

# **Submission to the OHCHR on the impact of the world drug problem on the enjoyment of the right to defend human rights in Latin America**

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## **ABOUT THE ORGANISATIONS AUTHORS OF THIS REPORT**

The **International Service for Human Rights** (ISHR) is an independent, non-governmental organisation dedicated to promoting and protecting human rights. For 31 years ISHR has achieved this by supporting human rights defenders (HRDs), strengthening human rights systems, and leading and participating in coalitions for human rights change.

**Peace Brigades International** (PBI) is an independent, non-governmental organisation which uses international protective accompaniment to protect, and open spaces for, HRDs at risk. Now in its 33rd year, PBI currently has projects on the ground in Colombia, Guatemala, Honduras, Kenya and Mexico, as well as offices around the world.

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# I. INTRODUCTION

## 1. ABOUT THIS REPORT

A large percentage of drugs consumed worldwide, and the vast majority of cocaine, are produced in or trafficked through Latin America, with a huge presence of organised crime groups dedicated to drugs trafficking throughout the continent. Latin America is also a very dangerous place to defend human rights. In a report this year Frontline Defenders showed it to be the region with the highest number of murders of HRDs, accounting for 101 of the 130 HRDs killed in 2014,<sup>1</sup> whilst PBI receives the majority of its requests for protective accompaniment from Latin American activists.

In January 2015, ISHR interviewed 75 HRDs from 20 countries across the Americas.<sup>2</sup> The information compiled from these ground level activists coincided with information provided by HRDs to PBI in its field projects in Colombia, Guatemala, Honduras and Mexico. This information showed that both the presence of organised crime related to drug trafficking, and the current methods and strategies with which States respond to this issue, imply increased and specific risks for HRDs.

This report complements that first-hand information with secondary research to demonstrate that changes must be made to drugs policy and HRD protection policy if HRDs are to be protected and if States are to guarantee them their rights as set out in the United Nations *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (UN Declaration on Human Rights Defenders)<sup>3</sup>.

The emphasis of this report is on the situation in Mexico, which has been on the front lines of the so-called 'war on drugs' for at least the past nine years. However, the report also includes specific examples from Colombia, El Salvador, Guatemala, Haiti and Honduras, as well as general conclusions taken from ISHR's Latin America consultations.

## 2. REGARDING TERMINOLOGY

Throughout, this report will discuss the impact that 'organised crime and drugs trafficking', and State responses to this phenomenon, have upon the security and work of HRDs. The use of this terminology is in keeping with language used by the region's States, analysts and civil society, who often use these terms interchangeably, whether referring to highly organised criminal enterprises involved in the trade of drugs and other illicit products, or to low level drug traffickers and dealers.

It also reflects the fact that the threat to defenders in the region comes from the activities of – and responses to – drug trafficking by the following groups: those which could be defined as organised crime organisations by the UNODC definition;<sup>4</sup> and groups or individuals which might be found elsewhere on the spectrum of the definition of drug trafficking used by the same body.<sup>5</sup> The terminology also reflects the fact that drug trafficking is one of the prime activities of organised crime groups throughout the region.<sup>6</sup>

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<sup>1</sup> <https://www.frontlinedefenders.org/2015-Annual-Report>

<sup>2</sup> *ISHR Latin America regional consultations*, January 2015. Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela, Uruguay and the USA. A public report of these consultations will be published later this year.

<sup>3</sup> <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

<sup>4</sup> <http://www.unodc.org/unodc/en/organized-crime/index.html>

<sup>5</sup> <http://www.unodc.org/unodc/en/drug-trafficking/index.html>

<sup>6</sup> See, for example, <http://www.wilsoncenter.org/sites/default/files/BB%20Final.pdf>, [https://www.unodc.org/documents/data-and-analysis/Studies/TOC\\_Central\\_America\\_and\\_the\\_Caribbean\\_english.pdf](https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf) and <http://www.insightcrime.org/news-analysis/organized-crime-what-to-expect-in-2015>

## II. THE IMPORTANCE OF HUMAN RIGHTS DEFENDERS IN THE CONTEXT OF THE FIGHT AGAINST ORGANISED CRIME

The UN Declaration on Human Rights Defenders, current and previous UN High Commissioners for Human Rights, the UN Secretary General and numerous UN resolutions and experts have consistently reiterated the crucial role of HRDs in promoting and protecting human rights, exposing violations and seeking justice. Human Rights Council resolution A/HRC/RES/25/18 'strongly urges all States to take concrete steps to create, in law and in practice, a safe and enabling environment in which HRDs can operate free from hindrance and insecurity', whilst General Assembly resolution A/RES/68/181 explicitly calls upon States to prevent abuses against women HRDs carried out by non-State actors.

The fact that the UN Human Rights Council resolution A/HRC/28/28 mandated the OHCHR and the Human Rights Council to consult all stakeholders, including civil society, in developing contributions to UNGASS 2016 is recognition of the crucial role HRDs can play in ensuring that the impact of world drugs policies on human rights is positive rather than negative.

In Latin America HRDs have played a fundamental role in exposing abuses by State and non-State actors in the context of the 'war on drugs' and in proposing approaches to drugs, security, crime and corruption policies from a human rights perspective.

