Evaluación de Riesgos*); Unit for Prevention, Follow-up and Analysis (*Unidad de Prevención, Seguimiento y Análisis*): auxiliary, operative units in the Mechanism.

What is still required in order for the Mechanism to be implemented?

- The instalation of the Unit of Prevention, Follow-up and Analysis (*Unidad de Prevención, Seguimiento y Análisis*). The bases of the other auxiliary units have already been installed.
- Sufficient human resources in the units and that these and other governmental entities that correspond to

⁹ (A/HRC/13/22) "a) Human rights defenders should be consulted throughout the setting up or review of protection programmes; b) The structure of a protection programme should be defined by law; c) In federal States, the structure of a protection programme should be defined by federal legislation. The administration of such a programme should be overseen by the Federal Government even in cases where in practice administered by States".

the Mechanism receive capacitation on its mandate and function.

- The formation of the Committee that will oversee financial operation of the Mechanism so that its budget is operational.
- Better application of Risk Analysis, contemplating a wide range of possible protection measures that aren't solely focused on the police and insuring that these correspond to the level and nature of risk.
- The guarantee of a rapid and adequate response, especially in cases of extraordinary risk
- Ample dissemination of the Mechanism and how possible beneficiaries can access it.
- The signing of cooperation agreements between State governments and Segob. As of April 1st, 2013, 27 of the 32 states in Mexico had signed agreements.
- Close cooperation between Segob and the state governments to define state level contacts for and participation in the Mechanism.

RECOMENDATIONS:

To Enrique Peña Nieto, President of Mexico:

- Recognise, via a public statement, the important role which HRDs and journalists have to play in a democratic Mexico, the situation of risk which they live in due to their activities, and the responsibility of the federal government to protect them through a Protection Mechanism.
- Guarantee the continuity of the Protection Mechanism in the new administration.

To the Interior Ministry (Segob) (and in particular its *Subsecretario de Asuntos Jurídicos y Derechos Humanos*) and the governmental members of the Mechanism's *Junta de Gobierno*:

- Ensure that dialogue with the CSO Group continues, recognising their legitimacy after having driven the debate on the Mechanism's creation, written the initial proposal for its functioning, designed the Protection Law and consulted a wide range of HRDs and journalists in order to understand their protection needs.
- Create the Unit for Prevention, Follow-up and Analysis and name an adequate Director.
- Ensure that the Mechanism has sufficient trained personnel so that can operate efficiently.
- Ensure the immediate installation of the committee for the management of the Mechanism's funds.
- Ensure better application of Risk Analysis, contemplating a wide range of possible protection measures that aren't solely focused on the police and insuring that these correspond to the level and nature of risk.
- Ensure ample dissemination of the Mechanism and how possible beneficiaries can access it.
- Work in close cooperation with state governments to define state level contacts for and participation in the Mechanism.

To the Governors of all Mexican states:

- Recognise, via a public statement, the important role which HRDs and journalists have to play in a democratic Mexico, the situation of risk which they live in due to their activities, and the responsibility of state governments to protect them through a Protection Mechanism.
- Sign cooperation agreements with the Protection Mechanism.
- Work in close cooperation with Segob to guarantee application of the Mechanism in each State.
- Guarantee the proper implementation of the measures authorised by the Mechanism.

To the National Human Rights Ombudsman (CNDH):

- Be actively involved in the functioning of the Mechanism, monitoring its impact and pushing the Federal Government to ensure its efficacy.

PBI considers urgent that the Mexican State guarantee the security of HRDs and journalists by implementing an effective Mechanism for their protection. Unless HRDs and Journalists have sufficient political space and safety guarantees to be able to promote social change, Mexico's democratic transition will be seriously compromised.