

# FOCUS

## REPORT

PUBLIC POLICIES FOR  
THE PROTECTION OF HUMAN  
RIGHTS DEFENDERS:  
GLOBAL TRENDS AND  
IMPLEMENTATION CHALLENGES  
2017 UPDATE





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*Protection International believes it is now high time to shift the focus of the debate away from adopting laws to protect human rights defenders at risk towards a more comprehensive approach, which addresses the structural violence and repression against them.*

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## PREFACE

Protection International (PI) is very happy to publish a new edition of its Focus Report (2017). As part of its global research agenda, PI monitors developments in the field of national protection mechanisms and public policies for the protection of human rights defenders (HRDs) worldwide.

Since the publication of our seminal handbook Protection of human rights defenders: Best practices and lessons learnt (2011), in PI we have witnessed the fast evolution of the public debate regarding national public policies for HRD protection: initially only a handful of Latin American governments were addressing systematic attacks against HRDs through national protection mechanisms; and civil society organisations approached the issue with a lot of mistrust and scepticism.

*Our research shows that political will and backing [of HRD protection policies] is key to overcome these problems*



In recent years, it has become mainstream with the adoption of national laws and the emergence of draft bills in several countries of Latin America and Africa, while permeating the discussions on HRD protection in countries of Europe, Central and South-East Asia. Many developments in this field of the HRD protection ecosystem also occurred since the publication of the last edition the Focus Report in 2014.

This heightened interest nonetheless, the implementation gap remains a big issue and trust is far from assured, especially among groups of HRDs taking the brunt of state repression and violence and those HRDs in remote areas where the presence of state authorities is weak or contested by non-state actors. Our research shows that political will and backing is key to overcome these problems.

With the 20th anniversary of the UN Declaration on HRDs fast approaching, more needs to be done. At Protection International we believe that it is now high time to shift the focus of the debate away from adopting – or not – legislation framing the existence of state mechanisms to protect groups of HRDs at risk towards a broader and more comprehensive approach, which delivers proactive actions to address the root causes of insecurity, structural violence and repression against HRDs.

We hope that this new Focus Report will effectively contribute to this objective, and to the broader reflection about how we can promote effective state action to ensure – in line with the spirit of the UN Declaration on HRDs – that individuals, groups and organisations can freely and safely exercise the right to defend human rights.

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# 1. INTRODUCTION

## 1.1 Global Trends

In his 2015 and 2016 reports to the United Nations General Assembly (UNGA) Michel Forst, the UN Special Rapporteur on the Situation of Human Rights Defenders (HRDs), noted a range of tendencies that had led to a progressive deterioration in the conditions required to exercise the right to defend human rights. He further argued that this worsening environment was becoming the norm. High rates of attack against individual HRDs were being compounded both by a lack of awareness of the role of HRDs and the use of new forms of repression (e.g. criminalisation, defamation and communications surveillance). The growing rate of murders of environmental HRDs was equally alarming. According to the Special Rapporteur, these negative developments were associated with profound weaknesses in state institutions as well as the “war against terrorism” in which several countries were engaged.<sup>1</sup>

Of more significance for this Focus Report, the Special Rapporteur also emphasised that existing national protection mechanisms were “deficient, or even non-existent”, and that they should be strengthened to ensure an end to impunity.<sup>2</sup> The process that led to the adoption, on 17 December 2015, of UNGA resolution A/RES/70/161, on the right to promote and protect human rights, is indicative of the current challenges faced in many countries by HRDs and civil society organisations (CSOs).<sup>3</sup> The resolution was not adopt-

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1 United Nations General Assembly (UNGA). “*Report of the Special Rapporteur on the situation of human rights defenders*”, A/70/217. 30 July 2015; UNGA. “*Report of the Special Rapporteur on the situation of human rights defenders*”, A/71/281. 3 August 2016.

2 Ibid.

3 UNGA. A/ 70/161. “*Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*”. 17 December 2015.

ed unanimously, 127 states voting in favour, 14 against, and 41 abstaining. The weeks leading up to the vote had seen the expression of overtly hostile positions towards the proposals and efforts by several countries to weaken the draft text.<sup>4</sup>

Although UNGA resolution A/RES/70/161 is not binding, it constitutes an important international precedent for the protection of HRDs:

The General Assembly “(e)ncourages States to develop and put in place sustainable public policies or programmes that support and protect human rights defenders at all stages of their work in a comprehensive manner”.<sup>5</sup>

From 2015 to early 2017, there were significant developments in the sphere of national-level public policies for the protection of HRDs. These involved one piece of national legislation, and four more general trends, as follows: **1)** the adoption, in May 2015, of a new law on HRD protection in **Honduras**; **2)** the unresolved implementation gap affecting legal protection frameworks for HRDs in other Latin American countries and Côte d’Ivoire; **3)** growing interest in adopting legislation on HRD protection, mainly in West and Central Africa; **4)** the role played by National Human Rights Institutions (NHRIs) in the development of protection guidelines, especially in Asia; and **5)** the role of Universal Periodic Review (UPR) in influencing recommendations for the adoption of HRD protection measures. The case of Burundi stands apart, as it went from being a country where state institutions and civil society had engaged in talks for adopting a HRD protection law to a place where violence and repression against HRDs get worse by the day.

## 1.2 The new Honduran law for the protection of HRDs

On 14 May 2015, the National Congress of Honduras adopted the Law on the Protection of HRDs, Journalists, Social Communicators and Justice Operators (Decree 34-2015).<sup>6</sup> The law came about as the result of years of sustained civil society pressure and mobilisation, supported by international bodies.<sup>7</sup> Despite this important and much-needed step

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4 The Observatory for the Protection of Human Rights Defenders. “UNGA passes resolution on the protection of human rights defenders”. p.1.; United Nations. “*Concluding Intense Session, Third Committee Approves Final Draft Resolution on Human Rights Defenders, Sending Package of 62 Texts to General Assembly Seventieth Session, 56th Meeting (AM)*”. 25 November 2015. ISHR. “General Assembly: States must not turn their backs on human rights defenders”. 24 November 2015.

5 UNGA. A/ 70/161. op. cit. § 12. p.5.

6 Available at <http://focus.protectionline.org/es/2015/06/23/ley-protection-honduras/>

7 For more details, see Protection International. “Focus Report 2013. Public policies for the protection of human rights defenders: The state of the art”. December 2013. p. 9; “Focus 2014. Public policies for the protection of human rights defenders: Latest trends”. December 2014. pp. 20-21.

in one of the most dangerous countries in the world for HRDs,<sup>8</sup> the government took more than a year to adopt the enabling regulations required to ensure implementation of the law. Throughout 2016 several local and international CSOs expressed concern about the continued violence against HRDs and the poor performance of the protection mechanism.

PI received information on the approval of a HRD protection law in Burkina Faso in late June 2017, after completion of the writing of this Focus Report. PI will publish an analysis of this law and other West African initiatives in the coming months.

### 1.3 The implementation gap

Some Latin American countries already possess concrete legislation to protect HRDs. However, there remains an important implementation gap.<sup>9</sup> External analyses, including some carried out by PI, have identified the principal challenges and made some observations on the implementation of protection mechanisms in **Brazil**, **Colombia**, and **Mexico**. The protection of HRDs outside the capital cities and main urban areas, particularly in rural regions far from major towns remains insufficient and ineffective. This is compounded by factors including poor to non-existent coordination between different institutions and levels of the state, lack of political will, deficient training for officials with responsibility for providing protection, and inadequate representation of civil society in the mechanisms. In this edition of the Focus Report PI hopes to shed some light on this matter by analysing the local-level performance of HRD protection programmes in Latin America.

Implementation in **Côte d'Ivoire** has been equally problematic. The country's HRD Protection Law was enacted in 2014, but it was only in late February 2017 when the government adopted the enabling regulation required to implement an effective protection mechanism.

### 1.4 New legislative initiatives for the protection of HRDs

Since the adoption of the **Côte d'Ivoire** HRD Protection Law in 2014, growing interest has been shown in adopting similar laws elsewhere, especially in West and Central Africa.

In May 2015, an international workshop on the protection of HRDs was organised in Abidjan, **Côte d'Ivoire**<sup>10</sup> to examine legislative approaches to the protection of HRDs in

8 Global Witness. "Honduras: The deadliest place to defend the planet". January 2017; Front Line Defenders. "Annual Report on Human Rights Defenders at Risk in 2016". 2017. p.11-12.

9 Focus Report 2014. op. cit. p.7.

10 CIDDH. "Atelier d'élaboration de la stratégie de protection des Défenseurs des Droits de l'Homme". 5 June 2015.

West Africa.<sup>11</sup> At the time this report was being written, CSOs and governments in the region had embarked on various initiatives to draft legislation, **Mali** being on the way to becoming the second African country to adopt laws to protect HRDs. On 4 January 2017, the Council of Ministers adopted the draft bill that had been submitted in May of the previous year to the Ministry of Justice by the Malian Coalition of HRDs (COMAD-DH in French).<sup>12</sup>

In **Niger** and **Sierra Leone** local civil society networks and movements also initiated discussions with government bodies.<sup>13</sup> In **Burkina Faso**, a draft bill was presented by the government of former President Blaise Compaoré to the committee responsible for evaluating legislative proposals. For their part, civil society groups in **Senegal** have also expressed interest in working on a similar initiative.<sup>14</sup>

In Central Africa, the **Democratic Republic of Congo (DRC)** has, since 2007, pioneered efforts to develop legislation for the protection of HRDs at the national and provincial levels.<sup>15</sup> On 10 February 2016, the Governor of South Kivu promulgated a provincial edict (édit provincial) on the protection of HRDs and journalists. In August 2016, the newly appointed National Human Rights Commission (CNDHRDC in French) convened a workshop in Kinshasa to initiate discussion of a new national draft bill to protect HRDs.<sup>16</sup> The ensuing discussions led to the approval by the Congolese Senate of the draft bill on 15 May 2017.<sup>17</sup>

Similarly, the Human Rights Defenders Network in Central Africa (REDHAC in French) has recently published a draft bill similar to the Ivorian law<sup>18</sup> as a template for use by HRD organisations, coalitions and other interested stakeholders working in its eight member countries.<sup>19</sup>

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11 Email interview with Malian HRD. 11 August 2015.

12 Malian Coalition of Human Rights Defenders (COMADDH), West African Human Rights Defenders Network (ROAHRDs/ WAHRDN), ISHR, Protection International (PI). "Ministers adopt draft law on protecting human rights defenders". 23 January 2017.

13 At the time this report was being prepared a draft bill already existed in Niger while the drafting process had started in Sierra Leone.

14 Email interview with Senegalese HRD.

15 Focus Report 2013. op. cit. p.11; Focus Report 2014. op. cit. pp.27-28, 30.

16 Protection International. Internal report of participation in the seminar. August 2016. Not for public distribution.

17 Depeche.cd. "RDC: Le Sénat adopte la proposition de Loi portant protection et responsabilité du défenseur des droits humains". 15 May 2017.

18 See Facebook posting by REDHAC. 4 November 2016, at [https://www.facebook.com/permalink.php?story\\_fbid=1137979619625593&id=672194292870797](https://www.facebook.com/permalink.php?story_fbid=1137979619625593&id=672194292870797)

19 Cameroon, Congo, Gabon, Equatorial Guinea, Central African Republic, Democratic Republic of Congo and Chad.

Problems might arise if, as occurred in **Mali**, the bills end up incorporating some of the flaws of the **Ivorian** law reported in the 2014 Focus Report.<sup>20</sup> This is a potential cause for concern, especially as technical expertise is frequently lacking during drafting processes.<sup>21</sup> It would in fact be better if these countries were to distance themselves from the Ivorian law and create their own robust and well-implemented protection public policies.

**PI** received information on draft bills for the protection of human rights in **Uganda** (Africa) and **Paraguay** (South America) in the weeks leading up to the publication of this Focus Report. This is why these countries do not feature in this edition. **PI** has been invited to contribute with our experience in the topic by CSOs of each country; we expect to make public our analysis of these two draft bills in the coming months.

An even broader international focus was provided by Independently of any individual country initiative, the International Service for Human Rights (ISHR) when it launched its “Model National Law on Human Rights Defenders” in mid-2016.<sup>22</sup> The project involved consultations with HRDs from different regions of the world, and discussions with human rights experts and jurists. The document is intended to provide guidance to state institutions and other stakeholders on how to implement the UN Declaration on Human Rights Defenders at the national level.

## 1.5 National Human Rights Institutions

Like the CNDHRDC in the **DRC**, national human rights institutions in **Kenya** and in various Asian countries, including **Indonesia**, **Pakistan** and **Sri Lanka**, have been working alongside civil society in an effort to play a more significant role in raising awareness of the rights of HRDs, condemn attempts to criminalise and stigmatise their work, and ensure their protection.

The Kenya National Commission on Human Rights (KNCHR) invited CSOs to a “public policy drafting meeting” in mid-2015. In **Indonesia**, the National Human Rights Commission (*Komnas HAM*) backed initiatives to include HRD protection in the reform of the 1999 Law on Human Rights. In **Pakistan**, consultations between the Human Rights Commission of Pakistan (HRCPP) and civil society resulted in the creation of a Charter of Demands, while in **Sri Lanka**, the Human Rights Commission of Sri Lanka (HRCSL) drafted guidelines which were subsequently presented to civil society.

<sup>20</sup> See Focus Report 2014 p. 27.

<sup>21</sup> Note, however, most of the CSOs in the countries mentioned above have benefited from technical support provided by the ISHR to the drafting process in 2015 and 2016.

<sup>22</sup> ISHR. “Groundbreaking Model Law to recognise and protect human rights defenders”. 21 June 2016.

PI has noted that the “Guidelines on the Protection of Human Rights Defenders” published by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE)<sup>23</sup> have inspired the elaboration of guidelines and the formulation of demands for the protection of HRDs, in particular by the KNCHR in **Kenya**. Draft legislation in **Pakistan** and **Sri Lanka** also appear to borrow elements from the OSCE/ODIHR guidelines.

## 1.6. Impact of the Universal Periodic Review (UPR)

Organised under the auspices of the UN Human Rights Council (HRC) the Universal Periodic Review (UPR) requires states to provide information on the actions they have taken to improve the human rights situation in their countries and ensure they fulfil their obligations.

Requests made under the UPR mechanism for states to take action have led to the adoption of measures for the protection of HRDs by the governments of **Thailand**, **Honduras** and **Guatemala**. Thus, the Rights and Liberties Protection Department of **Thailand’s** Ministry of Justice established a Working Group to examine measures for the protection of HRDs, while **Honduras** was influenced to adopt a Protection Law, and the Programme for the Protection of Journalists was launched in **Guatemala**.<sup>24</sup>

## 1.7 Participating States of the Organisation for Security and Cooperation in Europe one year after the adoption of the Guidelines for the Protection of Human Rights Defenders

By David Mark and Jovana Kokir,  
OSCE’s Office for Democratic Institutions and Human Rights (ODIHR)

Following consultation meetings, extensive research and input from a range of stakeholders, the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) launched its “Guidelines on the Protection of Human Rights Defenders” in June 2014. The Guidelines, rooted in OSCE commitments and universally recognised human rights standards, aim to support participating States in the implementation of their human dimension commitments related to the protection of HRDs. The Guidelines do not establish new standards, but serve as a foundation for renewing and strengthening dialogue between governments and HRDs. In the long run, the aim is to work with participating States to ensure that HRDs are able to carry out their activities without restriction or fear of reprisal.

A year after presenting the Guidelines, we cannot yet claim that significant progress has been made in the OSCE area. On the contrary, the trends we see are negative; in some



23 Focus Report 2014. op. cit. pp.8-9.

24 Ibid. p.7.

regions and countries the space for human rights work continues to shrink. This trend makes the ODIHR's work all the more important: developing the Guidelines was not only necessary, it was timely.

