

AMERICAS: STATE PROTECTION MECHANISMS FOR HUMAN RIGHTS DEFENDERS

Day after day, human rights defenders are attacked for taking part in peaceful protests; for documenting and publicly denouncing human rights abuses and violations; for seeking justice, truth, reparation and non-repetition of those violations; for providing human rights education; and for fostering respect for and guaranteeing human rights. In the most extreme cases, human rights defenders are killed because of their work.

In the Americas, several countries have established national protection mechanisms as a measure to guarantee the safety of human rights defenders as well as other groups at risk, such as journalists, trade unionists and justice operators, among others. The purpose of this brief document is to present Amnesty International's assessment of the implementation of the national mechanisms in Colombia, Honduras, Guatemala and Mexico. This analysis is based on Amnesty International's monitoring of the situation of human rights defenders across the region for years and close work with local civil society organizations and social movements in each country. It is also based on the organization's diverse interactions with national and local authorities to address the concerning situation facing human rights defenders. Through our research and advocacy work, Amnesty International has been able to document the impact of the measures adopted by authorities in order to create a safe and enabling environment in which to exercise the right to defend human rights, as recognized by the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms¹ and in the Inter-American standards and jurisprudence².

COLOMBIA

Colombia's protection mechanism provides measures to thousands of persons at risk, including human rights defenders and victims of the armed conflict. The mechanism has saved lives and after years of implementation, has made progress in relation to the adoption of a protocol to implement a Plan for Collective Protection. However, the measures provided continue to be mainly police-focused and some emergency measures have been criticized by civil society organizations on the basis of the negative impact that such measures could have on the human rights of people protected. Currently, the mechanism faces several challenges derived from the increasing number of human rights defenders killed in 2017 and from the implementation of the peace agreement with the Revolutionary Armed Forces of Colombia (FARC). Impunity regarding attacks against human rights defenders remains a major concern.

In Colombia, the National Protection Unit (Unidad Nacional de Protección – UNP), created in 2011, provides physical security measures to thousands of persons at risk, including human rights defenders.

According to the local human rights organization Somos Defensores, around 80 human rights defenders were killed in 2016 compared to 63 in 2015.³ There were a further 10 killings in January 2017 alone. Many of the death threats levelled against human rights defenders and other activists have been attributed to paramilitary groups, but in most cases it has been difficult to identify those responsible for many of the killings. However, the nature of the human rights and community work carried out by the victims, many of whom were community leaders or land rights and environmental activists, suggests that many may have been killed because

¹ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144), 8 March 1999. Available at: <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>

² Inter – American Court of Human Rights, Case of *Human rights defender et al. v. Guatemala*, Judgment of August 28, 2014, Case of *Kawas-Fernández v. Honduras*, Judgment of April 3, 2009 (Merits, Reparations and Costs); Case of *Nogueira de Carvalho et al. v. Brazil* Judgment of November 28, 2006 (Preliminary Objections and Merits)

Inter – American Commission on Human Rights, *Second report on the situation of human rights defenders in the Americas*, OEA/Ser.LN/II. Doc. 66 31 December 2011.

³ <http://somosdefensores.org/index.php/en/publicaciones/informes-siaddhh/144-contras-las-cuerdas>

their human rights work and exposure of abuses were perceived as a threat by powerful regional and local economic and political interests, as well as various armed groups, including paramilitaries.⁴

Over the years, Amnesty International has repeatedly called on the UNP to provide more effective and comprehensive protection mechanisms, including preventative and collective measures to ensure the safety of human rights defenders, especially those working in rural contexts. The organization has also reiterated the importance of ensuring the participation of and proper consultation with human rights defenders at risk along with civil society organizations when assessing what appropriate protection measures to implement. Impunity remains a major challenge. It perpetuates and bolsters the risk for human rights defenders since it sends the message that defenders can be attacked without fear of any punishment.

