

ENTREVISTAS

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JUAN CARLOS GUTIÉRREZ

“The challenge is to have, by the end of December, a fully working Mechanism with a trusteeship and established and professionalized Units”

In an interview to PBI Mexico, Juan Carlos Gutiérrez, Head of the Interior Ministry's (SEGOB) Unit for the Promotion and Defense of Human Rights, speaks on the difficulties and challenges regarding the implementation of the Mechanism for the Protection of Human Rights Defenders and Journalists (hereafter Mechanism). The Mechanism arose from the passing of the Law for the Protection of Human Rights Defenders and Journalists. June 2013 marked one year since its publication. In this context, civil society organizations handed in a performance diagnostic of the Mechanism to SEGOB and wrote a letter to the Minister of the Interior, Miguel Osorio Chong, demanding greater political support and the protection of human rights defenders and journalists. The letter also asked for the release of the resources needed for the proper functioning of the Mechanism and for hiring qualified personnel to fill the necessary positions.



Event organized by PBI in December 2012 to promote the implementation of the Mechanism. From right to left: Lía Limón (Subsecretary for Legal Affairs and Human Rights at SEGOB), Daniel Zapico (Amnesty International Mexico), Agnieszka Raczynska (Executive Secretary of the *Red Todos los Derechos para Todos y Todas*) and Brisa Maya Solís (Director of Cencos).

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In the context of the first anniversary of the Protection Law in June, civil society handed to SEGOB a diagnosis on the functioning of the Mechanism and wrote a letter to Miguel Osorio Chong highlighting some specific points they felt had to be improved. What is your diagnosis of the Mechanism, one year since the passing of the Law?

The civil society diagnosis is very important. Organizations have always had a proactive attitude to strengthen the Mechanism. The Mechanism is in the process of creation. Colombia has had a Mechanism for fifteen years, we have had it for seven months¹. I would like to clarify that the Law is one year old, but the Mechanism is only seven months old. Evidently there are gaps and challenges, for example the trusteeship, to finish creating the units and to hire personnel. It is often difficult for civil society to understand what it means, for example, to manage a trusteeship, a budget of more than 120 million pesos. There are rules for hiring, of service from the public federal administration, of the trusteeships. They produce obstacles. However, until now we have not failed to protect people. We have more than ten people with bodyguard protection services, and more than fifteen with perimeter patrols. We have infrastructure installed in different places, which really contributes to the protection of organizations and individuals. It is not easy to overcome the neglect that once existed towards defenders. What I want to express is that one year after the adoption of the Law, and seven months after the implementation of the Mechanism, we are moving forward with the confidence that the Mechanism's team is made up of very committed individuals, many of them recognized human rights defenders and people trained by civil society. We have always insisted that the work of a human rights defender is critical to building a democratic State and an attack against a defender threatens the rule of law. I remember that in the previous administration, statements made by some senior Army officers questioned the work of human rights defenders and linked them to organized crime. This implies that a discourse of recognition is also part of the protection. What we have done in the Federal Government until now is to maintain a clear line of recognition. It is not the same in the states and, therefore, there exists another issue that may go beyond the challenges of the Mechanism.

The three main points in the letter from civil society were concerned with the lack of staff and the installation of the Prevention, Monitoring and Analysis Unit, the necessity to apply a trusteeship and the necessity for high level political support from the Federal Government. Do you agree with these points or do you have another perspective?

I think the issue is political support. The creation of the Units has been requested and this comes from a bureaucratic logic. The Monitoring and Analysis Unit is supposed to carry out an analysis of context, to establish possible assailants and patterns. We are covering this with risk analysis that you may have a look at. It is a professional risk analysis, that incorporates context, interviews with defenders, international standards. What really is important is the matter of political support. I think the view of organizations is based on only one case, which is a case of temporary neglect by an institution that had to be withdrawn from the protection of an

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organization. Until now Federal Government authorities, specifically those who provide protection, have acted in a very professional manner. What does this mean? If I have nine or ten organizations or persons protected by bodyguards, I cannot say there is no political support. Often only one case is considered, but it is important to look at other information as well. What I can tell you with

certainty is that at this moment we have support. Obviously, this support goes through a process of institutional coordination. The willingness of the coordination is evident. In some cases this willingness is obviously saturated by the internal logics of the institutions. Institutional coordination is complicated. The Mexican State is very complex, with very difficult internal logics. I received this Unit in a serious crisis of

¹ Interview from July 2013. At time of publication, the Mechanism had been operating for 11 months.