This assessment is based on information received from ODIHR's civil society partners, which report that HRDs are facing increased challenges and obstacles in their work: physical attacks and death threats; criminalisation; confiscation of documents and property; arbitrary arrest and detention, often based on dubious charges; unfair trials; and ill-treatment while in detention, to name just a few. In some OSCE participating States, limitations on the work of HRDs are being introduced in national legislation. HRDs face restrictions when they try to register their organisations or open bank accounts; they may be labelled "foreign agents", have their e-mail accounts hacked or their tax registration suspended; and this is happening even in established democracies.

During the 2015 OSCE Human Dimension Implementation Meeting in Warsaw, we learned that some of those HRDs who had participated in the event the year before had since been arrested, put on trial or given harsh sentences when found guilty of fabricated charges. We also learned that travel bans had been imposed on some HRDs, preventing them from attending the conference. Such situations are very alarming.

All of these developments point to the same conclusion: we must step up our efforts to protect HRDs. After the launch of the Guidelines, our first step was to work to stimulate dialogue between governments and civil society on the need to protect HRDs better. But we must not stop there, as we have a duty to expand our activities and achieve more sustainable results.

Building on recommendations we have received from civil society groups and experts over the course of a number of events and meetings, as well as on ongoing communication with HRDs across the OSCE area, ODIHR intends to focus on building the capacity of HRDs in order to ensure they have the skills they need to protect their rights and engage in quality human rights monitoring and reporting. The ODIHR's priorities in the upcoming period will include conducting a permanent analysis of the environment in which HRDs operate and to develop tools and methods to carry out regular assessments.

Another important activity we are already undertaking, and plan to expand further, relates to raising awareness among the general public of the important work carried out by HRDs. ODIHR will soon launch an educational video promoting the work of HRDs and illustrating the risks and obstacles they face. In the future, it plans to engage in more extensive outreach, including activities directly targeting young people.

If any significant progress is to be made in this area, it is essential to support participating States to take an active role implementing the Guidelines. We encourage them to seek our assistance when reviewing legislation and introducing amendments to laws dealing with the protection of HRDs. We also request them to provide ODIHR with information about steps they are taking to implement the Guidelines to the fullest extent possible, and to welcome and facilitate our activities in this regard, including country visits. It is

vital that authorities in OSCE participating States understand that protective mechanisms must be put in place and applied.

Ultimately, there is a need for political will to create and consolidate a safe and enabling environment for human rights-related work, as the primary responsibility for the protection of HRDs rests with the state. We must all clearly understand that there can be no guarantee for fundamental freedoms and the rule of law if those who fight to promote these rights are persecuted because of their work. We do not have to look too far before it becomes clear that respecting human rights is intrinsic to providing security and to preventing conflict. Repression and persecution, conversely, often contribute to instability and conflict.

## 1.8 The development and role of national laws in the protection of human rights defenders

By Phil Lynch, Director,  
*International Service for Human Rights (ISHR)*



A conducive legal framework is a necessary, although by no means sufficient, element of a safe and enabling environment for the work of HRDs. This requires both the absence of laws and policies which restrict or, even, criminalise the work of HRDs, and the enactment and effective implementation of laws and policies which support and protect their work.

In recent years, a number of states – Mexico, Côte d'Ivoire and Honduras among them – have enacted specific laws on HRDs, which have the potential to provide both enhanced protection for, and public recognition of, the vital work of HRDs. However, the experience of each of these jurisdictions also demonstrates that success is highly contingent on close civil society engagement in the development of the law, adequately-resourced provisions which give full force and effect to the UN Declaration on Human Rights Defenders, and high-level political support for the effective implementation of the law.

ISHR's project to develop a model national law on HRDs should be seen in this light, as it is being developed at a time when an increasing number of jurisdictions (Mali, Burkina Faso, Sierra Leone and Tunisia among them) are looking to develop laws for the protection of HRDs, while, regrettably, a still larger number of states is promulgating laws which restrict HRDs' work.

Informed by in-depth legal research in over 40 jurisdictions, together with face-to-face consultations with over 400 HRDs from over 100 states, held in Bangkok (Thailand), Tbilisi (Georgia), Tunis (Tunisia), Bogotá (Colombia), Guatemala City (Guatemala), Kampala (Uganda), Abidjan (Côte d'Ivoire) and Florence (Italy), the project was intended to develop model legislation which responds to the situation and protection needs of HRDs, draws

on good practice, and learns from the deficiencies and difficulties associated with existing HRD laws and policies in other jurisdictions.

Drawing on these invaluable inputs, the model law was drafted with the technical assistance of leading international lawyers from Freshfields Bruckhaus Deringer. The draft was reviewed and finalised by eminent HRDs and experts including Navi Pillay (former UN High Commissioner for Human Rights), Hina Jilani (former UN Special Rapporteur on Human Rights Defenders) and Sir Nicolas Bratza (former President of the European Court of Human Rights). Ultimately, it is envisaged that the model law will be used by states to develop laws, policies and institutions at the national level to support the work of HRDs and protect them from reprisals and attacks. It will also serve as a valuable tool for HRDs advocating for stronger legal recognition and protection of their important work.

So what have our research and extensive consultations taught us regarding the development, enactment and implementation of a national law on the protection of HRDs? I would identify six key insights.

First, it is imperative that HRDs are properly consulted and engaged throughout the process of drafting a law and continue to be engaged in monitoring and assessing its implementation and effectiveness. Such an approach is more likely to ensure that a law is responsive to the situation and protection needs of HRDs, both in its content and its implementation. In this regard it is also imperative that HRDs are directly included in the governance and decision-making structures of any protection mechanism.

Second, any national law should conform to international law, drawing on the UN Declaration on Human Rights Defenders as a baseline rather than a ceiling. This includes ensuring that the law adopts an inclusive functional rather than vocational definition of HRDs, comprehensively enshrines the rights set out in the Declaration and other relevant international human rights treaties without reservation or selectivity, and does not introduce conditions or seek to impose or imply ‘responsibilities’ on HRDs that may impair those rights. The law should also clearly articulate the obligations of both state and non-state actors (including business enterprises), and contain provisions for the enforcement of these obligations and penalties and remedies if they are contravened.

Third, any law and protection mechanism should be drafted and implemented having regard to the particular vulnerabilities and protection needs of specific groups of HRDs, including women (WHRDs). Article 9 of Côte d’Ivoire’s Law on the Protection of Human Rights Defenders is a good example of this.

Fourth, ensuring that HRDs can operate in a safe and enabling environment not only requires effective measures to protect HRDs at risk, but also preventative measures and approaches which identify and respond to systemic and structural risks and barriers affecting the work of HRDs. This should be reflected in the mandate and activities of any HRD protection mechanism, whether it focuses on an A-status national human rights institution or a specific mechanism established under the law.



Fifth, it is clear that the mere enactment of an HRD law, however comprehensive, is not sufficient, and that to be effective it must enjoy high-level political support and be adequately resourced in order to ensure full and effective implementation. Its promulgation should also be accompanied by consequential amendments to, or repeal of, laws which are incompatible with the Declaration and restrict the work of HRDs, such as those restricting NGO access to funding and resources or that unduly limit the rights to freedom of expression, association and peaceful assembly.

Finally, the international human rights community and international and regional human rights mechanisms have a vital role to play both in highlighting and complementing national level advocacy for better HRD protection and in monitoring and scrutinising how national HRD laws and policies are working in practice.

Self-evidently, a national HRD law is not a panacea for the risks and restrictions facing many HRDs. ISHR's extensive research and consultations do confirm, however, that the explicit legal recognition and protection of HRDs is a necessary, though insufficient, element of establishing and maintaining a safe and enabling environment for their work. It further confirms that HRDs working in diverse countries and contexts consider that the development of a model national law would be a valuable contribution to the development and enactment of legislation that implements the Declaration on Human Rights Defenders effectively at the domestic level.





## 2. LATIN AMERICA

### 2.1 Brazil

#### Protection Programme for HRDs in the State of Pará

By *Justiça Global*



The Brazilian Protection Programme for HRDs (PPDDH in Portuguese) was formally established in 2004, in response to the murder of the missionary Dorothy Stang, who worked with peasant farmers in the vicinity of the town of Anapú in the State of Pará, North Eastern Brazil. From the start, the programme struggled to guarantee protection to HRDs. Historically, Pará has been the Brazilian state with the highest rates of agrarian conflict and murder. The majority of threatened HRDs are peasant farmers, landless workers, and members of traditional Afro-Brazilian and indigenous communities resisting megaprojects and the seizure of land by private companies and economic interests.

Despite this troubling panorama of gross human rights violations, the proposed bill establishing the programme has still not been approved by Congress. The only legal mechanism that has actually been put in place is a presidential decree issued in 2007. Thus, the protection programme continues to be very weak and lacks institutional backing.<sup>25</sup> Currently, the national-level Brazilian Programme operates in only three of the country's 26 states: Minas Gerais, Espírito Santo and Pernambuco. The states of Rio de Janeiro, Bahia, Ceará and Pará have ceased to implement their programmes locally. In Pará, the Defensoria Pública (Ombudsman's Office) ceased to coordinate HRD protection in 2012. In Bahia and Ceará the existing agreements were discontinued when the state governments failed to renew funding for the programmes.

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25 For more information on how the Brazilian protection programmes work at state and federal level, see Focus Report 2013. op. cit. p.8; Focus Report 2014. op. cit. pp.15-16.

The situation for HRDs is most serious in the state of Pará. By the end of 2015, the national programme included 63 HRDs from Pará – making it the state with the highest number of HRDs under protection – while a further 32 had suffered threats without having received effective protection from the authorities.

Being the state institution established to ensure that citizen rights were guaranteed, when it was still operating the Ombudsman's Office was viewed by civil society as best placed to coordinate protection activities with other state bodies, such as the police. In other states in which programmes operated, civil society organisations (CSOs) used to coordinate protection actions jointly with the state secretaries of justice, human rights or public safety.

The Pará programme was one of the first in the country. However, despite the mediation provided by the Ombudsman's Office, dialogue between civil society and the state government was always difficult during the period when the programme was running. No specific training was provided to the security forces' personnel responsible for providing protection to HRDs, who themselves did not believe that the protection provided by the state was effective or adequate. Thus, the ending of the programme is a good indicator of the institutional weaknesses that threatened HRDs face in their localities on a daily basis.

Given this situation, CSOs have noted that the programmes do not follow a single methodology involving, for example, greater transparency in the procedures used to evaluate risk and to establish security plans appropriate to each threat. Similarly, CSOs continue to argue that the only way to protect HRDs effectively and definitively is to prioritise public policies designed to resolve the structural causes of the violations of the rights of HRDs. Consequently, the Presidency of the Republic's Special Secretariat for Human Rights (SEDH in Portuguese) performs an important role facilitating contacts between ministries and other government agencies responsible for implementing an effective policy for the protection of HRDs.

The Brazilian Committee of Human Rights Defenders is the civil society body responsible for monitoring state and national government protection policies.<sup>26</sup> In a meeting held in September 2015, the Committee expressed concern at the fragility of the protection programmes for HRDs working in the context of infrastructural megaprojects, which are being implemented across the entire country and especially in the Amazon region. These weaknesses in the response to the human rights situation should be redressed by protecting the rights of HRDs who belong to the affected populations, and promoting the effective participation of communities by promoting the right – established by International Labour Organisation (ILO) Convention 169 – of indigenous, Afro-Brazilian and other traditional peoples to free, prior and informed consultation.

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<sup>26</sup> Since 2004, the Committee has expressed its opinion on protection matters and on the definition of HRD related policy in states with critical human rights situations such as Pará.

### International Seminar on Government HRD Protection Programmes – Brazil, Mexico, Colombia (Brasilia, 27-29 September 2015)

The event was convened by the Brazilian Committee of Human Rights Defenders and was attended by some 50 representatives of CSOs and state agencies from Brazil, Mexico and Colombia, and by delegates from the European Union, the Embassies of Sweden and Norway, and Brazilian parliamentarians, among others. PI was represented by members of its Protection Desk, Colombia.<sup>27</sup> The objectives of the seminar were i) to analyse the situation of HRDs in Brazil, Mexico and Colombia; ii) to strengthen the PPDDH; and iii) to explore the possibility of carrying out joint actions in order to improve protection programmes in the three countries. The event enabled participants to identify the common risk factors behind the serious human rights situations occurring in the three countries – which include mining or agroindustrial projects, racial discrimination, drugs trafficking and other illegal economic activities – and the kind of attacks to which HRDs are subjected, principally murder, threats, criminalisation and malicious prosecution.

Discussions also highlighted the declining interest of the Brazilian state in human rights. This situation is of major concern to civil society groups, which are confronted by situations of structural violence. Finally, the event highlighted the importance of the work of the Human Rights Secretariat and the need for a legal framework governing the PPDDH.

In late 2015, PI was asked by the Human Rights Secretariat of the Presidency of the Republic to adapt its *New Protection Manual* to the Brazilian context.<sup>28</sup> This project was framed within the context of the ongoing human rights and political dialogue between the European Union and Brazil and was intended to boost the PPDDH's capacity to respond to the protection needs of HRDs across the country. However, the project was suspended by the Brazilian government following the profound political crisis generated by the impeachment of former President Dilma Roussef in August 2016. Shortly after taking office, the new government of President Michel Temer decided to cancel the project definitively. In a separate process, Brazilian HRDs visiting Brussels have confided their concerns to PI that the current government's harsh austerity measures have impacted negatively on social programmes, putting further strain on already inadequate budgets for the protection of HRDs and, more generally, creating conditions that severely prejudice respect for human rights.<sup>29</sup>

27 Protection Desk Colombia is a joint project of Protection International and its local Colombian partner, *Pensamiento y Acción Social*.

28 Enrique Eguren and Marie Caraj. Protection International. *New Protection Manual for Human Rights Defenders*. 2009.

29 On current austerity measures in Brazil, see Kimberly Brown. Al Jazeera. "Is Brazil's government rolling back women's rights?" 21 August 2016; Zeeshan Aleem, Vox. "Brazil just enacted the harshest austerity program in the world". 15 December 2016.

## 2.2 Colombia

### The paradox between building peace and systematic violence against human rights defenders

Starting in 2012, the government of President Juan Manuel Santos pursued a process of negotiation with the guerrilla group the *Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo* (FARC-EP) in an attempt to bring to an end the longest-running armed conflict in the Western Hemisphere and build a stable and lasting peace in the country.<sup>30</sup> The complex negotiation process culminated in the signature of the final agreement in September 2016, which contained significant advances in the fields of agrarian reform; the problem of illegal drugs; political participation; victims; and the creation of a “Special Jurisdiction for Peace”. The Special Jurisdiction for Peace will employ a restorative justice focus in an attempt to bring to trial and punish those responsible for committing “grave crimes” within the context of the internal armed conflict, in particular crimes against humanity, genocide, and war crimes.

The effects of the negotiation on levels of violence has been clear: the 12 months following the initiation of a cease fire and scaling-down of the conflict in July 2015, saw the lowest levels of confrontation in 52 years.<sup>31</sup> However, systematic acts of aggression and other attacks against HRDs, have continued. According to the Information System maintained by the NGO *Somos Defensores*, 80 HRDs were killed in 2016, and a further 49 suffered attempts on their lives. This constituted a 22% increase in murders compared to the year before (when there were 63) and of 29% in the case of murder attempts (35 in 2015).<sup>32</sup> To this should be added 317 registered cases of direct threats of violence, 17 arbitrary detentions, two disappearances, nine cases of malicious prosecution, six cases involving the theft of sensitive information and one case of sexual violence.<sup>33</sup> These figures demonstrate that the risks faced by HRDs in Colombia are not associated exclusively with the internal armed conflict, but that it corresponds to a more complex set of risk factors and threats that include disputes associated with the defence of land and territory; economic, social, cultural and environmental rights; opposition to megaprojects and organised crime. This situation could worsen considerably in the post-conflict scenar-

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30 The internal armed conflict is not yet fully over as the government continues to fight the left-wing guerrillas of the National Liberation Army (ELN) and new illegal armed groups, which emerged in the wake of the demobilisation of the rightwing paramilitary groups (2003-2006).