The Human Rights Council Advisory Committee has said that 'human rights defenders are often subjects of harassment, intimidation, threats, arbitrary arrest and attacks. This also includes persons who denounce and fight corruption'. The Advisory Committee has encouraged the protection of anti-corruption activists, whistle-blowers and journalists reporting on corruption under the UN Declaration on Human Rights Defenders.<sup>7</sup>

Nonetheless, HRDs feel that they are rarely formally consulted by States on drugs, crime and security strategies and that their analysis and proposals are not usually taken into account, leading to the development of policies without a human rights perspective and with the capacity to facilitate or exacerbate human rights abuses.

Many HRDs, affected communities and much of Latin American civil society feel they are not being properly consulted about the human rights impact of the current drugs policies. Seeking their input should be standard given that it could mitigate the negative human rights consequences of these policies.<sup>8</sup>

If the UN and its member States are serious about ensuring a human rights approach to the world drugs problem, they must consult HRDs at every opportunity and take steps to ensure a safe and enabling environment for their work and for their contribution to this debate. Currently, HRDs working on abuses related to the world drugs problem are some of those facing the highest levels of risk in Latin America.

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<sup>7</sup> [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/28/73](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/28/73)

<sup>8</sup> Numerous local, regional and international organisations and analysts have documented the negative impact of the organised crime and drug trafficking upon human rights generally. Good overviews include <http://www.wola.org/sites/default/files/Drug%20Policy/FINAL%20CIDH%20Testimonio%20-%20El%20impacto%20de%20las%20pol%C3%ADticas%20de%20drogas%20en%20los%20DDHH.pdf> and [https://www.hrw.org/sites/default/files/wr2014\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/wr2014_web_0.pdf) (pp. 19-28).

### III. THE NEGATIVE IMPACT OF THE CURRENT DRUGS PROBLEM AND CURRENT DRUGS / SECURITY STRATEGIES ON THE SECURITY OF HUMAN RIGHTS DEFENDERS

It is clear that in Latin America, the drugs trade and the current anti-drugs policy and public discourse, together with a climate of impunity, have conspired to produce additional risks for HRDs.

#### 1. RISKS TO HUMAN RIGHTS DEFENDERS FROM NON-STATE ACTORS AND COLLUDED AUTHORITIES

The increase in powerful, armed non-State actors including organised crime groups, paramilitary groups and private security firms have left HRDs at risk to more actors in an increasingly complex context.<sup>9</sup> State actors have not been capable of responding to this complexity with adequate HRD protection measures and policies, and have sometimes been accused of complicity in the criminal activities of these groups against defenders, exacerbating the climate of risk.

Essentially, the existence of organised crime and drugs traffickers creates violence for society and, therefore, indirectly increases the risks for HRDs. They can also represent a direct attack on HRDs, particularly when the work of the latter contradicts the territorial or business interests of criminals and colluded authorities.

As is the case for the general population in many Latin American countries, HRDs face high rates of crime and violence across the region. They risk being attacked by armed non-State actors, such as organised crime and drugs trafficking groups which have developed strategies of violence against society as a means of pressuring the authorities. They also face the risk of getting caught in the crossfire in exchanges between State and non-State armed actors.

For example, Central America is now home to some of the world's most dangerous cities, with the highest global homicide rate found in **Honduras**, at 82.1 murders per 100,000 inhabitants. The region has become unsafe for those HRDs, journalists, politicians and security officials that expose this violence and speak out against attempts at corruption by organised crime and drug trafficking groups.<sup>10</sup> According to Global Witness, for example, per capita Honduras ranks number one in the 'global killings of land and environmental defenders 2002-2014' index with a total number of 111 victims.

The influence that organised crime has on society as a whole also has a knock-on effect on how HRDs can operate. In an interview with ISHR in March 2014, woman HRD Alejandra Burgos from **El Salvador**, outlined how defenders are compelled to either negotiate with armed drugs gangs or to risk that they become another hostile actor which threatens their life and their work.<sup>11</sup>

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<sup>9</sup> <http://www.insightcrime.org/news-analysis/evolution-crime-violence-latin-america-caribbean>

<sup>10</sup> HRW World Report available at <http://www.hrw.org/world-report/2015/country-chapters/honduras?page=2>

<sup>11</sup> ISHR interview with Alejandra Burgos, Red Salvadoreña de Mujeres Defensoras, March 2014, <http://www.ishr.ch/news/alejandra-burgos-woman-defender-working-sexual-and-reproductive-rights-el-salvador>

At ISHR's Latin American consultations, participants identified that HRDs exposing collusion between authorities and organised crime and drugs trafficking groups, or abuses by security forces charged with fighting drug trafficking, were some of the continent's most vulnerable.<sup>12</sup>

The Inter-American Commission on Human Rights (IACHR) and the UN Special Rapporteur on HRDs have both reported that the number of attacks against HRDs perpetrated by non-State armed groups, such as organised crime groups, has risen.<sup>13</sup> In some countries, these groups operate in collusion with, with the acquiescence of, or thanks to the omission of, State agents.