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legitimacy, organization, trust, personnel and lack of sensitivity to the issue. I think that we must be more prudent in the analysis, to understand the structural phenomena of the State. The challenge is to have, by the end of December, a fully working Mechanism with a trusteeship and established and professionalized Units. We have implemented a monthly dialogue system with the organizations in order to assess how we are doing. Something very positive is that the Mechanism has a Governing Board and an Advisory Council where civil society is present. The Subsecretary (for Legal Affairs and Human Rights at SEGOB, Lía Limón) met four times with the Council in six months and we have consistently met with the Board. It is positive that the problems are resolved through dialogue. I encourage organizations to take the baton, for if we only question the Mechanism we will delegitimize it. It is necessary to be careful with criticisms. The central element that is failing is the lack of willingness on the part of the states. Most of the cases are at the state level. So far, the organizations have not incorporated in their work, analysis or discourse, the necessity for state will. If we accept and understand that the only entity responsible for protecting defenders is this Mechanism, we are taking a giant challenge to which we will not be able to respond. This Mechanism is not able to absolutely protect all defenders and journalists in the country if the states and local agencies are not committed to work. We have told the states that there is joint responsibility. This involves opening a discussion to revise the Federal Law, which currently does not oblige the states to act. The Law is based on cooperation agreements that are not binding. We have to work together to open a debate on joint responsibility with the Senate and the House of Representatives.

Can this joint responsibility be achieved through a General Law?

We would have to assess this. Either a General Law or to work on an agreement with CONAGO (National Council of Governors) and for now to move forward with this agreement. We have a representative in CONAGO, we have asked them several times that they incorporate the subject of protection of human rights defenders in their discussions.

Apart from the possibility of a new Law, can the Unit put forward another plan or policy to increase the participation of the states? It seems that the problem has been identified, we would like to know whether there are other elements that could support more state commitment.

We need to build a plan that allows us to generate more advocacy actions in the states. It is important to say that in every case discussed in the Government Board, we summon the highest authorities of the state that is involved. Several states have already attended and it is necessary to continue this practice. Invitations are sent to Secretaries of Government so that the highest authorities come. We have an important strength with the Mechanism and it is important to maintain this strength. The criticisms that the organizations have been making should be focused so that we construct a strategy to work with state governments together. We must motivate CONAGO to take on the subject of the Mechanism. We need to really move forward to link the State Commissions (of human rights), which are completely lost in this subject. I have thought about suggesting that in every case we invite the presidents of the State Commissions to attend the Mechanism. This would be important because a State Commission should be a key actor in the promotion of protection measures. On the other hand, we are considering starting a federal campaign on the protection of human rights defenders, which would take place before the end of the year. We are looking into what would be the objectives of the campaign but it would be a national media campaign including television and radio.

I suppose part of the complexity of working with the states is that there are so many and each one is different from the other.

The complexity has to do with respect for state sovereignty and autonomy in this process. What we have noted is that there is a lack of attention, and furthermore the lack of confidence that many defenders and