31 There was a 98% reduction in offensive actions protagonized by the guerrilla group, a 91% decrease in armed combats, and a fall of 98% in conflict-related civilian deaths, compared to the period of negotiations during which the ceasefire was not in place. Source: Centro de Recursos para el Análisis de Conflictos (CERAC). “Un año de desescalamiento: conflicto casi detenido, pero que se resiste a desaparecer”. 20 July 2016 <http://blog.cerac.org.co/un-ano-de-desescalamiento-conflicto-casi-detenido>.

32 Programa Somos Defensores. “Contra las cuerdas. Informe anual 2016, Sistema de Información sobre Agresiones contra Defensores de DDHH en Colombia SIADDHH”. 2017. p.28.

33 Ibid.

io during which problems that were previously cloaked by the armed conflict are likely to emerge with even greater force than was previously the case.

Given these circumstances, it is a matter of concern that state intelligence services continue to engage in illegal operations to attack, denounce and criminalise HRDs, engage in arbitrary detentions and issue individual and collective threats. In addition, the efforts of the Colombian state to counter this situation and guarantee the right to life and personal integrity and ensure that HRDs are able to work, remain weak. The National Protection Unit (UNP in Spanish), a dependency of the Ministry of Justice, is the government body responsible for the implementation of protection measures for people at risk, including HRDs.<sup>34</sup> While it is true that the UNP has provided protection to hundreds of HRDs, these only represent a small fraction of the total number of beneficiaries of protection measures, as the principal recipients of protection are civil servants and politicians.<sup>35</sup> Likewise, the *Fiscalía General de la Nación* (Attorney General's Office) is still not delivering in terms of the investigation and punishment of those responsible for the acts of aggression and the threats in question.

A particular problem is the inability of the governmental protection programme to provide effective protection to threatened rural HRDs, specifically: the lack of timely responses; the implementation of measures that are inappropriate to the region where the at-risk HRDs or organisations operate; and the fact that HRDs and communities are barely involved in defining the measures to be taken.

In addition, the protection measures envisaged by the government continue to be predominantly material, and fail to respond to the demands made by rural communities to combat impunity by pursuing perpetrators through the justice system; implementing measures to mitigate collective risks rather than focusing only on the vulnerabilities of leaders; and strengthening community or organisational protection measures and processes.

Furthermore, in 2014 and 2015 a series of corruption and mismanagement scandals placed the UNP in the public eye.<sup>36</sup> Starting in late August 2014, high level UNP officials were accused of having embezzled at least €240,000<sup>37</sup>, mainly by way of illicit contracts and payments. The then Director of the Unit acknowledged the existence of a budget deficit that might lead to the withdrawal of protection measures for a significant number of beneficiaries.<sup>38</sup> The Attorney General's Office pressed criminal charges against the

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34 See Focus Report 2013. pp.7-8; and FOCUS Report 2014. pp.17-19.

35 Semana. "El exorbitante gasto para proteger a los servidores públicos" 27 May 2015.

36 Focus Report 2014. op. cit. p.18.

37 About COP 800 million.

38 See Focus Report 2014. op. cit.. p.19.

former Secretary of the UNP and the Administrative Director in February 2016,<sup>39</sup> requesting the extradition of the former from the United States.<sup>40</sup> Other officials remain under investigation.<sup>41</sup>

Moreover, the *Contraloría General de la República* (Comptroller General's Office) identified a number of financial mismanagement and administrative problems at the UNP. These included the unnecessary purchase of firearms, bulletproof vests and vehicles; unjustified overspending on a range of goods and services such as plane tickets, fuel for bulletproof vehicles and tolls, amounting to a total cost of about €4.3 million<sup>42</sup>; irregularities related to the hiring of legal advisors, cost overruns in invoicing and the outsourcing of protection to private security companies<sup>43</sup>; a failure to adhere to internal budgeting procedures; and the absence of clearly defined criteria for assigning protection measures that were appropriate to level of risk.<sup>44</sup>

The resulting financial deficit led to significant reductions in the budget for the protection of HRDs and civil society activists (such as victims and land claimants) and also caused upheavals in the implementation of protection measures.<sup>45</sup> Note also that in September 2014 the UNP had announced a drastic cut in the protection measures provided to over 1,100 beneficiaries, plus the withdrawal of about 200 bodyguards and 100 bulletproof vehicles.<sup>46</sup>

To date, the *Procuraduría General de la Nación* (Office of the Inspector General) has requested the UNP's General Directorate to guarantee adequate protection for people at risk and to present a budget plan to its Board,<sup>47</sup> as specified by Decree 4065 of 2011, so that the unit can operate effectively and fulfill its objectives.<sup>48</sup>

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39 El Espectador. "Procuraduría citó a juicio disciplinario a exsecretario privado de la UNP". 19 February 2016.

40 Semana. "Fiscalía solicitará extradición del exsecretario de la UNP". 20 August 2015.

41 Fiscalía General de la Nación. "Fiscalía solicitó orden de captura con fines de extradición contra directivo de la UNP". 5 September 2014.

42 El Tiempo. "Detrimiento en la Unidad de Protección sería de \$ 33.000 millones". 9 March 2016.

43 See Focus Report 2014. pp.18-19.

44 El Tiempo. "Hay un grave desorden en la Unidad de Protección": Contraloría". 30 July 2015.

45 This situation has led to significant delays paying bodyguards and has limited their movements, obliging protected individuals to travel alone; delays of up to six months in the payment of transport subsidies; and a failure to implement protection measures in situations of extreme risk, on the argument that there were too few officials to meet demand, or inadequate resources.

46 Semana. "El 15% de los esquemas de seguridad podrían ser retirados." 14 September 2014; El Tiempo. "Procuraduría, preocupada por funcionamiento de la Unidad de Protección". 25 September 2014.

47 The Board is composed of the Minister of the Interior, the Minister of Defence, the General Director of the National Police, the Director of the Presidential programme for the protection of Human Rights and the Human Rights Director of the Ministry of the Interior.

48 El Tiempo. "Procuraduría, preocupada". op. cit.

The following changes have been made to the legal framework governing public policies on protection:

- Decree 4912 of 2011, which created the Prevention and Protection Programme for the Rights to Life, Liberty, Personal Integrity and Security of Persons, Groups and Communities was replaced by Decree 1066 of May 2015, regulating internal administrative matters. However, this decree was merely a compilation of existing regulations and did not make any significant modifications to existing rules governing protection.
- The Ministry of the Interior published Resolution 1085 of August 2015, establishing the rules covering the implementation of its Prevention and Protection Programme's *Ruta de Protección Colectiva* (Joint Protection Route) and of the UNP. Despite the fact that HRD representatives on the *Mesa Nacional de Garantías* (National Round Table on Guarantees) had persistently insisted that they should be consulted on the resolution and their approval sought, this did not occur. Furthermore, at the time this report was being prepared, in early 2017, collective protection measures were only being adopted in cases in which they had been ordered by the Constitutional Court.
- In terms of gender, the UNP's *Comité de Transversalidad de Género* (Gender Mainstreaming Committee) was inaugurated on 10 December 2015, as stipulated by the terms of Decree 0639 of 25 November 2014. The committee was established in order to ensure gender issues are effectively mainstreamed during the implementation of the UNP's Protection Route, using a dedicated, specific, methodology.
- Points 2 and 3.4 of the Havana Agreement to End the Conflict and Build Peace ("A Democratic Opportunity to Build Peace" and "Agreement on Security Guarantees and the Fight against Criminal Organisations") are intended to provide security guarantees for leaders of organisations and social movements and HRDs<sup>49</sup>.

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49 Gobierno de Colombia y FARC-EP. "Acuerdo Final para la terminación del conflicto y la construcción de una paz estable y duradera". 24 November 2016. See: <https://www.mesadeconvenciones.com.co/sites/default/files/24-1480106030.11-1480106030.2016nuevoacuerdofinal-1480106030.pdf>

### **Colombia: protection rooted in territorial realities**

*Extracts from an interview conducted by PI's Protection Desk Colombia with Elkin Rincón (Mayor) and Edgar Arrieta (Municipal Secretary) of the Municipality of Simití, Department of Bolívar, 7 September 2015*

Interested in understanding the way the Prevention and Protection Programme operates at municipal and local level, Protection Desk, Colombia contacted representatives of the local authorities responsible for providing protection to persons at risk, including HRDs.

Firstly, it was clear not only that there is confusion between the rules governing the protection of HRDs and those covering protection for victims of the armed conflict, but also that there is duplication between the various laws and decrees that operate in the field. For example, Law 387 of 1997, on attention for the displaced population, Law 1448 of 2011, on attention and reparation for victims and land restitution, and Decree 1066 of 2015 all require committees or round tables to be created to take responsibility for prevention and protection. Small municipalities like Simití do not have the capacity to establish all of these bodies and it has therefore prioritised the committee for transitional justice for the victims of the armed conflict at the expense of protection for HRDs.

On the other hand, the participation of the police and the army in the prevention and protection sub-committees has led risk factors identified by civilian authorities such as the Mayor's Office or the *Defensoría del Pueblo* (Ombudsman's Office) to be ignored:

*"Often those institutions don't accept the risk maps we produce, preferring their own strategic action plans, which concentrate on the armed conflict. These measurements and indicators, which are focused on warlike conditions, are different and do not take other aspects, such as illegal mining or land conflicts, into account. In this zone the war is a question of social control rather than [open] conflict and therefore the evaluation of risk is different".* Municipal Secretary.

On the question of risk analysis and the rules governing the measures to be taken in differing circumstances, we were able to confirm that local officials did not have access to education or training in questions relating to the protection of HRDs. Thus: *"We prepare the prevention and risk analysis plans in the transitional justice committees established by Law 1448 on the basis of early-warning alerts issued by the Ombudsman's Office. We are also participating in a training programme with the Victims Unit [of the Ministry of Interior], but the UNP only provides accompaniment in specific cases".* There is clearly a desire to attend to victims of the armed conflict, and capacity to do so, but, equally, a clear failure to respond to the protection needs of HRDs.

Another difficulty pointed out by the interviewees was that it is difficult for the police to respond to emergency situations in outlying rural parts of the municipality: *"For example, when we send police officers to rural areas, they are only able to go as far as the*

hamlet [corregimiento] of El Cerro. They can't go any further because beyond that point they cannot be protected. [...] The police rules of engagement indicate where they are allowed to go. In the Simití wetland area (ciénaga) there are three islands in the river that are only ten minutes away from the main settlement but the [police] can't go there because they are outside their protected area of operation. When we go to the hamlet of El Garzal, [...] the army and the marines have to establish a perimeter so that the police can go in and carry out their operations". The question is, how can the police act as "police sponsors" [policías padrino], the role specified by the UNP, when a rural leader is at imminent risk if they themselves require the protection of the army whenever they wish to go to the rural areas where the leader lives.

These points give an idea of the enormous difficulties faced by some regional or local authorities with responsibility for implementing the protection programmes established by the law, which are intended to be "complementary, and coordinated in an orderly, systematic, coherent, efficient and harmonious manner"<sup>50</sup> between the different institutions that comprise the programme at municipal, departmental and national level. It should be noted, in addition, that in many cases the lack of political will demonstrated by the local and departmental authorities makes it difficult to implement an effective protection programme for HRDs at local level. To this lack of will should be added the pressure and threats imposed continually on local authorities by illegal armed groups and other politically and economically powerful parties who are present and exert influence in the territories.

For this reason it seems paradoxical to speak of peace and the end of the conflict following the signing of the agreement with the FARC-EP, when the causes of structural violence remain and the armed actors are still present in the territories, going by different names, operating under different guises and acting in different ways.

## 2.3 Guatemala

### 2.3.1 HRD protection

Following the resignation of Former President Otto Pérez Molina on 2 September 2015, the situation for HRDs in Guatemala did not improve. Attacks against HRDs and journalists continue unabated. In 2015, 493 incidents targeting HRDs and journalists were recorded alongside 320 cases of other rights violations; 13 HRDs were murdered<sup>51</sup> and 159 cases of criminalisation of HRDs were registered.<sup>52</sup> A further 159 aggressions against

50 Ministry of Interior (Colombia). Decree 1066 of 2015. Capítulo 2. Prevención y protección de los derechos a la vida, la libertad, la integridad y la seguridad de personas, grupos y comunidades. Artículo 2.4.1.2.2. Principios.

51 UDEFEGUA. "Informe final 2015. Mi esencia es la Resistencia pacífica". 2016. pp. 23, 29-30.

52 UDEFEGUA. Informe final 2015". op. cit. p. 29.

HRDs were reported during the first nine months of 2016.<sup>53</sup> Although the number of physical attacks appears to be decreasing, other kinds of aggression such as criminalisation and arbitrary detentions have increased.<sup>54</sup>

CSOs working to defend human rights continue pressing for the government to comply with the Inter-American Court of Human Rights (IACtHR) ruling of October 2014, which ordered Guatemala to implement a comprehensive public policy for the protection of HRDs.<sup>55</sup> The ruling had, in addition, ordered spaces to be established to ensure the participation of HRDs and civil society in all aspects of the process; the inclusion of risk-assessment procedures to accurately determine protection needs; and the establishment of a system for managing information on the prevention and protection of HRDs.<sup>56</sup> CSOs have also requested that a performance evaluation be carried out by the Unit for the Analysis of Attacks against HRDs, which they argue needs to be strengthened.<sup>57</sup> An opportunity for these requests to be met arose following the resignation of former President Pérez Molina and the inauguration of a new government in November 2015, when human rights organisations such as the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEGUA in Spanish) rejoined the body. The agreement underpinning its mandate was extended in early 2016, though the decree that was legally required to approve its operations had still not been published by the Ministry of the Interior at that point.<sup>58</sup>

According to the IACtHR ruling, the Presidential Human Rights Commission of Guatemala (COPREDEH in Spanish) is responsible for developing public policy for the protection of HRDs.<sup>59</sup> In mid-2016, the president of COPREDEH made a first public statement on the matter, saying, “COPREDEH will convene civil society organisations to participate, alongside the Congressional Human Rights Commission and the Procuraduría de Derechos Humanos [Office

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53 UDEFEGUA. “Situación de Defensoras y Defensores de Derechos Humanos en Guatemala. Enero – Septiembre. 2016”. 2016. p.1.

54 UDEFEGUA. Ibid. p. 2.

55 IACtHR. “Case of Human Rights Defender et. al. v. Guatemala”. 28 August 2014. p.75, § 263. For the contribution of PI to this case, see Focus Report 2014. op. cit. pp.14, 19-20.

56 Ideas and recommendations made during a forum organised by Oxfam. “¿Por qué es importante una Política Pública de Protección a Defensoras and Defensores?” part of the campaign: “Defender la Vida es un Derecho, Somos Defensoras and Defensores”. Guatemala City. 29 October 2015.

57 OHCHR. “Annual report of the United Nations High Commissioner for Human Rights on the activities of his office”. 2015. A/HRC/31/3/Add.1. p.13.

58 CERIGUA. “Renuevan acuerdo de cooperación que da vida a Instancia de Análisis de Ataques a Defensores de Derechos Humanos”. 1 March 2016.