According to analysis by the **Mexican** Red TdT Civil Society Network, the work of many of the HRDs killed in recent years 'confronted certain groups of "default power" (businesses, local leaders and organised crime groups) that operate in conjunction with diverse levels of government [...] The work of these defenders was focused on obtaining justice and truth, defending the land, territory and natural resources [...], reporting the actions by organised crime and the complicity of authorities and pointing out corruption and inefficiency of State entities to prevent, investigate and sanction those who violate human rights'.<sup>14</sup>

In **Guatemala**, journalists and media outlets covering corruption and drug trafficking are particularly at risk of threats, attacks, and legal intimidation. Threats and influence by organised crime are frequent.<sup>15</sup>

In **Colombia** in 2013, Somos Defensores recorded an increase in assassinations of HRDs, identifying non-State actors – many with links to drug trafficking criminal groups – as the principal aggressors. They showed how political, business and criminal interests which felt threatened by HRDs, could conspire to ensure attacks against activists by paramilitary and guerrilla groups.<sup>16</sup>

At ISHR's Latin American consultations, HRDs alleged that both State and business representatives use criminal actors to attack defenders with impunity in countries such as **Chile, Colombia, Guatemala, Honduras, Mexico** and **Peru**. This phenomenon has increased in line with levels of organised criminal groups associated with drug trafficking. They also agreed that exposing collusion between State and non-State actors, and the corruption of the former, was an activity which puts HRDs at a heightened level of risk of reprisals from both actors for their human rights work.<sup>17</sup>

In **Mexico**, according to the OHCHR country office, 'it is important to note that a majority of the cases [of attacks against HRDs] point to non-State actors, mainly identified as "caciques" [local bosses] or criminal groups that see their interests affected by the work of defenders in the region, since they uncover and confront their illegal actions and interests. In some cases [we] have been able to demonstrate the acquiescence of governmental actors [...] In 23% of the cases, public officials have played a role either through action or omission'.<sup>18</sup>

The OHCHR Mexico office adds that, 'on the one hand the municipal authorities do not prevent organised crime from retaliating against HRDs who hamper their activities; on the other hand [...] these same authorities have allegedly requested that organised crime carry out the "dirty work" in order to elude any responsibility'.<sup>19</sup>

**Honduran** HRDs continue to be subject to violence, threats, and killings. In May 2014, José Guadalupe Ruelas, director of international children's charity Casa Alianza, which has criticised authorities for failing to protect children from organised crime and drug smuggling activities, was arbitrarily detained and

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<sup>12</sup> The full list of vulnerable groups identified by participants were: Defenders working on corruption and collusion between State and organised crime; Defenders working on the impact of business, and in particular natural resource exploitation; Defenders working on land rights; Indigenous, afro-descendant and *campesino* defenders and defenders working on their rights; Defenders working on security force abuses; Defenders working on migrant rights; Women defenders and defenders working on women's rights; LGBTI defenders and defenders of LGBTI and/or sexual and reproductive rights; Defenders working on political prisoners; Defenders working on torture. Participants acknowledged that most of these groups faced threats from organised crime and drug traffickers, with particular overlap amongst the first six groups. *ISHR Latin America regional consultations*, January 2015.

<sup>13</sup> Margaret Sekaggya, *Report of the Special Rapporteur on the situation of human rights defenders*, A/HRC/66/203, 28/07/2011, para.18c

<sup>14</sup> Red Nacional de Organismos Civiles 'Todos los Derechos para Todas y Todos' (Red TdT), *El Derecho a defender los derechos humanos en México: Informe sobre la Situación de personas Defensoras 2011-2013* [The Right to defend human rights in Mexico: report on the situation of human rights defenders 2011-2013], 2014, p.66

<sup>15</sup> HRW World Report available at <http://www.hrw.org/world-report/2015/country-chapters/guatemala> and <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>16</sup> <http://www.somosdefensores.org/index.php/en/publicaciones/informes-siaddhh/117-informe-siaddhh-2013-d-de-defensa>

<sup>17</sup> *ISHR Latin America regional consultations*, January 2015.

<sup>18</sup> OHCHR-Mexico, *Defender los derechos humanos: entre el compromiso y el riesgo. Informe sobre la situación de las y los defensores de Derechos Humanos en México*, 2010, para.44

<sup>19</sup> OHCHR-Mexico, *Defender los derechos humanos: entre el compromiso y el riesgo. Informe sobre la situación de las y los defensores de Derechos Humanos en México*, 2010, para.44

violently beaten by military police. He was released the next day after local human rights organisations intervened on his behalf, claiming that the police harassment and aggression was a direct reprisals for his work criticising organised crime and other authorities.<sup>20</sup>

In **Guatemala** in November 2013, President Otto Pérez Molina and Vice President Roxanna Baldetti filed charges against José Rubén Zamora, editor of *El Periodico*, after the newspaper published articles referring to alleged links between the administration and organised crime. In February, a judge barred Zamora from leaving the country pending investigation of the allegations. The President has since dropped the charges, with the Vice President promising to do likewise.<sup>21</sup>

### **Example Case: Ayotzinapa, Mexico 2014**

This case demonstrates the vulnerability of Latin American HRDs to attacks from organised crime and drug traffickers, as well as the stigmatisation they face and the impunity which reigns when their work exposes governmental corruption, questions the anti-drugs strategy and goes against the predominant public discourse on drugs policy.