Although the UNP protection programme has saved lives, serious weaknesses remain. These deficiencies include: long delays in implementing the security measures; the ineffectiveness of several measures (such as providing a vehicle for secure transport but without gasoline, or a cell phone without credit); and that usually the measures were reactive and not preventive, individual and not collective, or without a differential focus as stipulated by Colombian legislation. Some measures have often been deemed as inappropriate by specific human rights defenders. For example, peasant farmers are sometimes provided with armoured vehicles and bodyguards in areas where only paramilitaries, public officials, members of the security forces and drug traffickers use such vehicles. This could expose the victim to additional risks and lead to stigmatization by other members of the community in the area where the defenders live.⁵

The UNP is also supposed to provide emergency measures while it evaluates a case. But according to information from human rights organizations provided to Amnesty International, such emergency measures are not being consistently implemented, and are more likely to be provided in cases supported by national human rights organizations. In cases where emergency measures are implemented, these are quickly removed if the risk is deemed to be “ordinary”.

In September 2014, the UNP was involved in a corruption scandal in which high-ranking officials were accused of profiting from contracts with private contractors to whom the UNP had subcontracted most of its protection work. That same month, the UNP acknowledged that due to budget issues it had to withdraw the protection plans from several of its beneficiaries.

On 21 August 2015, the Ministry of the Interior adopted Resolution 1085, a protocol to implement a Plan for Collective Protection. According to the resolution, collective measures include: “individual measures when they have an impact on the protection of the community or group at risk; supporting infrastructure; organizational and community strengthening; improving the presence of governmental institutions; legal and administrative measures”, such as providing legal assistance to the collective at risk; “and strategies aimed at tackling the causes of the risk and threat.” According to the NGO Somos Defensores, as of 20 February 2017, only 10 collective measures had been approved, although none had been implemented.

In 2016, Decree 567 eliminated the subsidies for land transportation that had been provided by the UNP to people at risk, including human rights defenders, and that covered the value of the transportation contract. Around this time the UNP began to provide panic buttons that track the location of the person at risk and once activated send an emergency alert. The measure proved controversial among civil society since some beneficiaries claimed that they did not receive a response when they activated the emergency alert and did not receive comprehensive information about the tool. They also expressed concerns about respect of their right to privacy since the tool has the capacity to transmit voice data and they were not informed about the circumstances in which this function would be activated and by whom.⁶

After a spike in killings of human rights defenders in the first three months of 2016, a High Level Group, coordinated by the Ministry of the Interior, was created to identify those responsible for the killings and threats against defenders. In addition, the Office of the Attorney General created an internal group responsible for identifying the cases of killings against human rights

⁴ Colombia: the human rights situation in Colombia. Amnesty international's written statement to the 34th session of the un human rights COUNCIL (27 FEBRUARY – 24 MARCH 2017), AMR2355732017, <https://www.amnesty.org/es/documents/amr23/5573/2017/es/>

⁵ A land title is not enough ensuring sustainable land restitution in Colombia, AMR 23/031/2014, <https://www.amnesty.org/es/documents/AMR23/031/2014/en/>

⁶ Botones de pánico: de las 'chuzadas' del DAS a las escuchas ilegales de la UNP: <http://www.derechos.org/nizkor/colombia/doc/unp4.html>

defenders and to track the status of the criminal investigations into these killings.⁷

Comprehensive protection for human rights defenders will remain a challenge during the implementation of the peace agreement with the Revolutionary Armed Forces of Colombia (FARC). The peace agreement includes measures to create and strengthen some institutions in charge of justice and protection for defenders. For example, the National Commission of Security Guarantees (Comisión Nacional de Garantías de Seguridad) will design and monitor public policy to dismantle “criminal organizations and behaviours”, including the paramilitaries and their support networks, that “attack [among others] human rights defenders, and social or political movements”. This Commission was created on 3 February 2017. In addition, the peace agreement refers to the creation of a Special Investigation Unit as a part of the Office of the Attorney General (Unidad Especial de Investigación) to investigate, prosecute and accuse the aforementioned organizations. The peace agreement stipulates that the Special Investigation Unit will have access to all the judicial information available which it might require for its investigations.