59 Oxfam Forum. op. cit.

*of the Human Rights Ombudsman] so that we prioritise work to construct the Policy for the Protection of Human Rights Defenders. I am committed to having this ready for 2016”.*<sup>60</sup>

Accordingly, the first participatory workshop in the process to develop the policy was held on 13 September 2016. The workshop was convened by COPREDEH following several preparatory meetings involving a selection of CSOs.<sup>61</sup> During the workshop some of the participating organisations noted the absence of HRDs from isolated rural communities, arguing that it was important to encourage their participation in the discussions. COPREDEH initiated conversations with the Office of the UN High Commissioner for Human Rights (OHCHR) and UDEFEGUA with the aim of establishing a road map to govern the design of the policy, and designed a consultation process that will be used to produce the initial diagnostic. At the time this section of the report was being prepared, in early 2017, the consultations started with the aim to adopt the policy by the end of the year.

### 2.3.2 Protection of journalists

In recent years the government has shown an interest in preparing protocols and proposals for protection programmes for specific groups, as in the case of the Protection Programme for Journalists.<sup>62</sup> In June 2015, a “technical roundtable” was established as part of the process to develop the programme. An aspect of the discussions was the question of whether the programme should be aimed only at professional journalists, or should also protect the rights of any person – journalist or not – who expresses or communicates ideas.<sup>63</sup> The recommendations of the technical round table were accepted, and the programme was reformulated as the Protection System for the Journalistic Profession (SPEP in Spanish). Like its predecessor, the SPEP consists of a process of strategic coordination and inter-institutional contacts, principally between the prosecuting authorities, COPREDEH and the Ministry of the Interior. The SPEP is designed to offer prevention, protection and justice to journalists facing pressure, including attacks and threats received as a result of their activities as journalists. The system receives complaints and seeks to reduce impunity, but also works to develop public policies to protect rights that are related to journalistic

60 Speech by Víctor Hugo Godoy, president of COPREDEH at the closing event of the campaign “¿Por qué es importante una Política Pública de Protección a Defensoras y Defensores?”. 28 June 2016.

61 Government of Guatemala. Press release. “Inicia proceso de elaboración de Política Pública para Protección de Defensoras and Defensores de DDHH”. 20 September 2016. PI was invited to participate in the launch along with other human rights CSOs.

62 See Focus Report 2014. op. cit. p.20.

63 In 2015, groups of journalists also participated in discussion meetings with the aim of issuing recommendations to the government regarding the fight against impunity for crimes committed against journalists, as well as better working conditions. See Declaración, IV Encuentro Nacional de Periodistas. CIVITAS and Sala de Redacción. 1-2 August 2015.

activities.<sup>64</sup> The creation of a system of this nature was encouraged by Guatemalan CSOs but also by international organisations including UNESCO; it was influenced by the experiences of Mexico and Colombia. However, faced with growing criticism from journalists and CSOs, the system was suspended in January 2016 by the very body responsible for leading the initiative, the Secretariat of Social Communication of the President's Office. Journalists and CSOs claimed that they had not been adequately involved in the development phases of the system. They also argued that the final document submitted by the technical roundtable failed to take into account the inputs and views of the intended beneficiaries of the system. At the time of writing, discussions on how to revive the initiative were ongoing between CSOs, journalists and the Secretariat of Social Communication<sup>65</sup>.

#### **On HRD protection:**

In its capacity as a member of the Forum of International NGOs in Guatemala (FONGI in Spanish) and through its monitoring of the campaign “We are HRDs: Why is an HRD Protection Policy Important?”,<sup>66</sup> PI's Protection Desk Guatemala has been monitoring discussions concerning the development of a public policy for the protection of HRDs. On 13 September 2016, COPREDEH invited PI and other national and international CSOs, national-level authorities, and diplomatic missions to participate in the inaugural act of the process to construct a Public Policy for the Protection of HRDs. PI committed to monitoring and reporting on the process to the FONGI. Additionally, as a part of the accompaniment it provided to rural communities, the Protection Desk, Guatemala has agreed to provide advice and support to representatives of rural indigenous communities in an attempt to ensure that the new policy recognises and incorporates ancestral indigenous authorities and organisational structures.

#### **On the protection of journalists:**

After taking part in the OHCHR's International Seminar on protection mechanisms in September 2014, PI was invited by Guatemalan CSOs to participate in the meeting of the technical roundtable in June 2015.<sup>67</sup> This gave PI the opportunity to examine the evolution of the draft plans of the Protection Programme for Journalists. PI continues

64 Government of Guatemala. “Propuesta preliminar, programa de protección a periodistas, mesa técnica”. February 2015.

65 Knight Center for Journalism at the University of Texas at Austin. “Mecanismo de protección para periodistas en Guatemala: una promesa sin cumplir.” 18 February 2016; CERIGUA. “SCSP ofreció rectificar proceso de construcción del Programa de Protección a Periodistas”. 5 February 2016.

66 In Spanish “Somos defensores, ¿Por qué es importante una Política Pública de Protección a Defensoras y Defensores?”.

67 Focus Report 2a014. op. cit. p.20.

to jointly monitor the situation of professional communicators and journalists closely, with the NGO *Centro Civitas*. Recent figures show that Guatemala continues to be one of the most dangerous countries in Latin America for journalists.<sup>68</sup>

## 2.4 Honduras

On 14 May 2015, the National Congress of Honduras unanimously adopted Decree 34-2015, or the Law on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Operators. This decidedly positive step towards building a public policy to protect the right to defend human rights in one of Latin America's most violent countries was the result of many years of local civil society pressure<sup>69</sup> and of recommendations made by a number of international bodies, including the Inter-American Commission on Human Rights (IACHR), the UN Special Rapporteur on the situation of HRDs, and the UN Human Rights Council's UPR.<sup>70</sup>

The Law created the National Protection Council for Human Rights Defenders, Journalists, Social Communicators and Justice Operators, which acts as the steering body of the protection mechanism. It is made up of representatives of the Ministry of the Interior, Human Rights and Justice; the Ministry of Foreign Affairs; the *Ministerio Público* (Prosecuting Authorities); the judiciary; the *Procuraduría General de la República* (Inspector General's Office); the Ministry of Security; the Ministry of Defence; and seven representatives of beneficiaries of the law (the Association of Journalists, the Law Society, the Press Association, the Association of Judges and Magistrates, the Association of Prosecutors and representatives of two human rights CSOs).<sup>71</sup>

The Law also established the Directorate General of the Protection System, ascribed to the Ministry of Human Rights, Justice and the Interior, and responsible for managing the protection mechanism (i.e. overseeing the units that receive and process requests for protection, and coordinating with other state institutions and government bodies to ensure effective and timely protection measures are provided).

68 Reporters Without Borders. "Disastrous toll – 21 Latin American journalists killed in past six months". 5 July 2016.

69 Focus Report 2014. op. cit. pp.20-21.

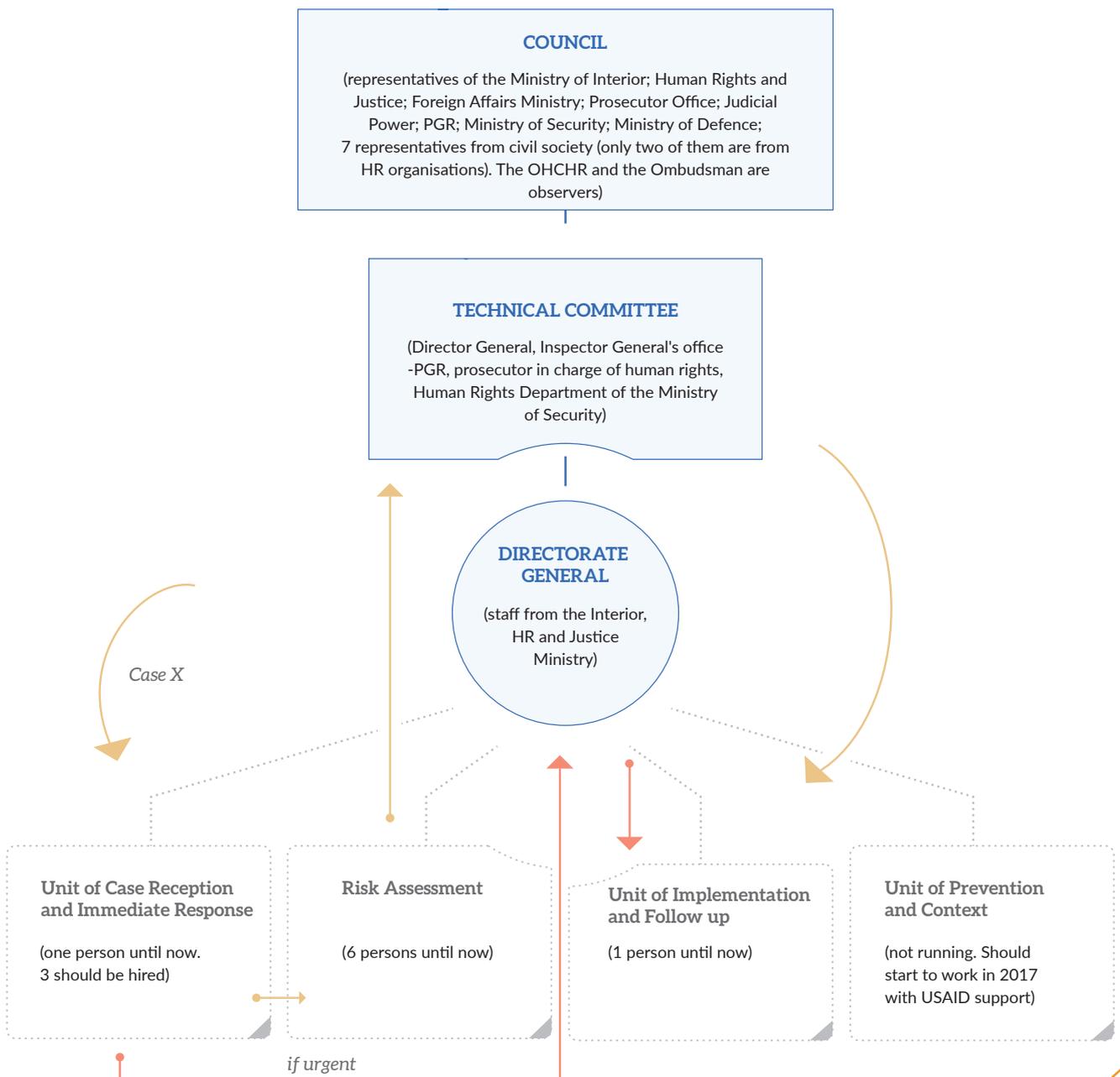
70 Protection International and Centro por la Justicia and el Derecho Internacional (CEJIL). "Observations to the law for the protection of human rights defenders, journalists, social communicators and legal practitioners". July 2015. (Available in Spanish and English).

71 The two civil society representatives were elected in a general assembly convened by the Human Rights, Justice and Interior Ministry: Suyapa Martínez (Centro de Estudios de la Mujer – CEM-H), Eddy Tábor (C-Libre); their supplatives are Jessica Sánchez (Grupo Sociedad Civil - GSC) and Tonny Reyes (Organización Lésbico Gay Arco Iris). La Prensa. "Consejo Nacional de Protección ya tiene representantes de dos organizaciones". 3 August 2015.

Finally, the law created the protection mechanism's Technical Committee, made up of the Director General, representatives of the Attorney General's Office, the Inspector General's Office, and the Human Rights Department of the Ministry of Security. The committee is responsible for carrying out risk assessments, deciding on the protection measures to be assigned to beneficiaries (and on their modification, suspension or termination).

### The Structure of the Honduran HRD Protection Mechanism (Decree 34-2015)

Source: Based on a graphical representation by Amnesty International (late 2016)



Because the law meets international standards and incorporates several recommendations made by CSOs, there is no doubt that it represents a positive step towards the recognition of the role of HRDs. However, it is not free of flaws.<sup>72</sup> It will face many challenges during implementation, and its success will be judged by its effectiveness, the allocation of resources, political commitment, and the degree of coordination between all the state authorities involved. Thus, the design of specific enabling regulations, which the law stipulated were to be adopted within three months of enactment, was a key element in the process. However, it started without a broad process of consultation and discussion with the main beneficiary groups. This aspect was highlighted by Honduran and international NGOs in a letter to the Ministry of Human Rights and Justice in August 2015.<sup>73</sup> The letter also argued that the adoption of the enabling regulations should be postponed for some months in order to correct its course and deal with a series of challenges.

The enabling regulations of the HRD Protection Law (Executive Agreement 59-2016) were finally published by the government 15 months after the law was enacted, on 20 August 2016.<sup>74</sup> The process was advised by a group of international experts from Colombia and Mexico, and the Protection System's Directorate General received funding from the EU to develop manuals and protocols; the selection and training of staff was supported by Freedom House. However, HRDs have reported that there was no wider process of consultation or information-sharing and that many CSOs struggled to understand how the mechanism is supposed to work.<sup>75</sup>

Efforts to build civil society trust in the new protection programme also fell short. Many HRDs still prefer IACHR protection measures and do not trust those granted by the national authorities (which are perceived to be corrupt and biased). Furthermore, at the time this report was being prepared, it was still not clear how the process of transferring responsibility for coordinating and implementing protection measures from the Ministry of Security, which had traditionally assumed this role, to the Ministry of Human Rights, Justice and the Interior would be carried out.<sup>76</sup>

More worryingly, the inadequacy of the original budget (only €387,000 –or 10 million Lempiras– for running costs and the same amount for implementing the protection measures) was compounded by the apparent low priority given to the functioning of the Technical Committee by the relevant authorities. For example, the police, and representatives of

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72 For a detailed analysis of the positive and negative aspects of the law, see: Protection International and CEJIL. *op. cit.*

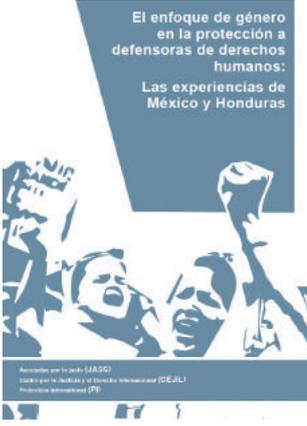
73 Protection International et al. Open letter to Rigoberto Chang Castillo, Minister of Human Rights, Justice, Interior and Decentralisation. 13 August 2015.

74 See La Gaceta, Diario oficial de la República de Honduras. Num. 34, 117. 20 August 2016. <http://www.tzibalnaah.unah.edu.hn/bitstream/handle/123456789/4042/20160820.pdf?sequence=2&isAllowed=y>

75 Email exchange with Amnesty International and CEJIL on Honduras. 21 to 26 September 2016.

76 *Ibid.*

the Public Prosecutor’s and Inspector General’s Offices, failed to attend the weekly meetings; institutions sent low-ranking officials to represent them; participants did not receive training; and no efforts were made to ensure continuity in the officials who took part – a practice that made it difficult to ensure adequate follow-up of cases).<sup>77</sup>



The image shows the cover of a report. The title is 'El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras'. Below the title is a photograph of three women, one of whom is shouting with her fist raised. At the bottom of the cover, it lists the authors: 'Autoría por la Red (JASS) Red por la Justicia y el Derecho Internacional (CEJIL) Protección Internacional (PI)'. The report title is repeated in the text block to the right.

**Protection International** co-published “El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras” in 2016. This report analyses the protection mechanisms developed by States and civil society for women human rights defenders. By adopting a comparative approach to the cases of Mexico and Honduras, **PI**, **JASS** and **CEJIL** identified specific protection challenges faced by WHRDs and proposed policy recommendations to address them. This report is available in Spanish.