On the night of the 26 September, municipal police officers of two municipalities of the state of Guerrero, in collusion with an organised crime group, and under the orders of the Mayor of Iguala, arrested and disappeared 43 students of the Normal Rural School of Ayotzinapa. The media, several HRDs and political actors have denounced that the links between the Mayor and the local organised crime group were in fact known by state and federal authorities.

The school which these students represented has a renowned history of human rights activism and social protest. In addition, when the incident happened, the Mayor faced an open and unsolved complaint for the homicide, in 2013, of another social leader.

As of April 2015, the whereabouts of 42 of the 43 students have not been proven with adequate scientific evidence. The possible responsibility of state and federal authorities has not been investigated. The official State version favours one line of investigation which explains that the students were abducted and murdered because some of them belonged to a rival organised crime gang. The social activism of the students as a probable line of investigation has not been prioritised. The relatives of the missing and the HRDs who have been accompanying and representing them have suffered threats including defamation, surveillance and disproportionate use of force by police during protests.<sup>22</sup>

## **2. RISKS TO HUMAN RIGHTS DEFENDERS FROM STATE ACTORS IN THE CONTEXT OF THE CURRENT ANTI-DRUGS STRATEGY**

The militarisation of public security, coupled with the abuse of public discourse and the misuse of legislation, are representative of current State responses to organised crime and drugs trafficking which have served to threaten the space of HRDs and put them at risk.

### **A. THE INCREASED MILITARISATION OF PUBLIC SPACES AND PUBLIC SECURITY STRATEGIES HAS MEANT AN INCREASE IN PHYSICAL ATTACKS ON HUMAN RIGHTS DEFENDERS**

The militarised approach to public security has in itself led to an increase in attacks against HRDs, whilst those who have denounced other human rights abuses caused by the strategy, have found themselves facing great levels of risk.

<sup>20</sup> <https://hondurasaccompanimentproject.wordpress.com/2014/05/15/beating-and-arbitrary-detention-of-childrens-rights-defender-mr-jose-guadalupe-ruelas/>

<sup>21</sup> HRW World Report available at <http://www.hrw.org/world-report/2015/country-chapters/guatemala>

<sup>22</sup> See the communiqué published in March 2015 by several international NGOs on this issue: [http://www.pbi-mexico.org/fileadmin/user\\_files/projects/mexico/images/News/150313OpenLetterAyotzi\\_01.pdf](http://www.pbi-mexico.org/fileadmin/user_files/projects/mexico/images/News/150313OpenLetterAyotzi_01.pdf)



Governments across the region have responded to the organised crime and drugs trafficking problem through 'tough' enforcement and militarised security strategies which favour the use of armed forces in public security tasks and which have led to increased abuses and violations by this actor.<sup>23</sup> In parallel, the capacities of the justice, police and penitentiary systems have not been improved effectively and often fail to work from a human rights perspective.<sup>24</sup> Arbitrary detentions, undue processes of law and torture are recurrently used to fabricate evidence and charges in order to present results and figures.<sup>25</sup> Impunity remains extremely high throughout the continent (with rates of usually between 70% and 98% in the four Latin-American countries where PBI is present).<sup>26</sup> By reporting on human rights violations and working to fight impunity, HRDs directly face the causes and consequences of the governmental security strategies and are often attacked, criminalised and defamed by State actors, in particular judicial operators and members of the security forces.

Decades-old counter-insurgency strategies used by State and non-State actors to target and attack social movements in countries such as **Colombia**, **Guatemala** and **Mexico** have been exacerbated in the context of 'the war on drugs', leading to high numbers of defenders being killed.<sup>27</sup>

In **Mexico** in early 2013, the administration of President Peña Nieto said that more than 26,000 people had been reported disappeared or missing since 2007, yet the government has made little progress in prosecuting widespread killings, enforced disappearances, and torture committed by soldiers and police in the course of efforts to combat organised crime and drug traffickers.<sup>28</sup> Defenders exposing these abuses by the armed forces are some of those facing the highest risks.<sup>29</sup>

**Honduras** continues to increase the size of the country's military police force (PMOP), while simultaneously decreasing the number of civilian police officers. Activists have told ISHR that this leads to a militarised approach when dealing with HRD security issues which, in turn, can increase levels of risk.<sup>30</sup>

In **Haiti**, the election of Mr René Prével as President of the Republic on 7 February 2006 failed to stabilise the country's political situation. On the contrary, insecurity was on the increase, notably in late 2006, with a new wave of assassinations and abductions, often by armed gangs and drug traffickers. Against such a background, defenders denouncing growing criminality were seriously targeted.<sup>31</sup>

In interviews with ISHR, **Colombian** HRDs (who preferred not to be named in this report) underlined that a fusion of the anti-drugs strategy with the counter-insurgency strategy has threatened the work of HRDs. On the one hand, State and non-State actors threaten, stigmatise, disappear and displace social leaders and HRDs under the pretence of combatting drugs trafficking. In parallel, those activists who denounce the abuses committed by the State and its security forces in the context of the 'war on drugs' (such as the forced displacements of communities in order to fumigate crops) face elevated risks and are often wrongly labelled *guerrillas*.<sup>32</sup>

In **Guatemala** the 'militarisation of public space' (the creation of military police or the use of the army to tackle organised crime, the rise of paramilitary, vigilante and private security groups, the increased availability of arms, the proliferation of drug trafficking gangs) has contributed to an increase in violence, which has generated a climate of heightened insecurity for activists.