The agreement also envisages the creation of a Comprehensive Security and Protection Plan for Communities and Organizations in the territories which, as established in the peace agreement, will promote the adoption of measures against the stigmatization of defenders and campaigns to publicly recognize their legitimate work. As a part of the peace agreement, the authorities also committed to develop, in agreement with human rights organizations, a comprehensive protection protocol for defenders. The government also agreed to strengthen the coordination with the Office of the Attorney General in order to drive and monitor, on a case-by-case basis, complaints and investigations related to attacks against human rights defenders.

HONDURAS

In Honduras, the adoption of the Law to Protect Human Rights Defenders, Journalists, Social Commentators and Justice Officials (Protection Law) on 15 May 2015 was perceived as a positive step towards ensuring the safety and protection of human rights defenders. However two years after its adoption there are still many challenges for the Honduran authorities to overcome in order to ensure effective implementation, including to surpass the police approach to protection measures, guaranteeing the effective participation of civil society in the different stages of decision making in relation to protection provided to human rights defenders, and in adopting measures to fight against impunity in cases of defenders attacked. It is important that authorities, including those in high-ranking posts, continue taking structural protection measures, such as the public recognition of the legitimate work that defenders do, as the National Council for Protection did at the beginning of 2017.

The Protection Law created a National System for the Protection of Human Rights Defenders, Journalists, Social Commentators and Justice Officials (Protection System). The Secretary of State in the Ministry of Human Rights, Justice, the Interior and Decentralization has overall control of the system, which is composed of the National Council for the Protection of Human Rights Defenders, Journalists, Social Commentators and Justice Officials (the National Council for Protection), the Protection System General Directorate, the Protection Mechanism Technical Committee and the Human Rights Department of the Secretary of State in the Ministry of Security. The Protection Council is the only body which allows for the participation of people from civil society and representatives from professional bodies of justice officials and journalists. This body, however, has limited powers to consider and advise the Protection System. Of the 14 seats on this body, only two are designated to representatives of human rights organizations that must be accredited by the National Human Rights Commission, a representative of the Honduran Bar Association, two representatives of journalists and the press, and a representative of judges and magistrates. The Protection Mechanism Technical Committee, which carries out the expert risk analysis and decides what protection measures should be adopted, is made up solely of state institutions.⁸

On 20 August 2016, the regulations of the Protection System were published. In order to understand the regulations and to develop the protocols, authorities have held several workshops with some representatives from civil society organisations. They have invited defenders through civil society representatives who holds seats on the National Council for Protection. Despite the workshops,

⁷ Programa Somos Defensores, ¿Este es el fin? Informe enero - junio 2016, p. 36 <http://somosdefensores.org/attachments/article/140/este-es-el-fin-informe-semestral-2016.pdf>

⁸ Americas: “We are defending the land with our blood: defenders of the land, territory and environment in Honduras and Guatemala”, AMR 01/4562/2016, <https://www.amnesty.org/en/documents/amr01/4562/2016/en/>

human rights defenders continue to report a lack of information and consultation regarding the National Protection System.

Staff members working with the Mechanism have confirmed that most of the measures implemented are police measures, such as police patrols or perimeter security. However, on 25 January 2017, for the first time, the National Council for Protection issued a public declaration recognizing the important and legitimate role of women human rights defenders. This was an important step forward to implement non-police measures targeting the structural causes of the violence against defenders. Unfortunately, few days after this public declaration of recognition, several civil society organizations and movements were subjected to a smear campaign, driven by both state and non-state actors.⁹ There were no declarations from authorities recognizing the important work defenders do to counteract the hostile environment created around them. Furthermore, it is vital that public recognition from authorities is continuous and not only expressed via as isolated messages. In addition, the authorities expressed their willingness to implement technological and infrastructure measures. They have hired a consultant for this purpose.