Together with the Centro por la Justicia y el Derecho Internacional (CEJIL), **PI** continues to monitor the evolution of public policy discussions in Honduras.<sup>78</sup> Jointly, and together with other national and international human rights NGOs, both organisations have taken the following actions as they have persisted in advocating that the Honduran authorities and CSOs should continue working to strengthen the legal frameworks for the protection of HRDs, carrying out the following activities: Open letter to the President of the Honduran Congress, expressing concern that a number of demands made by civil society groups had not been addressed in the final version of the draft bill debated and voted on in April 2015.<sup>79</sup>

Webinar organised in June 2015 by **PI** and **CEJIL** with the participation of several representatives of national CSOs in order to explain the scope of the law and raise awareness of the need to select candidates to represent civil society in the National Protection Council.

Joint **PI-CEJIL** assessment of the challenges that the enabling regulations would have to overcome. Made public in August 2015, this analytical piece was sent to the

<sup>77</sup> Ibid.

<sup>78</sup> For details of a joint **PI-CEJIL** mission to Honduras carried out in mid-2014 in an effort to provide key advice on how to strengthen the bill in the light of international standards, see Focus Report 2014. op. cit. p.21.

<sup>79</sup> Protection International, CEJIL, Red Nacional de Defensoras, ISHR, and JASS. “Carta a Mauricio Oliva, Presidente, Congreso Nacional de Honduras”. 14 April 2015.

Ministry of Human Rights, Justice and the Interior, and was also shared widely with CSOs in Honduras and across Latin America.<sup>80</sup>

Also in August 2015, an open letter was sent to the Minister of Human Rights, Justice and the Interior, Rigoberto Chang Castillo, sharing concerns about the enabling regulations that was under discussion at the time.<sup>81</sup>

Jointly with CEJIL, UDEFEGUA, the International Platform against Impunity, the Coalition against Impunity and the American Institute of Human Rights, PI organised a visit to Tegucigalpa by Michel Forst, the UN Special Rapporteur on the Situation of Human Rights Defenders, in August 2016.<sup>82</sup>

## 2.5 Mexico

### 2.5.1 Implementation of the National Law for the Protection of Human Rights Defenders and Journalists in Mexico

The environment for HRDs in Mexico continues to be characterised by violence, drug trafficking by powerful organised criminal structures, corruption, and high levels of impunity.<sup>83</sup>

The Mexican Mechanism for the Protection of Human Rights Defenders and Journalists was created by law on 25 June 2012.<sup>84</sup> However, the protection provided remains insufficient and there is still no proper recognition of the role played by HRDs in the country. There is a significant gap between the contents of the law and its implementation, and many HRDs at risk, especially those working in rural and remote areas, remain excluded from federal and state protection mechanisms.<sup>85</sup> Several obstacles hamper the effective implementation of the mechanism.

First, the Federal State has shown a lack of political will and scant support has been given the law by authorities and institutions at federal, state or municipal levels. Although all 32 federal entities signed collaboration agreements, the mechanism is not being ful-

<sup>80</sup> Protection International and CEJIL. Op. cit. August 2015.

<sup>81</sup> Ibid.

<sup>82</sup> CEJIL. "Relator Forst conoce desprotección de defensores and defensoras de derechos humanos en Centroamérica". 1 September 2016.

<sup>83</sup> Conference on Violence in Mexico and its impact on Human Rights Defenders. Brussels. 21 October 2015.

<sup>84</sup> Focus Report 2013. op. cit. p.7; Focus Report 2014. op. cit. p.23.

<sup>85</sup> Conference on Violence in Mexico. op. cit.

ly implemented.<sup>86</sup> Municipal authorities have an obligation to protect, but they tend to ignore the instructions of the National Mechanism.<sup>87</sup>

Second, the response is inadequate because of the lack of effective coordination between federal and local entities and with other relevant government bodies with security responsibilities. Indeed, there is a general absence of coordination measures, and the way the mechanism operates varies widely between federal, state and municipal levels. As a result, some states have created their own protection mechanisms, adapted to their local situation.<sup>88</sup> (see the analyses on the cases of Mexico City and Oaxaca state below).

Third, preventive measures and the fight against impunity remain largely absent, as the mechanism's Prevention, Monitoring and Analysis Unit -whose main objective is to analyse trends of aggression in regional and local contexts and to propose changes in public policies in order to reduce risk- has not been proactive.<sup>89</sup>

Fourth, the functioning of the protection mechanism is far from optimal: admission criteria are unclear and arbitrary and risk analyses are deficient and lack transparency. The latter aspect was improved following a consultancy conducted by four civil society experts, but the mechanism continues to consider that many individuals who request protection do not qualify as HRDs, and they consequently remain excluded from the protection mechanism.<sup>90</sup> Protection responses are slow and inappropriate, follow-up of cases where protection measures have been granted is inadequate, and there is a lack of awareness of HRDs in general. Thus, measures do not always respond to context or need.<sup>91</sup>

Finally, although the main concerns involve the effectiveness of the mechanism, resources are also insufficient to ensure the optimal operation of the three units of which it consists.<sup>92</sup> Protection services, including personnel and hardware, are subcontracted and

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86 Comisión Mexicana de Defensa and Promoción de los Derechos Humanos (CMDPDH). "En defensa de la vida". September 2015. p. 23.

87 Espacio OSC. "Segundo diagnóstico sobre la implementación del Mecanismo de Protección para personas defensoras de derechos humanos and periodistas". Mexico City. July 2015. pp.61-64 and 70.

88 Ibid. CMDPDH. "En defensa de la vida". p. 26. op. cit.

89 Conference on Violence in Mexico. op. cit. Espacio OSC. "Segundo diagnóstico". op. cit. pp.61-62 and 69-70; Protection International (et al.). "Comunicado conjunto: Organizaciones internacionales identifican fallas preocupantes en la implementación del Mecanismo Nacional de Protección a Personas Defensoras y Periodistas en México". Brussels, Washington D.C. 29 April 2015.

90 Espacio OSC. "Segundo diagnóstico". op. cit. Pp.49-53; Protection International (et al.). "Comunicado conjunto: Organizaciones internacionales identifican fallas preocupantes...". op. cit. p.1; CMDPDH. "En defensa de la vida". op. cit. pp.28-29.

91 Espacio OSC. "Segundo diagnóstico". op. cit. pp.40, 50-52 and 70; Protection International (et al.). "Comunicado conjunto: Organizaciones internacionales identifican fallas preocupantes...". op. cit. p.1; CMDPDH. "Prevenir el riesgo; manual sobre mecanismos de protección para Defensores and Defensoras de Derechos Humanos and Periodistas". Mexico City. September 2015. p.48.

92 Focus Report 2014. op. cit. p. 23.

too few of the individuals (and institutions) involved possess the capabilities, competence, and information required to ensure they function properly. This results, for example, in a reduction in the number and quality of the risk analyses that are carried out.<sup>93</sup>

These deficiencies translate into the fact that the mechanism is little used, especially at the local level. It also leads to a lack of prevention measures and integral protection, inadequate responses to situations of risk, ineffective protection, exclusion, re-victimisation, and reduced confidence in the mechanism as a whole. A process intended to strengthen the mechanism was launched recently, but the challenges remain, and the participation of civil society is limited.<sup>94</sup>

As the Mexican State is failing to comply with its obligation to guarantee human rights and protect HRDs, civil society has been obliged to take measures to provide its own protection.<sup>95</sup>

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93 Espacio OSC. "Segundo diagnóstico". op. cit. pp. 61, 70.

94 Ibid. p.72. Conference on Violence in Mexico. op. cit.

95 Conference on Violence in Mexico. op. cit.

## 2.5.2 The Protection Mechanism in Mexico City<sup>96</sup>

By Orfe Castillo and María Martín<sup>97</sup> (JASS)



The degree of security offered by Mexico City, its social programmes and the relative openness of its authorities to matters associated with human rights have resulted, over the last decade, in the city's transformation into a veritable haven for Mexican HRDs and journalists.<sup>98</sup> As a result, several well-established human rights organisations with experience working to protect HRDs initiated a process of dialogue with the Federal District authorities, seeking their support for developing mechanisms to provide assistance to individuals who faced situations of risk as a result of their activities as journalists or in defence of human rights.

Given the characteristics of the city, the efforts of civil society organisations to protect HRDs and journalists have frequently received support from public bodies. At first, this emerged as the fruit of informal channels of communication with the authorities, which generated very positive experiences in concrete cases. Later, these initiatives coalesced into a "Prevention and Protection Mechanism for Journalists, their Collaborators and Human Rights Defenders at Risk as a Result of their Work", which gave institutional form to the protection available to men and women working as journalists or HRDs.

Unfortunately, rather than improving protection, the creation of a formal mechanism has resulted in administrative difficulties that did not exist when the protection available

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96 The name of Mexico DF (DF refers to *Distrito Federal*, or Federal District) was officially changed to Mexico City (Ciudad de Mexico) in January 2016. Therefore, this section generally refers to the Federal District, as this was the official name at the time the public policy initiatives it describes occurred.

97 Orfe Castillo has participated in initiatives to provide protection to WHRDs in Mexico as a member of *Asociadas por lo Justo* (JASS) and in Central America with the Steering Group of the *Iniciativa Mesoamericana de Defensoras de Derechos Humanos*. She has also been a member of the Risk Evaluation Group at the Mexico City Protection Mechanism and founder and consultant at the feminist organisations *Consortio para el Diálogo Parlamentario* and *Equidad AC*.

María Martín currently works with JASS in Mexico. She has conducted several pieces of research in the field of protection for WHRDs and HRDs in her role as Senior Researcher at PI and consultant for JASS, UDEFEGUA, and the *Iniciativa Mesoamericana de Defensoras de Derechos Humanos*. She has collaborated on the design of regulations for protection mechanisms in Mexico and Honduras and has collaborated with prosecuting authorities in Honduras and Guatemala in processes to strengthen specialised criminal investigation procedures for cases of violence against HRDs and journalists.

98 During his speech in favor of the Law, Miguel Ángel Mancera, head of the Mexico City government, referred to this aspect when he said "Mexico City is working to maintain its reputation as a safe haven for journalists who feel that their rights have been threatened in other jurisdictions". Editorial Team, *Animal Político*. "Reubicaciones and chalecos antibalas: así es la ley de protección a activistas and periodistas en el DF". 10 August 2015. <http://www.animalpolitico.com/2015/08/reubicaciones-y-chalecos-antibalas-asi-es-la-ley-de-proteccion-a-activistas-y-periodistas-en-el-df/>

in the city was provided as a result of informal channels of communication with the city authorities. Other problems were present too, including operational weaknesses, clashes of authority with the federal (national) mechanism, budgetary shortfalls and the failure to implement measures that had been agreed previously. Faced with these difficulties, and given the absence of the political will necessary to resolve them, the representatives of the organisations withdrew from the mechanism's Consultative Committee<sup>99</sup>.

In response to the significant drawbacks associated with the fact the mechanism was not backed by legislation, the Legislative Assembly of the Federal District approved the Law for the Protection of Human Rights Defenders and Journalists in 2015.<sup>100</sup> The involvement of civil society in the development of this law was considerable,<sup>101</sup> and contributed to the formal creation of the Protection Mechanism for Human Rights Defenders and Journalists from the Federal District, established as a decentralised body of the Federal District government, enjoying its own legal status and assets, as well as “technical and managerial autonomy”.

Among the positive elements of the mechanism, is that it seeks to confront discrimination, its statutes incorporating a gender perspective, as follows: “the constituent bodies of the Mechanism [...] should take into account the particular circumstances of risk faced by each person”. The guidelines expressly mention the importance of taking into account questions of gender and other personal, cultural, social and political characteristics of victims that might affect the risks they face. The law also indicates that the mechanism should ensure that risk analyses, and all preventive, protective, urgent and social measures that may be developed should incorporate a gender perspective and adhere to the principles of equality and non-discrimination.<sup>102</sup> In addition, the law orders that all public policies and legislation that may be enacted by the Federal District (now Mexico City) government to protect, respect and guarantee the human rights of persons at risk because of

99 Gloria Leticia Díaz, *Proceso*. “Se desmorona consejo del Mecanismo de Protección a Periodistas del DF”. 14 MAY 2014. [HTTP://WWW.PROCESO.COM.MX/?P=372259](http://www.proceso.com.mx/?p=372259)

100 Ley para la protección integral de personas defensoras de derechos humanos y periodistas del Distrito Federal. Publicada en la Gaceta Oficial del Distrito Federal el 10 de agosto de 2015. Available at: <http://aldf.gob.mx/archivo-74ea2ed80b1e8b8607ca0e3c8e566ac8.pdf>

101 Contributing organisations included: Amnesty International, Article 19, JASS, Acción Urgente para los Defensores de Derechos Humanos, Cauce Ciudadano, Centro de Derechos Humanos Fray Francisco de Vitoria, Colectivo de Análisis de la Seguridad con Democracia, Servicios Integrales para la Paz, Casa de los Derechos de Periodistas, Comité de Derechos Humanos del Ajusco, Centro Jurídico para los Derechos Humanos, Colectivo de Análisis de la Seguridad con Democracia, Colectivo Ustedes somos Nosotros, Comunicación e Información de la Mujer, Comisión Mexicana de Defensa y Promoción de Derechos Humanos, Ideas, Iniciativa Ciudadana y Desarrollo Social, Espacio Libre Independiente Marabunta, Legis Monitoreo, Misión para Migrantes y Refugiados, México toma la calle, Movimiento Urbano Popular, Propuesta Cívica, Reporteros sin Fronteras, Red de Organismos Civiles de Derechos Humanos todos los derechos para todas y todos and Serapaz.

102 Art. 4 ,19 45, 59 and 62 of Ley para la Protección Integral de Personas Defensoras de Derechos Humanos y Periodistas del Distrito Federal.

their work defending or promoting human rights and pursuing freedom of expression and journalism in the city must also be informed by a gender perspective.<sup>103</sup>

As well as including relocation, protection from bodyguards and the provision of security elements such as bullet proof vests or hardware to protect buildings, the Mechanism also has the power to develop preventive measures, such as courses on self-protection, accompaniment, and public acts of recognition of the work of HRDs and journalists.<sup>104</sup>

While the Mexico City Mechanism deserves to be evaluated positively, it should not be forgotten that the law that regulates it was passed at a particularly delicate moment, as several Mexico City-based organisations had recently been broken into by the authorities<sup>105</sup> and the community of HRDs and public communicators was in turmoil following the brutal murder of five people in the Narvarte neighbourhood, including a journalist and a woman HRD who were living in Mexico City having been displaced from their home state of Veracruz by the serious threats they faced there. The memory also remains alive of the unjustified arrests and aggressions and of attempts to hinder the efforts of HRDs to document cases perpetrated by members of the Federal District Police against more than 90 demonstrators –including 23 women– during a series of demonstrations that took place during 2013 and 2014 and which led the Human Rights Commission of the Federal District to issue Recommendations No. 9, 10 and 11/2015.<sup>106</sup>

In the light of these and similar experiences with mechanisms in different parts of Mexico, and in other countries, it is very important to recognise that the development of protection norms has been limited. This is because the challenge faced in Mexico City lies precisely in establishing the mechanism and in ensuring it offers effective protection to all those who need it. Clearly, success depends in large part on the procedures included in the implementation regulations of the law. These should guarantee effective coordination with specialist bodies, and ensure that the justice system is capable of responding to the demands made of it by victims, and of identifying and punishing those responsible for the acts of violence committed against HRDs and journalists.

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103 Ibid. Art. 61.