The government continues to use the military to address public security challenges, despite the latter's long history of human rights abuse. More than 20,000 soldiers are currently deployed throughout the country. In May 2014, the government announced the creation of a new inter-agency task force to provide

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<sup>23</sup> Human Rights Watch, *World Report 2014 - Events 2013*, 2014, p.19

<sup>24</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II.Doc.57,2009; and , UNDP, *Human Development Report for Latin America 2013-2014: Citizen Security with a Human Face, Evidence and Proposals for Latin America*, 2014

<sup>25</sup> See, for example, [http://www.amnesty.org.uk/sites/default/files/annual\\_report\\_2012\\_final.pdf](http://www.amnesty.org.uk/sites/default/files/annual_report_2012_final.pdf), <https://www.hrw.org/report/2011/11/09/neither-rights-nor-security/killings-torture-and-disappearances-mexicos-war-drugs> and <http://www.omct.org/urgent-campaigns/urgent-interventions/queatemala/2006/05/d18006/>

<sup>26</sup> PBI has field projects in Mexico, Guatemala, Honduras and Colombia. <https://www.gov.uk/government/case-studies/mexico-and-impunity>, <http://edition.cnn.com/2013/12/21/world/americas/queatemala-anti-corruption-commissioner/index.html>, <http://www.aljazeera.com/video/americas/2015/01/impunity-honduras-fuels-crime-epidemic-201511933020100436.html> , <http://www.insightcrime.org/news-briefs/colombia-ineffective-justice-low-incarceration-rate>

<sup>27</sup> ISHR *Latin America regional consultations*, January 2015. Up-to-date murder rates of HRDs in Colombia, Mexico and Guatemala can be found in studies by *Somos Defensores*, *la Red TdT* and *Udefequa* respectively.

<sup>28</sup> <http://www.hrw.org/world-report/2014/country-chapters/mexico?page=1>

<sup>29</sup> <https://www.frontlinedefenders.org/mexico>

<sup>30</sup> <http://www.insightcrime.org/news-briefs/us-official-praises-honduras-anti-drug-trafficking-efforts> and ISHR *Latin America regional consultations*, January 2015.

<sup>31</sup> [http://www.cartercenter.org/peace/human\\_rights/defenders/countries/haiti.html](http://www.cartercenter.org/peace/human_rights/defenders/countries/haiti.html)

<sup>32</sup> ISHR interviews with Colombian HRDs, January 2015

security against drug trafficking and related crimes throughout Guatemalan territory. The force is known by the acronym FIAAT and includes military personnel.

As Central America began a more explicit war on drugs in 2006, that year was further marked by a significant upsurge in threats against defenders in Guatemala. Indeed, the National Human Rights Movement (MNDH) registered 278 cases of threats or attacks against HRDs between January and December 2006, against 224 in 2005, whilst the numbers have continued to rise. In 2014, Udefegua documented 802 aggressions against HRDs.<sup>33</sup>

In a detailed study on the situation of HRDs in Guatemala earlier this year, the Observatory for Human Rights Defenders showed how difficult it is to guarantee the security of HRDs when the institutions charged with protecting them are colluded with organised crime and drug traffickers, unable or unwilling to take them on: 'Furthermore, the government's inability and/or lack of interest in tackling the issue of impunity combined with corruption in State institutions has provided fertile ground for organised crime to flourish and resulted in drug-trafficking rings seizing control in some areas of the country and wielding influence at higher levels of certain State institutions i.e. the police, the law courts, the Public Ministry and the Ministry of the Interior'.<sup>34</sup>

## Example Case: Mexico since 2006

Then President Felipe Calderón declared the 'war on drugs' in 2006, sending the Mexican army to the streets. Human Rights Watch have demonstrated that this militarised strategy has resulted in a dramatic increase in killings, torture, and other abuses by security forces, making the climate of lawlessness and fear worse in many parts of the country<sup>35</sup>, whilst the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has shown that extrajudicial executions by security forces are widespread and often occur without accountability.<sup>36</sup> HRDs have been fundamental in documenting such abuses.

Mexican civil society, meanwhile, has argued that 'the deployment of the Federal police and the military has led to major attacks and threats to journalists as well as human rights defenders'.