In December 2016, the Director of the National Protection System reported that the protocol to implement precautionary measures as well as the risk assessment protocol had been approved. Representatives of human rights organizations at the National Council were surprised because they said they were not consulted and did not have access to these documents.

To date, a major challenge for the National Protection System is the transition to the implementation of the precautionary and provisional measures¹⁰ granted by the Inter-American Commission and Court of Human Rights respectively. The implementation of precautionary and provisional measures will now be the responsibility of the Ministry of Human Rights, Justice, the Interior and Decentralization, rather than the Ministry of Security. Thus, the Ministry of the Interior will be in charge of the implementation of both the precautionary and provisional measures in addition to the national measures granted by the National Protection System. Some defenders who had been granted precautionary measures expressed concerns to Amnesty International that the progress achieved in the implementation of their measures by the Ministry of the Security would be at stake during the transition. As of February 2017, the Ministry of Interior was overseeing 9 precautionary measures already underway.

There is not yet a protocol on collective measures. Nevertheless, the Director of the National Protection System told Amnesty International that in January 2017 they held a meeting with a group of 45 people covered as a collective by precautionary measures. According to the Director, this was a first step towards building such a protocol.

Coordination with the Public Prosecutor's Office needs to be strengthened. The representatives of the institution do not consistently attend the meetings of the National Council. Moreover, the representative of this institution on the Protection Mechanism Technical Committee is the Human Rights' Prosecutor, who only has jurisdiction over the attacks perpetrated by authorities but not over those committed by non-state actors. This constitutes a serious weakness in a context where impunity remains a major concern in relation to attacks suffered by human rights defenders.

GUATEMALA

Despite the regulatory framework established in Guatemala to create bodies in charge of the protection of human rights defenders, among other subjects of protection, and aimed at analysing patterns of attacks against defenders in order to take structural measures to tackle the causes of such attacks, there is no systematic or coordinated approach from the authorities to human rights defenders' protection. In addition to impunity, authorities face a major challenge in terms of providing protection: to adopt effective measures to counteract the misuse of the justice system against defenders, and their stigmatization. Two positive initiatives are being undertaken by the Public Prosecutor's Office regarding the investigation of attacks against defenders and prevention of criminalization. The public policy on human rights defenders has not yet been adopted..

In 2004, after calls from national and international civil society groups, Internal Agreement 11-2004 of the Presidential Commission on Human Rights in Guatemala (COPREDEH) was approved. This created the Coordinating Unit for the Protection of Human Rights Defenders, Legal Administrators and Officers, Journalists, and Media Commentators (Unidad Coordinadora de Protección para Defensores de Derechos Humanos, Administradores y Operadores de Justicia, Periodistas y Comunicadores Sociales)

⁹ Honduras: Increasing smear campaign against defenders, AMR 37/5613/2017, <https://www.amnesty.org/en/documents/amr37/5613/2017/en/>

¹⁰ Precautionary measures and provisional measures are protection mechanisms for serious and urgent situations creating a risk of irreparable harm to a person or a group of people, granted by the Inter American Commission on Human Rights and the Inter American Court of Human Rights, respectively.

with the aim of articulating the state's responses to requests for protection of human rights defenders in situations of risk.

In recent years, the Unit for the Analysis of Attacks against Human Rights Defenders (Instancia de Análisis de Ataques Contra Defensores de Derechos Humanos en Guatemala), created by Ministerial Agreement No. 103-2008 to establish and analyse patterns of attacks on human rights defenders, has also been strongly criticized by civil society as they have observed that its work has been ineffective to the point that the organizations representing civil society in this setting, organizations knowledgeable and specialized in the subject of protection of human rights defenders, decided to withdraw from their involvement in the unit. In 2013 the Office in Guatemala of the United Nations Office of the High Commissioner for Human Rights stated that: "Despite efforts by several institutions to re-establish its role, the Unit for the Analysis of Attacks against Human Rights Defenders in Guatemala has lost relevance."