104 Ibid. Art. 47 and 48.

105 On 22 June 2015 the offices of the *Centro Nacional de Comunicación Social A.C.* (CENCOS) were broken into. Computers, video and photographic cameras, and reading documents were stolen. Just a month later, on 24 and 25 July, bank cheques were taken from the offices of the organisation *Equis Justicia para las Mujeres AC* in the Colonia Roma neighbourhood, providing information that was used to empty the organisation's bank account. See: "CDHDF condena allanamiento de instalaciones del Centro Nacional de Comunicación Social (CENCOS)". Boletín de la Comisión de Derechos Humanos del Distrito Federal 144/2015. 24 June 2015; and Proceso. "Allanan sede de agrupación de mujeres; solicitan al GDF medidas cautelares". 28 July 2015. <http://www.proceso.com.mx/?p=411734>

106 The recommendations made by the Mexico City Human Rights Commission are available at: <http://cdhdfbeta.cdhdf.org.mx/category/recomendaciones/recomendaciones-2015/>

### 2.5.3 The arduous path towards providing effective protection to HRDs and journalists in Oaxaca

By Yesica Sánchez<sup>107</sup> and Emilie De Wolf<sup>108</sup>



It is not in question that Mexico has become one of the most dangerous countries in Latin America for HRDs. Therefore, the approval of the Law for the Protection of Human Rights Defenders and Journalists in April 2012<sup>109</sup> and the initiation of the Protection Mechanism it established marked a highpoint in the long process through which CSOs had attempted to create an effective, flexible mechanism with a solid legal grounding.

However, with the passage of time, both the organisations that had pushed for the federal (national) mechanism, and its users, became disenchanted. Unfortunately, they have been met with a refusal to recognise them as HRDs, the dismissal of the risks they face, no gender perspective and a bureaucratic approach that flies in the face of their attempts to receive protection. In addition, one of the ways in which the federal authorities have evaded their responsibility to provide protection has been by returning cases to the very state authorities that have demonstrated their lack of political will and in numerous cases are the alleged aggressors in the case at hand.

In the state of Oaxaca, when almost 80 years of uninterrupted rule by the Institutional Revolutionary Party (PRI) were ended with the election of an alternative state government, measures were put in place to construct a policy to protect and guarantee human rights. However, after almost five years of alternative rule, those of us who work in the organisations that had pushed for the policy have come to realise that the results of the process have been inadequate, because the authorities were more interested in fine-sounding rhetoric than in concrete results.

An example of this is provided by the attempts made by several organisations to achieve a “State Law for the Protection of Human Rights Defenders” in Oaxaca, which we hoped would rectify some of the problems with the Federal Law, in particular the option it grants to state governments to define whether an applicant qualifies as an HRD and to determine the level of risk they face. Our point of view was that the role of the state consisted in guaranteeing the right to defend human rights. After several months working on the draft Oaxaca state law the initiative hit a wall, again because of the lack of seriousness shown by the Oaxaca state government, which ceased attending planning meetings.

107 Yesica Sánchez, feminist, lawyer, WHRD, member of the Oaxacan social movement and is a member of the group of women promoting *Iniciativa Mesoamericana de Defensoras de Derechos Humanos* and the WHRD networks of Mexico and Oaxaca. She is part of the management team of the citizen feminist organisations *Consortio para el Diálogo Parlamentario* and *Equidad AC* (Consortio Oaxaca).

108 Emilie De Wolf, psychologist, feminist, specialist in the protection of HRDs and responsible for international advocacy at *Consortio Oaxaca*.

109 Congreso de la Unión. *Ley para la Protección de personas Defensoras de Derechos Humanos y Periodistas*, *Diario Oficial de la Federación*. 25 June 2013. Available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/LPPDDHsP.pdf>

Moreover, its officials began justifying attacks on HRDs as the result of alleged disputes between private individuals, a practice that increased their vulnerability. After more than four years fruitlessly spent in an attempt to influence public policies on protection, and given the urgency of ensuring real protection, several CSOs decided to work to strengthen other spaces.

We called for the creation of an office of the “Specialised Ombudsman for the Protection of Human Rights Defenders and Journalists” (the Specialised Ombudsman’s Office)<sup>110</sup> within the Autonomous Office of the Ombudsman for the Defence of Human Rights of the People of Oaxaca (DDHPO in Spanish). The challenge implied by this proposal was considerable as, during previous state administrations, the DDHPO had been a passive observer. However, the DDHPO Law of 2012,<sup>111</sup> which was enacted as a result of civil society pressure, introduced a radical shift toward a more proactive attitude, and established a body that is now citizen-controlled and independent.

The Specialised Ombudsman’s Office was inaugurated in February 2015. Its role is to accompany HRDs and journalists in their attempts to achieve protection from the state. It has played an active role – no longer that of observer or mediator – and has caused the state government a degree of discomfort.

This new role brings with it a series of challenges, such as ensuring that the protection procedures do not become over-bureaucratic, and guaranteeing adequate budgetary and staffing levels to deal with excessive demand. Indeed, attacks have been increasing consistently, and over the last six year-period of government we recorded around 400 acts of aggression against WHRDs alone, all of which remain in impunity.

The construction and effective implementation of human rights legislation and policies is a major challenge for the alternative government in Oaxaca. In this context the failure of the Mexican state to fulfil the terms of a series of international treaties is clear, as is the fact that its commitment to human rights is cosmetic. This tendency towards lipservice and doublespeak has been noted recently by the IACHR and by the UN High Commissioner for Human Rights in recent official visits to the country. In this context, we recall the words of the UN High Commissioner who stressed the urgency of taking measures to protect HRDs when he directed himself to the Mexican State saying, “... instead of shooting the messenger, let us focus on the message”.<sup>112</sup>

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110 The Specialised Ombudsman’s Office is part of the structure created by the Law for the Protection of Human Rights Defenders of the State of Oaxaca, which had been proposed by civil society. However, up until 2015, the Specialised Ombudsman’s Office only existed on paper.

111 Congreso del Estado de Oaxaca. *Ley de la Defensoría de los Derechos Humanos del Pueblo de Oaxaca*. March 2012. Available at: [http://www.congresooaxaca.gob.mx/61/decretos/files/DLXI\\_0823.pdf](http://www.congresooaxaca.gob.mx/61/decretos/files/DLXI_0823.pdf)

112 Statement of the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, on his visit to Mexico. 7 October 2015. - Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16578&LangID=E#sthash.ngo3PRpl.dpuf>



## 3. AFRICA

### 3.1 Burkina Faso

The government of Burkina Faso has recognised both that HRDs face security risks as a result of their work and that the state has a responsibility to provide them with protection.<sup>113</sup> The Burkinabé state has also ratified all African and international instruments relevant to the respect and protection of human rights,<sup>114</sup> and, until recently, a process to adopt a HRD protection law was on track,<sup>115</sup> the drafting of the bill having been initiated by the government of former President Blaise Compaoré.<sup>116</sup> The proposed bill was intended to provide guarantees for the protection of HRDs and allow them to carry out their mission in a secure and enabling environment. However, although the initiative included input from public and private actors, it received strong criticism from human rights CSOs.

In 2014, the draft was submitted to the Technical Committee for the Analysis and Evaluation of Draft Bills (COTEVAL in French),<sup>117</sup> an inter-ministerial technical body that

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113 Ministry of Human Rights and Civic Promotion. “Politique Nationale des Droits Humains et de la Promotion Civique”. March 2013. p.55.

114 UN Human Rights Committee. *Examen du rapport du Burkina Faso. Soumission conjointe: Mouvement Burkinabé des Droits de l’Homme et des Peuples (MBDHP) et FIDH*. 117th Session. 20 June – 15 July 2016. p.3.

115 IHSR. Letter from Burkinabé representative. Available at IHSR website.

116 Email interview with Burkinabé WHRD. 29 September 2015.

117 COTEVAL is responsible for analysing the quality of draft bills before they are adopted by the deputies.

functions within the General Secretariat of the Government and the Council of Ministers, and also with the National Assembly.<sup>118</sup>

After the Uprising in late October 2014, civil society took steps to amend and strengthen the draft, adding important articles on the specific case of WHRDs. In June 2015, the director of the Human Rights Protection Unit at the Ministry of Justice, permitted the approval process to be suspended to allow the amendments to be made. The bill was then resubmitted to COTEVAL on 23 November 2015.<sup>119</sup>

Following the coup in September 2015, and the recent legislative and presidential elections (the latter won by Roch Marc Kaboré in December of the same year) which opened up the possibility of a transition to democracy, there has been a shift in priorities and the adoption of the bill has been postponed. This situation is alarming, as many violations were committed against HRDs and journalists during and after the coup, including the use of excessive force by security forces against peaceful protesters.<sup>120</sup> However, in 2016, with the technical support of the African Commission on Human and Peoples' Rights and the ISHR, CSOs suggested further amendments to the draft bill. Recommendations were sent to the authorities, and CSOs set up an advocacy committee to promote the draft. This committee has met with the National Assembly's Sub-Commission for General Affairs and Human Rights, and with representatives of the High Commissioner for Human Rights. At the time of writing the draft bill had been passed to the Council of Ministers for approval, after which was voted upon by the National Assembly on 27 June 2017.<sup>121</sup>

## 3.2 Burundi

A volatile electoral period in Burundi led to a shrinking of the space available for HRDs to work, and increasingly authoritarian attitudes on the part of the Burundian authorities. The current environment in the country is hostile, violent and repressive, as the kidnapping and disappearance of Jean Bigirimana, journalist for the Iwaku Press Group, shows. Several sources indicate that the crime was committed on 22 July 2016 by Imbonerakure militia men belonging to the ruling party, the CNDD-FDD, allegedly operating with the complicity of the National Intelligence Services. Such a massive deterioration in the na-

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118 Government of Burkina Faso. "Décret N°2013-318/PRES/PM/SGG-CM/MRIRP/MEF du 19 avril 2013 portant attributions, organisation et fonctionnement du Comité Technique de Vérification des Avant-projets de loi (COTEVAL)". JO n 32. 8 August 2013. Art. 2 and 3.

119 Email interview with Burkinabé WHRD. 20 October 2016. ISHR. "Updates on State reviews at the 57th African Commission session". 11 December 2015.

120 Amnesty International. "Annual Report 2015-2016". Burkina Faso. pp. 123-126. Amnesty International. "Human rights after the coup in Burkina Faso". 24 September 2015. Email interview with Burkinabé WHRD. 20 October 2016. Le Monde. "Sept questions sur les élections au Burkina". 27 November 2015; Le Monde. "Burkina Faso : Roch Marc Kaboré, nouveau président élu dès le premier tour". 1 December 2015.

121 Email interview with Burkinabé WHRD. 20 October 2016. The law was passed after PI finalised writing this report.

tional context has limited any dialogue on the protection of HRDs, and the gap between HRDs and the government is wider than ever.

President Pierre Nkurunziza was officially sworn in on 23 August 2015, after contested elections and widespread demonstrations against his controversial third presidential term, which were believed by many to violate the Constitution. Generalised insecurity and human rights violations characterised the election period and were showing no signs of abating at the time of writing. Many of the individuals who were targeted had been involved in the demonstrations and numerous arbitrary arrests, extra-judicial executions and alleged acts of torture occurred.

On 3 August 2015, leading human rights defender Pierre Claver Mbonimpa was shot as he was on his way home from work. Miraculously, though the bullet passed through his neck and jaw, he was not killed. The symbolism of the attack seemed clear: Pierre Claver Mbonimpa was one of the most senior and respected Burundian HRDs and the attack, alongside a series of high-level political killings, indicated to many HRDs that it was no longer safe to remain in the country.

A once vibrant civil society had come under attack, many HRDs fleeing to neighbouring Rwanda. The reduced number of HRDs still working in Burundi reported tougher operating conditions, including increased surveillance and fear of physical attack. The activities of human rights organisations decreased dramatically during 2015. Independent radio stations were closed down after a failed coup attempt at the beginning of May and remain closed. Some CSOs have seen their bank accounts seized by the *Parquet Général* (Prosecutor General), and the legal cases launched to seek redress have not progressed. On 23 September 2015, the Ministry of the Interior published Decree 530/1597, which provisionally suspended 10 of the country's leading CSOs. In addition, the CNDD-FDD released a declaration on 26 July 2016 accusing a group of specific HRDs of making false claims about the risk of genocide in Burundi. As a result of these acts of aggression and defamation, HRDs face financial uncertainty and are less able to travel within the country, while prominent individuals have been forced to flee the country.

Finally, a Commission of Enquiry led by the Prosecutor General, and published in August, claimed that civil society leaders had been among those who organised the demonstrations. HRDs still in the country and those living in exile therefore faced potential criminal charges. The President's inauguration speech alluded to plans to ensure tighter control over the activities of NGOs, including a possible national law which might limit the activities of Burundian CSOs. During 2016, the direction of travel was for the authorities to make human rights work a crime, rather than supporting it and providing HRDs with the protection they need. On 29 June 2016, a draft NGO bill was submitted to the Council of Ministers by the Ministry for Internal Affairs and Patriotic Education. The draft was developed in consultation with pro-government CSOs. In it, the government pledges to adopt a tougher stance towards any organisation that may have participated in the protests against President Nkurunziza's third term. In particular, the draft envisages "putting an end to the anarchy led by CSOs". It also aims to limit their mandates and force them to register their bank accounts with the Central Bank (BRB), in accordance with the

2016 budget law. The draft is now in the hands of the National Assembly, pending examination by a parliamentary commission.

The situation remained sufficiently repressive and uncertain at the time of writing for any former discussions on protection mechanisms or national legislation, as featured in the Focus Report of 2014, to be a mere distant memory.

### 3.3 Côte d'Ivoire

Law 2014-388 on the Promotion and Protection of Human Rights Defenders, passed on 20 June 2014, is recognised as landmark legislation in Africa. However, concerns have been raised regarding its capacity to mobilise state authorities to protect at-risk HRDs effectively.<sup>122</sup> In addition, its enabling regulation (Décret N° 2017-121) was only adopted by President Alassane Ouattara on 22 February 2017. Consequently, over two-and-a-half years after its adoption many government institutions remained unaware of the existence of the law or of their protection responsibilities, thus hindering execution. It was equally striking to see that, in spite of the progress the law represents, Côte d'Ivoire chose to abstain from voting in favour of a UN General Assembly Resolution on HRDs in December 2015<sup>123</sup>.

Due to the delays in adopting the necessary enabling regulation, the Ivorian Coalition of Human Rights Defenders (CIDDH in French) advocated for the immediate adoption of the implementation decree<sup>124</sup> and, together with other CSOs, submitted a proposed draft of the decree to the Ministry of Human Rights early in 2016, in order to present the draft to the Council of Ministers later in the year.<sup>125</sup>

In parallel to its advocacy activities, the CIDDH also organised training events between 2014 and 2016, aimed both at civil society and at state entities, including the police

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122 For more information on the Ivorian law, see Focus Report 2014. op. cit. pp.26-27.

123 CIDDH and ISHR. "Communiqué de presse conjoint de la Coalition ivoirienne des Défenseurs des Droits Humains et du Service International pour les Droits de l'Homme sur l'abstention de la Côte d'Ivoire concernant le vote à l'Assemblée Générale des Nations Unies de la Résolution sur les Défenseurs des Droits de l'Homme. 19 December 2015".