PBI Mexico documented an increase in threats for HRDs in line with an increasingly militarised anti-drugs strategy, with 292 arbitrary detentions in 2012 and 427 in 2013, 21 extrajudicial executions in 2012 and 20 in 2013, and affirms that 'in the first 18 months of Calderon's administration, there were 24 forced disappearances of HRDs and in the first 18 months of Peña Nieto's administration there were 29'.<sup>37</sup>

The Red TdT national civil society network supports this finding, having reported that, of the 104 cases of aggressions against HRDs that were documented between 2011 and 2013, the main group of perpetrators that were identified were members of State security forces.<sup>38</sup>

Urgent Action for Human Rights Defenders (Accudeh) reported that between January 2011 and May 2014, cases of aggressions towards HRDs have doubled as the war on drugs has intensified. Women HRDs have been identified as particularly vulnerable, along with migrant rights defenders, community rights defenders and those who work to fight impunity.<sup>39</sup>

National Campaign against Forced Disappearance affirms that if you compare the first 18 months of Felipe Calderon's presidency with Enrique Peña Nieto's, the forced disappearance of HRDs increased by 60%, which means that currently in Mexico, every two weeks a HRD is a victim of forced disappearance.<sup>40</sup>

<sup>33</sup> <http://www.omct.org/es/human-rights-defenders/urgent-interventions/ Guatemala/2007/07/d18743/>,

HRW World Report available at <http://www.hrw.org/world-report/2015/country-chapters/ Guatemala> and information provided by the Unidad de Defensores y Defensoras de Derechos Humanos de Guatemala (UDEFEGUA)

<sup>34</sup> <http://www.fidh.org/IMG/pdf/obsreportgtm2015eng.pdf>

<sup>35</sup> <http://www.hrw.org/news/2011/11/09/mexico-widespread-rights-abuses-war-drugs> and <http://www.hrw.org/world-report/2014/country-chapters/mexico?page=3>

<sup>36</sup> Idem

<sup>37</sup> Bulletin 'Peace in Mexico? Security Strategies and Human Rights', Peace Brigades International - PBI, 2014, [http://issuu.com/peacebrigadesinternacional/docs/boletin2014\\_24pag-eng-digital-isuu/1?e=4256013/11069382](http://issuu.com/peacebrigadesinternacional/docs/boletin2014_24pag-eng-digital-isuu/1?e=4256013/11069382)

<sup>38</sup> Red Nacional de Organismos Civiles ('Todos los Derechos para Todas y Todos' (Red TdT), *El Derecho a defender los derechos humanos en México: Informe sobre la Situación de personas Defensoras 2011-2013*

<sup>39</sup> Bulletin 'Peace in Mexico? Security Strategies and Human Rights', Peace Brigades International - PBI, 2014, [http://issuu.com/peacebrigadesinternacional/docs/boletin2014\\_24pag-eng-digital-isuu/1?e=4256013/11069382](http://issuu.com/peacebrigadesinternacional/docs/boletin2014_24pag-eng-digital-isuu/1?e=4256013/11069382)

<sup>40</sup> [http://www.comitecerozo.org/IMG/pdf/informe\\_campana\\_nacional\\_2014.pdf](http://www.comitecerozo.org/IMG/pdf/informe_campana_nacional_2014.pdf)

## B. PUBLIC DISCOURSE: THE WAY IN WHICH AUTHORITIES DISCUSS THE WORLD DRUGS PROBLEM

In consultations with ISHR, HRDs complained that authorities often criticise defenders as being a threat or an enemy of the State; language often also applied when referring to organised crime and drug traffickers, leaving both sets of actors in the same bracket in the public eye.

As documented earlier under ‘impunity’, defenders risk defamation as authorities publically preclude the findings of investigations into attacks against defenders, which are usually never completed.

This is dangerous in a context of generalised stigmatisation of human rights defence such as those that have recently worsened in both **Venezuela**<sup>41</sup> and **Honduras**,<sup>42</sup> where HRDs are accused of representing ‘vested interests’.

Academics have demonstrated how the **Colombian** State has used a doctrine of ‘the enemy within’ to criminalise human rights defence. Terms such as ‘narco-terrorism’, ‘subversives’ have been applied in blanket fashion to anybody deemed as a threat to the State, or elements within it.<sup>43</sup> The use of anti-terrorism laws and discourses are applied to criminalise HRDs in many parts of the world,<sup>44</sup> and in Latin America the impact of the term ‘terrorist’ is often enhanced with references to drug trafficking.

### Example Case: Student protests, Honduras 2015

In an example of how – in the context of organised crime – social movements and HRDs can be stigmatised, earlier this year the Honduran Minister of Education claimed that local street gangs were directing ongoing student protests.

High school students in the Honduran capital Tegucigalpa have been protesting since early March over proposals to extend school hours. Protestors say extended hours are unsafe as they force students to return home from school late at night.

The Minister of Education has previously said that as many as 30,000 gang members are enrolled in Honduras’ public schools. As reported extensively by the Associated Press last year, gang control in Honduran schools is a serious problem, with gang members extorting teachers and recruiting students.

The government’s claim that gangs are directing student protests, however, is highly questionable. Honduran gangs have shown little interest in gaining political power. It has been argued that the gangs are more likely to see the protests - and the resulting attention from security forces - as a challenge, not an opportunity to gain leverage. The fact that no Honduran gang has released a statement related to the protests speaks to this as well.