In 2016, civil society organizations reactivated their participation in the Unit for the Analysis of Attacks against Human Rights Defenders as they felt that the new authorities in charge of the unit were more open to changing their approach regarding the protection of human rights defenders. According to data provided by authorities, throughout 2016, the unit addressed 62 cases of attacks against human rights defenders. Of these attacks, 52 occurred in 2016, and the others in previous years, dating back to 2010.

Even if this unit is designed to analyse patterns of attacks against human rights defenders and could therefore make recommendations to other authorities in order to address these patterns through preventative and protective measures, the authorities take a very narrow view of what their roles and responsibilities are, limited to simply providing police measures to the defenders who present their cases to the unit.

Neither the unit nor the authorities represented in it have publicly recognized the important and legitimate work that human rights defenders do. Therefore the authorities have failed to address smear campaigns and stigmatization against defenders which form part of the very worrying patterns of attacks in Guatemala. Statements and rumours aimed at discrediting activists, including those based on gender stereotypes against women human rights defenders, facilitate attacks against them. For instance, in early 2016, death threats against a woman human rights defender who was very actively campaigning to oppose the mining project Progreso VII Derivadas, known as the El Tambor Mine, coincided with the publication in the newspaper Prensa Libre of a paid advertisement on 6 April 2016 in which the President of Exploraciones Mineras de Guatemala S.A. (EXMINGUA) addressed the President of Guatemala. The advertisement said that NGOs "consider socialism, terrorism and anarchy to be the best ways to govern a society", "whose sole purpose is to stop any development in Guatemala", and depicted them as "the enemies of this beautiful country."¹¹

The unit has not taken appropriate measures to protect human rights defenders from the misuse of the justice system through baseless criminal investigations, which is a major issue and recurring pattern in Guatemala, particularly used against those working to defend the land, territory and environment. A positive initiative is being undertaken by the Public Prosecutor's Office: the creation of General Directive which will serve as guidelines for prosecutors on how to investigate attacks against defenders. This initiative, driven by civil society groups, is currently under discussion. Authorities confirmed that as of February 2017, the Directive is in the final stages of approval. The adoption of this General Directive could signify an important step in tackling impunity in cases of attacks on human rights defenders. In addition, the Public Prosecutor's Office is in the preliminary stages of working to establish guidelines to prevent criminalization and to ensure that the criminal justice system is not used as a means to target or harass human rights defenders. The adoption of these guidelines could be a major improvement in addressing the misuse of the justice system against defenders. In both cases, the proper training of the authorities in charge of applying the General Directive and the guidelines will be crucial for their effective implementation.

The Ministry of the Interior has identified some challenges to the proper functioning of the unit: authorities must continue working to build trust with civil society, coordination with the Public Prosecutor's Office must be strengthened, and the unit should identify ways to access remote zones, especially in rural areas. Some human rights organizations told Amnesty International that most of the human rights defenders do not know about the unit and most of the objections to the unit have remained unanswered. The Office of the High Commissioner on Human Rights in Guatemala says that the unit always answers cases presented to it promptly, but there is no methodology for addressing the cases. In general, civil society has highlighted a lack of resources as a major challenge for the

¹¹ We are defending the land with our blood": defenders of the land, territory and environment in Honduras and Guatemala, AMR 01/4562/2016, <https://www.amnesty.org/en/documents/amr01/4562/2016/en/>

unit.

In August 2014 the Inter-American Court of Human Rights, in the decision Human Rights Defender et al vs Guatemala, ordered Guatemala to establish a public policy on human rights defenders. According to COPREDEH, the design of the policy began in September 2016, but the policy has not been adopted to date.