124 Email interview with Ivorian HRD. 7 October 2015.

125 Email interview with Ivorian HRD. 17 October 2016; ISHR. "Côte d'Ivoire: Adopt implementation decree for human rights defenders law". 11 April 2016. <http://www.ishr.ch/news/cote-divoire-adopt-implementation-decree-human-rights-defenders-law>

and the army.<sup>126</sup> These training events were part of a project intended to raise awareness of Law 2014-388 and support its implementation. In this endeavour, they were supported by the Human Rights Division of the UN Mission in Côte d'Ivoire (ONUCI in French). For instance, in December 2014, the CIDDH organised an information-sharing session on the Law. The event, which was attended by 80 HRDs from human rights organisations, national and international institutions and journalists provided an opportunity for attendees to discuss the reach of the law, express their concerns, and make recommendations.<sup>127</sup> Other training and awareness-raising sessions on HRD protection and the law were organised for the army and for the Prefectural Corps (*Corps Préfectoral*).<sup>128</sup> In September 2015, two workshops were organised for military and security forces in Bouake and Man, in a project implemented by the CIDDH, the Ivorian National Human Rights Commission, and the Network of Educators for Human Rights, Democracy and Gender.<sup>129</sup>

Despite the existence of the Protection Law and the creation of a Ministry for Human Rights and Public Liberties, HRDs in Côte d'Ivoire continue to be subjected to harassment and intimidation.<sup>130</sup> This problem was particularly acute during the period of the presidential elections, held in October 2015,<sup>131</sup> in which Alassane Ouattara was re-elected on a low turnout.<sup>132</sup> In this context, the United Nations Independent Expert on capacity-building and technical cooperation with Côte d'Ivoire has stressed the need for the country

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126 CIDDH and UN. "Rapport : séance de présentation de la loi n°2014-388 du 20 juin 2014 portant promotion et protection des défenseurs des droits de l'homme". Abidjan. 16 December 2015. p.2; CIDDH. "Formation des forces armées, des forces de sécurité et le corps préfectoral sur les droits de l'homme en période électorale et sur la loi ivoirienne relative à la promotion et à la protection des défenseurs des droits humains". 28 October 2015; CIDDH. "Atelier de présentation de la loi n° 2014-388 du 20 juin 2014 portant promotion et protection des défenseurs des droits de l'homme de Côte d'Ivoire". 25 February 2016; CIDDH. "Atelier d'appui à la promotion et à la protection des Défenseurs des Droits de l'Homme en Côte d'Ivoire". 11 March 2016; CIDDH. "Campagne de vulgarisation de la Loi 2014-388 du 20 Juin 2014 portant promotion et protection des défenseurs des droits de l'homme". 15 June 2016.

127 CIDDH and UN, op. cit. p.2.

128 The Prefectural Corps is composed of Regional Prefects (responsible for administering the regions), Departmental Prefects (who manage the activities of civil servants and represent the executive power in the Departments), Secretaries of Prefectures (who manage prefectural services and external administrative, economic and social services), and Sub-Prefects (who represent the state at the level below the Prefecture); Email interview with Ivorian HRDs. 7 October 2015 and 17 October 2016.

129 Projet d'appui à la promotion et à la protection des défenseurs de droits de l'homme en Côte d'Ivoire. Rapport general du project. Periode d'exécution décembre 2015-mai 2016. Available at: <http://ci-ddh.org/wp-content/uploads/2016/09/Rapport-général-du-projet-3.pdf>

130 ISHR. "Profil de défenseur: Pedan Marthe Coulibaly, femme défenseure des droits humains en Côte d'Ivoire". 11 April 2016.

131 Le Sursaut. "Protection de la société civile: Les défenseurs des droits de l'homme dénoncent les intimidations et les représailles". 13 February 2015.

132 Le Monde. "Côte d'Ivoire : Ouattara réélu au premier tour". 28 October 2015.

to strengthen its human rights institutions before the ONUCI leaves the country in June 2017.<sup>133</sup> It is for this reason that the implementation of the enabling decree is so important.

On 12 and 13 February 2015, consultations took place in Abidjan between HRDs from ten African countries and the African Commission Special Rapporteur on Human Rights Defenders, Reine Alapini-Gansou. The participants discussed information on and follow-up of cases involving reprisal and intimidation. At the time this report was being written, the participating HRDs were preparing a document for presentation to the Special Rapporteur, containing their proposals to clarify procedures and structures, including ensuring an effective focal point for submitting information on intimidation, and dealing with related security issues.<sup>134</sup>

PI is preparing and will soon publish an analysis of the Ivoirian Law 2014-388 on the Promotion and Protection of Human Rights Defenders of 20 June 2014 and its enabling regulation, presidential Decree N° 2017-121 of 22 February 2017.

## 3.4 Democratic Republic of Congo

### 3.4.1 The South Kivu Edict

In the province of South Kivu, PI has been advocating for changes in public policy for the protection of HRDs, alongside civil society and the United Nations. In this regard, the edict on the protection of HRDs and journalists in South Kivu, promulgated by the Provincial Governor in February 2016, rewarded the efforts made by civil society and journalists in South Kivu during the previous eight years. Indeed, despite setbacks and a number of unsuccessful initiatives, journalists in particular had maintained pressure on the authorities – and especially on the Provincial Governor – to pass the edict, repeatedly drawing attention to its importance.

The first version was written in 2007 with the technical support of a team of experts from PI, but the approved text did not receive the support of the Provincial Assembly. Other attempts to adopt the text failed because some members of the Assembly argued that HRDs were seeking to use the edict to grant themselves certain immunities. Throughout 2015, regular meetings were held with influential deputies and a follow-up committee was established to coordinate lobbying and monitor progress. In addition, on 26 March 2015, the United Nations brought together civil society representatives and provincial deputies to discuss how to reinvigorate the push for the promulgation of the edict. The

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133 ONUCI. *La Côte d'Ivoire doit renforcer ses institutions des droits de l'homme avant le départ de l'ONUCI – expert de l'ONU*. 30 May 2016.

134 Le Sursaut. op. cit.; ISHR. "Human rights defenders urge African Commission to strengthen its response to reprisals". 17 February 2015.

meeting constituted a significant opportunity for civil society to express its views on the importance of the work of HRDs and to analyse how legislative reform could contribute to their protection. The meeting was followed a week later by direct lobbying of the Political, Administrative and Judicial Commission, a body charged with revising the text before its submission to the Provincial Assembly. During the March to May parliamentary session CSOs carried out extensive lobbying of influential deputies, many of whom had previously expressed support for the edict.

On 3 June 2015, CSOs presented the latest version of the edict to its principal supporter within the provincial assembly, the Honourable Béatrice Kindja Mwendanga. However, the timeframe within which civil society could expect the edict to be tabled by the Provincial Assembly was not clear. As the year progressed, journalists worked with CSOs to publicise HRD protection issues in the South Kivu media. However, relations between journalists and deputies became increasingly strained following media discussion of the political impasse involving the governor, and the negative influence deputies were reported to have had on the situation. Despite these renewed tensions, during its plenary session of 28 December 2015, the Provincial Assembly adopted the Political, Administrative and Judicial Commission's report on the text of the edict by majority vote.

On 30 December 2015, the Provincial Assembly voted on the edict article by article, adopting it unanimously, after which it passed to the Provincial Governor for final approval, which was given, as stated at the beginning of this section, on 10 February 2016.

PI considers that the edict has the potential to address impunity for crimes committed against HRDs, but also to lay the foundations for improving protection through institution-building and legislative reform. One of the aims of the provincial legislation is to establish "a legal framework for the protection of HRDs and journalists in order to create a safe environment to allow them to act without hindrance and in complete security".

However, it was only in early June 2017, a few days before the finalisation of this report, that the provincial government published the final version of the edict. It is only now that provincial authorities and civil society actors can start the dissemination of the edict.

### 3.4.2 Discussions in North Kivu

In 2016, compelled by the human rights situation in North Kivu and inspired by the South Kivu edict, the *Synergie Ukingo Wetu* network collaborated with journalists and other human rights actors to initiate a reflection on the possibility of legislation to protect HRDs in North Kivu. It was hoped that these discussions would lead to the development of strategies for applying pressure on authorities to pass such legislation. A first workshop was organised in February 2016. A follow-up panel was organised in August, during which PI shared experiences from different countries and from South Kivu in connection with public policies for the protection of HRDs. In addition, the panel identified the need for a protection bill for HRDs and journalists in North Kivu, outlined the priority areas it would address, and created a commission to coordinate activities to ensure it was promoted adequately.

### 3.4.3 Draft bill by the National Human Rights Commission of the Democratic Republic of Congo

In the second half of 2016, the National Human Rights Commission of the Democratic Republic of Congo (CNDHRDC in French) proposed national draft legislation on HRD protection and their responsibilities. In this regard, the CNDHRDC is trying to revive draft bills that were immediately rejected by the Congolese Parliament over the past few years. In August, the CNDHRDC organised a workshop involving members of the CNDHRDC, civil society representatives, and international NGOs to validate and take ownership of the draft. **PI** took part in this meeting but expressed regret at the low levels of participation by CSOs. Furthermore, some provinces had not been invited to the workshop; of particular concern was the absence of South and North Kivu despite the fact that pioneering legislation for the protection of HRDs had – as mentioned above – been promulgated or initiated in the two provinces. The workshop approved the draft legislation with some modifications. It was sent to the Senate, which unanimously approved a draft bill on 15 May 2017.

At the time this report was being prepared, the bill was sent to the National Assembly (lower legislative chamber) for further discussion.

However, with presidential elections pending and the possibility of renewed repression and violence, it remains to be seen whether the initiative will make any further progress in 2017.

**PI** has been monitoring the discussion on HRD protective legislation at the national and provincial levels in DRC for ten years already. **PI** will carry out an analysis of the national draft bill being discussed in Parliament as soon as its text will be made available to civil society.

## 3.5 Kenya

In the absence of established public policy, the Kenya National Commission on Human Rights (KNCHR) uses some existing laws to do some HRD protection work, including holding police officers personally liable for the unlawful criminalisation of HRDs. The commission invited CSOs to a public policy drafting meeting on 4 and 5 June 2015. The meeting involved a reduced group of participants, whose principal task was to prepare a zero draft policy which could then receive input and validation from other CSOs. The organisations represented in the meeting were: the Kenya National Commission on Human Rights, Article 19, the National Coalition on Human Rights Defenders-Kenya, Samburu Women, Bunge La Mwananchi, Mediamax Network, Kenya Human Rights Commission, Kenya Association for the Intellectually Handicapped, and **PI**. This group was established with the aim of ensuring a broad representation of CSOs working in different areas of human rights (journalists; disability, grassroots and women's rights organisations in margin-

alised communities; HRD protection organisations; national-level CSOs; and international organisations with broad experience in public policy on HRDs).

Although the political environment in Kenya is unfavourable to CSOs, because of their perceived role in the indictment of the President and Deputy President of Kenya by the International Criminal Court, it was decided to start the drafting process immediately, because policies generally have a long lead-in time. The rationale was that were a draft policy already in place it should be possible to respond quickly to any opportunity that might arise.

The group discussed and identified the principal objectives of the draft, its guiding principles, the main stakeholders and the strategies that the policy should pursue. The key pillars, strongly influenced by the OSCE guidelines on HRDs, were as follows:

1. Protection from attacks, threats and other abuses;
2. Protection from criminalisation, arbitrary arrest, detention and abuse of judicial power;
3. Confronting marginalisation and stigmatisation;
4. Freedoms contained in Chapter 4 of the 2010 Constitution of Kenya (the Bill of Rights);
5. Right to access and to communicate with international bodies.

These pillars were fleshed out as a result of group work, and by the end of the two-day conference a skeleton draft had been developed. All participating organisations were tasked with inputting different aspects of the policy with a view to coming up with a document that could be shared with wider civil society. The resulting draft then received input from all the participating organisations and was subsequently shared with HRDs in different regions of the country for buy-in and suggestions. These included:

- The document should use language that will inspire the collaboration and support of government;
- Reference should be made to the constitution as rationale for the policy;
- Issues that affect individual HRDs and organisations differently should be separated;
- Other treaty bodies should provide input to the document;
- The policy document should be widely shared so that people are able to engage with the document from an informed point of view.

The National Action Plan on Human Rights (NAP) was launched on 4 October 2016. The Foreword of an earlier draft stated that “The National Policy and Action Plan on Human Rights give effect to Chapter Four of the Constitution, which is the legal and constitutional framework on human rights in Kenya. The successful implementation and

operationalisation of Chapter Four necessitates the development and adoption of an overarching coherent policy framework that sets human rights goals and priorities within achievable time frames and provides guidance to all actors regarding the specific tasks that need to be accomplished to ensure that human rights principles are integrated and mainstreamed in all aspect of the Government's developmental agenda".<sup>135</sup>

Although the NAP does not specifically mention HRDs, it does create roles and responsibilities for state agencies, and specifies budgets for human rights and for implementing UPR recommendations. HRDs could usefully focus their advocacy activities on seeking the development of a comprehensive public policy to ensure the respect to exercise the right to defend human rights based on the NAP.

### 3.6 Mali

Due to the ongoing security situation, civilians and HRDs have been particularly at risk in Mali.<sup>136</sup> The Malian Human Rights Defenders Coalition (COMADDH in French) initiated discussions with other CSOs and the Ministry of Justice and Human Rights on the adoption of legislation for the protection of HRDs in 2014.<sup>137</sup>

Mobilisation of civil society around this process increased in intensity, following the arbitrary arrest and detention of four HRDs in March 2015.<sup>138</sup> In addition, comments made during the Abidjan international workshop in May 2015 (see Section 1.3, above),<sup>139</sup> led COMADDH to go back to the drawing table in the hope of amending and enriching the draft in order to make the bill more concrete and comprehensive.<sup>140</sup> The draft was made public on 29 October 2015, during PI's workshop with Malian HRD representatives (see box, below), COMADDH and other Malian CSO partners. But the breakthrough occurred in 2016 after the Minister for Justice and Human Rights expressed her support for proposals to present the draft law to the National Assembly for debate and subsequent adoption. This achievement followed a two-day workshop co-hosted by the ISHR and COMADDH in Bamako, during which the final version of the draft law was agreed<sup>141</sup>.

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135 See text of the NAP draft of 2014 at <http://www.africanhuriplan.org/wp-content/uploads/2016/11/National-Policy-and-Action-Plan-on-Human-Rights-in-Kenya-2014.pdf>

136 Amnesty International. "Amnesty International Report 2014/2015". 2015; Front Line Defenders. "Mali: No Safety for Human Rights Defenders & Civilians". 15 September 2015.

137 See Focus Report 2014. op. cit. p.31.

138 Email interview with Malian HRD. 25 March 2015.

139 The workshop was convened by the ISHR.

140 Email interview with Malian HRD. 11 August 2015.

141 ISHR. *Mali: Significant step towards the legal recognition and protection of human rights defenders*. 3 June 2016; Email interview with Malian HRD. 20 October 2016.

At the time of writing, the draft bill had been submitted to the Minister of Justice and Human Rights pending the usual legislative stages which will see its eventual approval into a national law. COMADDH is currently monitoring this process.<sup>142</sup>

PI has been in contact with COMADDH since late 2014, suggesting some improvements to the draft bill, including a public policy approach for its strengthening.<sup>143</sup> On 29 October 2015, COMADDH organised a national seminar, with the participation and support of PI. Around 20 HRDs from the capital and neighbouring regions participated in the event. The purpose of the seminar was to analyse the draft bills COMADDH had developed for the protection of HRDs and of victims and witnesses of human rights violations, before submitting them to the government.

These documents were examined during the meeting, in plenary and in smaller group sessions. The text was amended, leaving room for further changes to be made in future meetings. Contributing its experience of existing public policies in Latin America and other regions, PI provided technical assistance and participated actively in the discussions. PI believes that the different initiatives launched in the West African region following the adoption of the HRD Protection Law in Côte d'Ivoire represent a promising development. However, local CSOs must build on best practices and develop solid legal frameworks to ensure protection for HRDs, victims, and witnesses in the future.