Activists have claimed that a more probable scenario is that gangs provide the government with a convenient scapegoat. Instead of engaging in dialogue with students, the Minister has attempted to delegitimise their concerns over traveling after dark in one of the world’s most violent countries. He also reportedly approved the firing of a school faculty accused of working with protestors.

The Minister’s comments have the potential to put the student protesters at risk given the context of Honduras’ security situation. At least four students were killed after reportedly participating in the protests, although the investigations have not yet produced results. Depicting student protestors as gang members may incite further violence against them in an already precarious situation.<sup>45</sup>

As part of the so-called ‘war on drugs’, States have passed laws and implemented policies, which have been used to hinder and criminalise HRDs and to close civil society space.

<sup>41</sup> <http://www.ishr.ch/news/venezuela-stop-harassing-human-rights-defenders> and <http://www.ishr.ch/news/venezuela-end-stigmatisation-and-reprisals-against-human-rights-defenders>

<sup>42</sup> <http://www.ishr.ch/news/honduras-end-defamation-human-rights-defenders-guarantee-their-security-and-legislate-their>

<sup>43</sup> See, for example, *Los defensores de derechos humanos como “enemigo interno” en la doctrina militar de Colombia entre 1997 y 2011: obstáculos para el derecho a defender los derechos humanos*, Zoraida Hernandez Pedraza, UNSAM, 2014

<sup>44</sup> <http://www.ishr.ch/advanced-search?term=terror>

<sup>45</sup> <http://www.insightcrime.org/news-briefs/honduras-gangs-behind-student-protests-minister>

At ISHR's consultations in January 2015, defenders reported that national security laws, discourse and practises, notionally created to combat organised crime and drugs trafficking, have been used to threaten, criminalise, spy upon and restrict defenders.

In **Mexico**, the Front for the Freedom of Expression and Social Protest has documented how during the last two years, laws and regulations enacted in the name of security have tended to restrict freedom of expression and protest, particularly when combined with a climate of excessive force by police during marches and protests as well as arbitrary detentions of protesters and HRDs. The Front has criticised the reform to Article 29 of the Constitution which makes the procedures to declare a State of Exception more flexible, as well as the Regulatory Law which 'gives an ample margin of discretion to the Executive to justify the establishment of the suspension of the guarantees [...] This allows for political utilisation with the goal of social control and criminalisation of social protest'. They also criticised the recent Telecommunications reform which allows people to be localised through their phones and direct access to their data by the Government for security reasons.<sup>46</sup> Terminology regarding 'threats to national security' was included in the laws in order to justify restrictions, invoking the spectre of organised crime and drugs trafficking – usually cited as the greatest threats to national security in the country – to vindicate a restriction of civil society space.

In February **Colombia's** Supreme Court convicted two close aides of former President Alvaro Uribe for organising a spying ring that illegally intercepted the communications of journalists, HRDs, politicians and members of the judiciary judged to have been critical of Uribe, using wiretaps.<sup>47</sup> The Uribe administration had argued that interception of communications was a necessary measure in the fight against guerrilla organisations involved in organised crime and drug trafficking.

## IV. THE IMPACT OF IMPUNITY UPON THE SECURITY OF HUMAN RIGHTS DEFENDERS

Attacks against HRDs, whether apparently by State or non-State actors and whether apparently direct or indirect, are rarely fully investigated or prosecuted, which, according to the IACHR, guarantees the repetition of aggressions and 'sends an intimidating message to society as a whole, putting it in a defenceless situation'.<sup>48</sup>

Successive Human Rights Council resolutions and reports by the UN Special Rapporteur on HRDs have argued that widespread impunity for attacks against HRDs contributes to a climate of insecurity. However, both the IACHR and defenders interviewed by ISHR and PBI suggested that impunity has crossed with other factors such as the militarised security strategy and defamatory public discourses by officials, to criminalise attacked or murdered HRDs.

Often HRDs apparently attacked by organised crime groups are criminalised and presented by States and the media as having been involved in organised crime themselves.<sup>49</sup> In the absence of investigations and prosecutions, this allows States to use public discourse rather than judicial oversight to deny their own responsibility and undermine the human rights work which probably put the victim at risk in the first place. These unaccountable suggestions of HRD involvement in organised crime and drugs trafficking, made by officials and the media, in turn contribute to a climate of de-legitimation of human rights defence and therefore of heightened risk for HRDs.