MEXICO

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 defenders and journalists at risk. The Federal Mechanism was established on 12 November 2012. The Mechanism provides protection measures in a context of increasing violence against human rights defenders and despite several improvements such as the implementation the unit in charge of prevention, monitoring and analysis and an important training process for staff working with the mechanism, many challenges remain. One of the major concerns of civil society in Mexico is the inexistence of a comprehensive public policy of protection coordinated at federal and state levels, especially in the context of the creation of new state-level mechanisms.

In 2014, several incidents indicated serious problems in the implementation of the mechanism: protection measures granted but never implemented, undue delays in the examination of the risk situation of defenders and journalists, and slow responses to urgent incidents. In response, the civil society members of the Mechanism Governing Board (Junta de Gobierno del Mecanismo) publicly expressed their concern over the deep credibility crisis of the body and the absence of adequate management, work plans and government's political will to enable the mechanism to fulfil its objectives. Despite its problems, some lessons can be learned from the Mexican process, in particular the inclusion of civil society throughout the whole process.

The Federal Mechanism must carry out its functions in a context of increasing violence against human rights defenders and journalists. According to figures provided by the Ministry of the Interior, between October-December 2012 and early 2017, 388 requests for protection were submitted: 168 related to defenders and 220 to journalists. The requests which were accepted cover 649 people, of which 60% corresponds to human rights defenders. Over the same period of time, the mechanism has taken responsibility for the protection of 28 groups, covering a total of 184 people. Of those collectives, 25 correspond to human rights defenders and cover a total 169 people.¹²

One of the major concerns of civil society in Mexico is the inexistence of a comprehensive public policy coordinated at federal and state level to protect defenders and journalists.

Despite some achievements made by the mechanism such as the implementation of a Third Unit in charge of prevention, monitoring and analysis, an important training process implemented for the personnel working with the mechanism, and the evaluation of the protection measures provided, many challenges remain.

The mechanism has failed in combatting non-traditional aggressions against defenders such as stigmatization and criminalization. The case of Mexican human rights defender Ildefonso Zamora who was released after almost nine months in prison having been accused of robbery under fabricated charges shows that criminalization or the misuse of the criminal justice system to target and harass defenders is a common pattern in Mexico that must be addressed.¹³

In addition, the approach of the mechanism to the subjects of protection is very narrow: all the relevant actors at risk are not taken into account in all cases, such as the organization with which the defender is affiliated or his/her family. Moreover, the protection measures are granted on the basis of a police and reactive approach, rather than providing structural measures in response to the underlying causes of the violence against defenders and journalists. Although the mechanism has carried out some acts of

12 Secretaría de Gobernación – Subsecretaría de Derechos Humanos – Unidad para la Defensa de los Derechos Humanos. Informe Estadístico Enero 2017. Mecanismo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas.

13 Mexico: Further Information: Jailed indigenous rights defender released: Ildefonso Zamora, AMR 41/4667/2016, <https://www.amnesty.org/en/documents/amr41/4667/2016/en/>

recognition, it has not implemented any structural measures aimed at creating a safe and enabling environment for the defence of human rights or to tackle impunity.

State actors continue to be perpetrators of attacks against defenders, not only through physical attacks, but also by stigmatizing defenders or initiating baseless criminal proceedings against them.

In order to strengthen coordination among institutions, including with those at the state level, it is crucial to create a comprehensive protection plan for defenders. Regarding the institutional relations of the mechanism with other authorities, it is important to highlight the lack of political support provided to the Mechanism by other institutions.

Other weaknesses of the Mechanism come from the continuous turnover of staff, making it virtually impossible for all the requests to be addressed by trained authorities. Civil society groups believe that there is a lack of participation of the beneficiaries of the Mechanism during the risk assessments and there are no collective measures implemented. It is particularly worrying that the Mechanism does not take into account the local contexts in which the defenders work.

There have been some efforts to create similar mechanisms at the state level. These efforts generate questions in relation to the financial and human resources available to properly implement these initiatives, along with concerns over internal coordination among different authorities operating at different geographical levels.