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journalists have in many states. We need to work on getting this confidence back. The state protection agencies, such as the state and municipal police, in many cases should be involved in the protection of the human rights defenders and journalists who live in their territory. This is an enormous challenge; to generate trust in state agencies. I would say that, with the exception of the Federal District, there is almost no trust in any state and this is a big problem because we risk overwhelming the Mechanism. The prognosis is that by the end of the year we will have 150 to 180 cases in the Mechanism. We have a weekly intake of approximately 5 cases, around 20 each month. It is necessary to assess this prognosis of figures and the institutional capability of the federal Mechanism if we can't rely on the support of state agencies and the State Commissions. It may be very complicated. Another challenge that the Mechanism must work on is the coordination with the organizations that have support projects for defenders and that have the resources to protect those defenders. Civil society already has some established capabilities, the infrastructure in some cases, the financial means for projects and the cooperation support that are necessary for this process. This does not mean there is no State responsibility. But apart from the unique obligation the state has to protect, it would be interesting to see how we can work together. For example, if there is a person who needs to leave their state and there is an organization that has a shelter, we can work together to help remove the person and house them with the organization. This way we share the protection. Recently we had a successful case whereby we were able to remove two migrants from a certain area. The Federal Government did what was necessary to remove these people and an organization housed them in a secure place, because they had the means to do so. So, another challenge that we must address is the organization of civil society. In many cases it is much easier to provide the resources to an organization that has the funds to assist this process than to go through the red tape that the State itself establishes. I think that there exists a crucial challenge and one that generates a discussion on collaboration.

You have already made some requests to civil society and the states. Do you have any specific requests or comments to different actors that could be important for the smooth functioning of the Mechanism?

I think it is very important to encourage the institutions responsible to investigate. The best protection is an adequate investigation. The Mechanism can not protect if there is no adequate investigation. The state authorities, the state Attorneys and the federal authorities should be committed to strengthening investigation. If there is no will to combat impunity, it is not possible to improve protection. I think there is a lot of work from our side and from that of the organizations in order to train the state Attorneys in appropriate protocols for the investigation of crimes committed against journalists and human rights defenders. One must be sensitive to and understand the work of defenders, one cannot investigate a fact based on bias. The prejudices must be overcome because the defenders are not threatening themselves. We must do away with this logic. To investigate an attack against a defender is not the same as to investigate a robbery, they are two different reasonings, hence we must work with civil society as well.

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In regards to the Inter-American System, perhaps there is a confusion in interpretation in that the organizations have to give up their protection measures if they want to enter the Mechanism. What is your position on this?

We believe that the protection measures granted by the Inter-American Commission are a vital element that must continue to be used by the organizations. I invite civil society to continue to use the Inter-American System. I have been a recognized user of the system, a lawyer for human rights defenders, and I have actively worked in the Inter-American System. I think its work continues to be crucial in the protection of

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defenders. And it does not contradict the work of the Mechanism. The organizations must continue to use international bodies because this helps to pressure the State to commit ourselves more. It is important to mention that a precautionary measure does not imply that the Mechanism does not have to provide protection, rather they are two complementary instruments. The fact that one is in the Mechanism does not mean that you can't also have a precautionary measure. I participated in the writing of the Law as civil society and I have always defended that if you have a precautionary measure, you can also be in the Mechanism, protected by both bodies. Now the central issue is that several organizations have, in a factual manner, rejected such protection and have instead privileged the protection of a precautionary measure. This is not a convenient attitude as it discredits the Mechanism. I can't say "because the Mechanism failed, now I want precautionary measures". No, because the Mechanism has not failed, the Mechanism is there and it is working. Then there is the problem of implementation. I cannot be attending ten monthly implementation meetings for one case alone because that is schizophrenic. I am working in protection actions for the Mechanism and at the same time in actions for the precautionary measures. Therefore the issue is to find ways that allow us to implement the precautionary measures ordered in conjunction with the Mechanism because they should be complementary.

For more information on the Mechanism, see:

- [PBI Mexico web page on the Mechanism](#)
- [PBI Mexico Briefing on the creation and implementation of the Mechanism](#)
- [Letter from civil society organizations one year after the publication of the Law](#)
- [Letter from international organizations one year after the publication of the Law](#)
- [PBI interview with Agnieszka Raczynska, Executive Secretary of the National Network of Civil Human Rights Organizations "All Rights for Everyone" \(Red TDT\).](#)