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<sup>46</sup> Front for the Freedom of Expression and Social Protest, *Control del Espacio Público: Informe sobre retrocesos en las Libertades de Expresión y Reunión en el Actual Gobierno* [Control of the Public Space: Report on Setbacks in Freedom of Expression and Assembly in the Current Government], April 2014

<sup>47</sup> Colombian court convicts Alvaro Uribe aides of spying on opponents, The Guardian, 28 February 2015, and <https://www.fidh.org/International-Federation-for-Human-Rights/americas/colombia/colombia-sentencing-of-senior-das-official-and-of-ex-president-uribe#>

<sup>48</sup> IACHR, Second report on the situation of human rights defenders in the Americas, OEA/Ser.L/V/II.Doc66, December 2011, p.51

<sup>49</sup> Idem, p.13

**Salvadoran** HRD Alejandra Burgos outlined to ISHR how – in a context of numerous organised crime and drugs gangs and a militarised strategy to combat them – murders of defenders are often publically reported by authorities as ‘due to involvement in drugs offences’ before an investigation is even carried out.<sup>50</sup>

As the U.S. State Department’s 2013 Human Rights Report on **Mexico** concluded: ‘Despite some arrests for corruption, widespread impunity for human rights abuses by officials remained a problem in both civilian and military jurisdictions.’<sup>51</sup>

## V. CHALLENGES IN THE SECURITY AND PROTECTION OF HUMAN RIGHTS DEFENDERS

For HRDs and organisations which support and defend HRDs (such as ISHR and PBI), this context implies several challenges:

- The intrinsic characteristics of organised crime groups and drug traffickers (illegal, violent, profit-driven) make it difficult to analyse and verify the probable collusion between these kinds of groups and State actors and to influence/deter these actors, given that – compared with State aggressors – logic and rationality are difficult to calculate, and the chain of command is complex to map.
- The concept of human rights protection is inherently linked to one of State responsibility. Under international human rights law, States are ultimately responsible for protecting citizens from human rights violations. However, States often attempt to frame attacks carried out by criminals as an issue outside of the sphere of human rights, and where State responsibility is deferred.
- In consequence – but also due to the history of the region shaped by dictatorial and repressive States – the classic protection strategies and security mechanisms for HRDs in the region usually focus solely on State actors and are based on the idea that political pressure on State actors can deter attacks.

Therefore more efforts are required to understand the context and the actors. In addition, protection strategies based on deterrence must be completed by efficient strategies of persuasion (advocacy) towards the State in order for it to reinforce the Rule of Law and accept its responsibility in protecting HRDs, even in cases where organised crime and drug traffickers are involved.

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<sup>50</sup> ISHR interview with Alejandra Burgos, Red Salvadoreña de Mujeres Defensoras, March 2014, <http://www.ishr.ch/news/alejandra-burgos-woman-defender-working-sexual-and-reproductive-rights-el-salvador>

<sup>51</sup> *Mexico 2013 Human Rights Report*, U.S. Department of State, February 27, 2014, available at <http://www.state.gov/j/drl/rls/hrrpt/2013/wha/220457.htm>

## VI. RECOMMENDATIONS

### **To States:**

- States must consult civil society and HRDs regarding laws and policies designed to tackle organised crime and problems related to drugs production, trafficking, sales and consumption, as well as how security forces can be adequately prepared to prevent human rights violations.
- State representatives should make strong public statements recognising the important role of HRDs, victims and whistleblowers in preventing, mitigating, reporting and tackling human rights violations in the context of strategies to deal with organised crime and drugs trafficking.
- Authorities which make unfounded public accusations regarding HRDs, or associating civil society organisations or victims with organised crime or other illicit groups, should be sanctioned.
- Where no investigation has yet been carried out, State officials should refrain from drawing conclusions publically regarding the perpetrators and circumstances of an attack against a HRD.
- States should guarantee that thorough, impartial investigations take place in cases where State agents or private actors are accused of committing human rights abuses or colluding with organised crime and drugs traffickers. Investigations must guarantee sanctions upon both the intellectual and the material authors of any crime.
- States must guarantee due process in judicial cases against HRDs, allowing trials to be monitored by objective third parties such as international experts or the diplomatic community.
- States must guarantee that security forces and public officials in charge of combatting organised crime and drugs trafficking are fully trained in international human rights obligations and the protection of HRDs.
- States should ensure freedom of information provisions exist in order for HRDs and social movements to know the nature of counter insurgency strategies and military doctrines, as well as to understand the criteria used in surveillance activities.
- States together with civil society should develop and enact specific laws and policies to recognise and protect the work of HRDs and which give full force and effect to the international Declaration on Human Rights Defenders at the national level.
- States must ensure that HRD protection mechanisms and policies analyse the specific protection needs of each HRD and develop protective measures specific to their needs. For example, specific measures may be required when HRDs face threats from armed non-State groups, or are at risk for having denounced security force abuses or exposed government corruption.
- States must refrain from criminalising the legitimate activities of HRDs and repeal all laws and policies that restrict their activities and rights.
- States should guarantee safe spaces for meaningful civil society participation in the development and implementation of public policies, in particular those related to drugs issues.
- States must implement Human Rights Council resolution 22/6 and ensure that 'measures to combat terrorism and preserve national security [...] do not hinder the work and safety' of HRDs.

### **To Third States, international and regional human rights bodies:**

- All UN and other international and regional bodies working on solutions to the world drugs problem must guarantee a human rights perspective by creating and safeguarding spaces for HRDs to be consulted and to feed in to this work.
- States must ensure that their diplomatic missions take steps to legitimise and protect HRDs working on violations in the context of strategies to tackle organised crime and drugs trafficking.
- The UN Special Procedures should recognise the important role of HRDs, victims and whistleblowers in preventing, mitigating, reporting and tackling human rights violations in the context of strategies to deal with organised crime and drugs trafficking.



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