In order to avoid the flaws present in the Côte d'Ivoire law (some of them already highlighted in PI Focus Report 2014), it will be key that the Mali law focuses on the responsibility of the state to protect HRDs, instead of focusing on their responsibilities; the bill should also specify who the beneficiaries of the law are; recognise the link between their activities and the risks they face; and include a risk analysis model. The independence of the institutions created by the law should also be guaranteed, in order to avoid its arbitrary and abusive application. Finally, the law should clearly set out how it will be implemented (budget and resources) and by which government bodies.

### 3.7 Niger

Niger transitioned from military rule to democracy in October 2010 following the adoption of a new constitution, and free elections were held in 2011. Despite these changes, HRDs continue to be arbitrarily charged with criminal offences, arrested and detained, and to

142 Email interview with Malian HRDs. 25 March 2015 and 20 October 2016.

143 Ibid.

suffer the use of excessive force.<sup>144</sup> Moreover, state authorities fail to provide security measures for HRDs at risk, which are provided instead by international and regional NGOs.<sup>145</sup>

After having participated in the ISHR international workshop in Abidjan in May 2015 (see Section 1.4, above), the network known as Collective Organisations for the Defence of Human Rights and Democracy (Coddhd in French) began to work on an initiative for the adoption of an HRD protection law. In August 2015, the Coddhd held discussions with the Ministry of Justice and received a positive response for their proposal from Minister Marou Amadou. The initiative has also received support from the Nigerien Commission on Human Rights and Fundamental Freedoms.<sup>146</sup>

Consultations continued in September 2016 with the support of ISHR.<sup>147</sup> At the time this report was being prepared the Coddhd was about to submit a draft bill to the Ministry of Justice's General Human Rights Directorate in order to initiate the legislative process.<sup>148</sup> The intention of the Nigerien CSOs involved is that the new legislation should draw inspiration from the Law of Côte d'Ivoire without reproducing its flaws.<sup>149</sup>

### 3.8 Sierra Leone

In Sierra Leone, crimes committed against journalists remain unpunished, and restrictive laws on freedom of assembly and expression are contributing to the shrinking working space of HRDs. In particular, HRDs working on issues related to corporate accountability and WHRDs are particularly vulnerable.<sup>150</sup> Even more worryingly, the government is currently examining a draft NGO Law, which would impose restrictions on the activities and independence of HRDs.<sup>151</sup>

In these circumstances, the executive appointed a Focal Contact Person for HRDs within the Office of the President in January 2015.<sup>152</sup> This position had the power to rec-

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144 ISHR, Collectif des Organisations de Défense des Droits de L'Homme et de la Démocratie, Réseau Ouest-Africaine des défenseurs des droits de l'homme. "The situation of Human Rights Defenders: Niger – UPR Briefing Paper June 2015". June 2015. p.1.

145 Skype Interview with Nigerien HRD. 9 October 2015.

146 Ibid. email interview with Nigerien HRD. 2 October 2015.

147 ISHR. "Annual Report 2017". 2017. p.17.

148 Ibid. Email communication with Nigerien HRD. 17 October 2016.

149 Ibid.

150 ISHR. "Sierra Leone: Briefing paper on the situation of human rights defenders". 15 April 2015.

151 ISHR. Sierra Leone: Safeguard civil society space and improve the working environment for human rights defenders. 27 June 2016.

152 The position was held by Ambassador Professor Monty Patrick Jones, Special Adviser to the President and Ambassador-at-Large, until his appointment to a new position.

commend security provisions that had been requested by HRDs.<sup>153</sup> Unfortunately, when the Focal Contact Person was appointed as the Substantive Minister in the Ministry of Agriculture, Forestry and Food Security he was not replaced.

The appointment of such a position was followed by declarations of Sierra Leonean officials highlighting the importance of adopting legislation to protect HRDs.<sup>154</sup> In this context, the Human Rights Defenders Network of Sierra Leone (HRDN-SL) initiated discussion on the formulation of a model law for the protection of HRDs in the country. On 4 September 2015, HRDN-SL met with the Focal Contact Person, who suggested the network should develop a draft bill and then present it to government for review and enactment. For this purpose, the HRDN-SL took part in a training workshop on 4 and 5 October 2016, on the development of the law. This training received technical support from the ISHR.<sup>155</sup> At the time of writing this report, the HRDN-SL had established a drafting committee to carry out regional consultations with HRDs. It was also planning to arrange a meeting with the Parliamentary Committee on Human Rights, which has pledged to support the draft bill, in order to discuss next steps. The HRDN-SL argues that if the bill is enacted it will go a long way towards countering the negative impact of the draft NGO Law that the government is currently trying to pass<sup>156</sup>.

### 3.9 Tanzania

HRDs are not particularly at risk in Tanzania. They do, however, face challenges associated with funding and with raising the profile of their work, and receive little protection.<sup>157</sup> Some new laws<sup>158</sup> also infringe the rights of HRDs and journalists and encourage their criminalisation.<sup>159</sup>

Since 2015, and in the context of the constitutional referendum which has been postponed since April of that year, threats to NGOs, independent media, and HRDs have continued to increase.<sup>160</sup> Presidential and parliamentary elections were also held in October

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153 Email interview with Sierra Leonean HRD. 2 October 2015.

154 Letter from Sierra Leone's Ambassador to the United Nations. 28th Regular Session of the Human Rights Council. 2-27 March 2015.

155 Email interview with Sierra Leonean HRD. 18 October 2016.

156 Ibid.

157 German Embassy in Dar es Salaam. "European Union Guidelines on Human Rights Defenders Local Implementation Strategy Tanzania". No date. p.2. Available at [http://m.daressalam.diplo.de/contentblob/2795972/Daten/890781/Download\\_HRD\\_Tanzania.pdf](http://m.daressalam.diplo.de/contentblob/2795972/Daten/890781/Download_HRD_Tanzania.pdf); Human Rights Watch. "Tanzania: UPR Submission 2015". September 2015.

158 For example the Cybercrimes Act of 2015 and the Statistics Act of 2015.

159 Email interview with Tanzanian HRDs. 11 October 2015.

160 East and Horn of Africa Human Rights Defenders Project (EHAHRDP). "Overview of the Human Rights Situation in the East and Horn of Africa April 2014- April 2015". April 2015. p.20.

2015. While this context led to turmoil, it also created an opportunity to institutionalise democracy further, and to develop new perspectives for HRD protection.<sup>161</sup>

Currently, there is no specific legislation for the protection of HRDs in Tanzania. The Tanzania Human Rights Defenders Coalition (THRDC) is working to create a National Policy for HRDs. The THRDC also lobbied for the inclusion of an article for the protection of HRDs in the new Constitution, drafted in 2013 (subject to referendum). This initiative was, however, dropped when elected members who supported the proposal left the National Assembly.<sup>162</sup>

This absence notwithstanding, in July 2015, draft legislation for the protection of whistle-blowers was passed. The Act **1)** promotes and facilitates the reporting of organised crime, corruption, unethical conduct and illegal and dangerous activities; **2)** provides for the protection of whistle-blowers and witnesses against potential retaliation or victimisation; **3)** establishes a legal mechanism to reward and compensate whistle-blowers and witnesses and **4)** provides for other related matters.<sup>163</sup>

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161 John Mukum Mbatia. "African elections in 2015: a snapshot for Côte d'Ivoire, Tanzania, Burkina Faso and Sudan". 2015. p.53.; The Citizen. "Katiba process in limbo". 15 April 2015.

162 Email interview with Tanzanian HRDs. 11 October 2015.

163 "The whistleblower and witness protection act". Bill Supplement N.14. 2015. p. 3; Center for Law and Democracy. "Tanzania: Whistleblower Protection Law Welcome but Needs Improvement". 14 July 2016.



## 4. ASIA

### 4.1 Indonesia

Efforts by civil society to increase the levels of protection provided to Indonesian HRDs by the National Commission on Human Rights (*Komnas HAM*) are ongoing. In 2015 Komnas HAM created a team to prepare a draft amendment to the existing 1999 Law on Human Rights (UU No. 39, 1999). HRDs were not included in earlier versions of the law, but Ms. Siti Noor Laila, who was appointed as Komnas HAM's Special Rapporteur on HRDs in 2014, has stated that the new draft will include HRD protection.

The Special Rapporteur's functions have not yet been finalised and there is no job description as yet; nor are there any clear instructions on how to protect HRDs beyond what Komnas HAM is already doing. Since September 2015 Komnas HAM has been discussing its internal Regulations on Procedures for the Protection of Human Rights Defenders. Following approval in a plenary meeting, the Regulation was finally adopted as the "Komnas HAM Guidelines for the Protection of HRDs who are Vulnerable and Face Threats as a Result of their Activities".

In cases involving the criminalisation of HRDs, the Special Rapporteur (Commissioner) has made use of Article 89, paragraph 3(h) of Law No. 39 of 1999 on Human Rights, that gives Komnas HAM the duty and authority, "on approval of the Head of Court", to "provide input into particular cases currently undergoing judicial process if the case involves violation of human rights of public issue and court investigation, and the input of the National Commission on Human Rights shall be made known to the parties by the judge". This was the case when her intervention in the case of Mr Gusti Gelombang, community leader and HRD in Central Kalimantan, was acquitted in court.

PI's Protection Desk Indonesia has advocated for the swift implementation of the HRD Protection Mechanism coordinated by Komnas HAM; PI has also encouraged public participation in this new mechanism in order to broaden the participation of CSOs and increase the participation of organisations from outside Jakarta.

The Protection Desk has also made efforts to engage with Jaleswari Pramodhawardani, Deputy of the Presidential Staff for Political, Legal, Security, and Human Rights Affairs. And together with other Indonesian CSO partners, PI met with Sidarto Danusubroto, a Member of the Indonesian Presidential Advisory Council (*Watimpres*) in June 2016, to discuss the protection and security of HRDs.

PI has also successfully advocated for the mainstreaming of WHRD protection issues by the Indonesian National Commission on Violence Against Women (*Komnas Perempuan*) in the second half of 2016.

On 27 September 2016, in cooperation with Komnas HAM, PI and HuMA held a seminar with multiple stakeholders on "The Challenges of Community-Based Human Rights Protection in Indonesia". The dialogue involved speakers from the President's Office, the Ministry of Law and Human Rights, the Witness and Victim Protection Agency (LPSK in Bahasa), the National Police, Komnas HAM and Komnas Perempuan. Additional invitees included representatives of the National Police Commission (*Kompolnas*), the Human Rights Ombudsman, the Constitutional Court, the Attorney General's Office and participants from NGOs, community organisations and the media. The dialogue concluded that, in explicitly legal terms, HRDs remain unprotected and that the state should address the issue of protection and security for HRDs more systematically.

## 4.2 Pakistan

HRDs in Pakistan face high levels of risk, including murder, threats, kidnap, judicial harassment, arbitrary arrest and detention. HRDs working on issues related to women in tribal areas where extremist groups operate are particularly vulnerable.<sup>164</sup> With the merger between the Ministry of Human Rights and the Ministry of Law and Justice, the two civil society-driven initiatives to establish HRD protection in Pakistan were abandoned.<sup>165</sup> The fact Pakistan voted against the UN Resolution on HRDs in December 2015 is also alarming.<sup>166</sup>

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164 Front Line Defenders. "Pakistan". 2015.

165 See Focus report 2014. op cit. p.32.

166 Hans Thoolen. "Follow up on the Human Rights Defenders Resolution in the UN". 5 December 2015.

On 7 May 2015, the Human Rights Commission of Pakistan (HRCP)<sup>167</sup> organised a consultation which was attended by a large number of civil society representatives. The aim was to call upon the Pakistani government to ensure safety and protection for HRDs and to facilitate their work. The meeting resulted in the elaboration of an 11-point Charter of Demands which it was hoped would create a safe and enabling environment for HRDs. The Charter refers to the constitutional and international legal standards governing the protection of HRDs, and describes the Pakistani state's obligations towards HRDs.<sup>168</sup>

Finally, faced with ever-increasing levels of threat, intimidation and murder faced by HRDs and CSOs,<sup>169</sup> and also with government inertia, civil society representatives decided to take the lead and create the Pakistan Human Rights Defenders Network (PHRDN) in October 2016. The network will advocate for the protection of HRDs by engaging with the government and governmental bodies; it will also provide immediate assistance to those at risk<sup>170</sup>.

### 4.3 The Philippines

In the context of the protracted internal conflict, increased militarisation,<sup>171</sup> and the exploitation of natural resources, violence against HRDs and indigenous communities has been rising.<sup>172</sup> Between July 2010 and December 2015, 17 massacres occurred, there were 30 cases of enforced disappearance, and 307 extra-judicial killings were committed; arbitrary arrests also increased.<sup>173</sup>

Although CSOs are working to create space for the recognition and protection of people at risk, there is still no national protection mechanism and little recognition of HRDs in the country. The Commission on Human Rights, controlled by the Head of State and the ruling party, has still not provided effective protection for HRDs, nor respect for human rights in general.<sup>174</sup> Mandates are not complied with and complaints mechanisms are still

167 Independent non-governmental Human Rights body in Pakistan.

168 Human Rights Commission Pakistan (HRCP). "HRCP event adopts charter of demands for protecting HRDs". 7 May 2015; Zohra Yusuf. Alternatives International. "Towards Greater Protection for Human Rights Defenders in Pakistan". 11 May 2015.

169 Christian Solidarity Worldwide. "Pakistan Urged to Protect Human Rights Defenders". 15 July 2016.

170 Dawn. "Rights Defenders Network Launched". 16 October 2016.

171 Principally in Mindanao and Bicol.

172 Meeting with Filipino HRD. Brussels, Belgium. 28 September 2015; OHCHR. *Philippines: UN experts urge probe into killings of three Indigenous peoples' rights defenders*. 22 September 2015; Business and Human Rights Resource Centre. "Philippines: "Development aggression by business blamed for killings of indigenous people in Mindanao". 28 September 2015.

173 Karapatan. "2015 Karapatan end of the Year Report on the Human Rights in the Philippines". 2015. p. 2, 5 and 16.

174 See Focus Report 2014. op. cit. p.33.

inexistent. A draft bill defining certain rights for HRDs (HB01472)<sup>175</sup> has also been blocked in Congress since July 2013 and remained so at the time of writing. The bill had been drafted by local CSOs and presented to the House of Representatives in Congress that same month.<sup>176</sup> Finally, despite the human rights legislation adopted by the government in recent years to extend the protection of human rights and bring the country into line with international standards (such as the Anti-Enforced Disappearance Law of 2012, the Anti-Torture Act of 2009, and the Republic Act No. 10368 – also known as the Human Rights Victims Reparation and Recognition Act of 2013), it has not been effectively implemented and has suffered from neglect and indifference.<sup>177</sup>

The election of Rodrigo Duterte in the May 2016 presidential elections is not expected to improve this situation. Human rights violations and threats to communities continue to occur as a result of counter-insurgency operations. The killing of 13 peasants, illegal arrests and trumped-up charges against leaders and members of social organisations have already been documented in the regions affected by these operations.<sup>178</sup> In addition, the war on drugs launched by the Duterte administration following his election resulted in the killing of 1,105 drug users and traffickers from between 1 July and 14 September 2016.<sup>179</sup>

#### 4.4 Sri Lanka

Despite the end of the protracted armed conflict with the Tamil Tigers in 2009, HRDs in Sri Lanka are still subjected to arbitrary detention, the proffering of criminal charges and intimidation.<sup>180</sup> However, the parliamentary elections held in August 2015 brought to power an alliance between the two traditional political parties, which was supported by important political groupings representing ethnic minorities and progressive intellectuals. Even though progress has been slow up to present, the new government has taken a number of positive measures to improve the human rights situation. In addition, independent appointments were made to the Human Rights Commission of Sri Lanka (HRCSL), which is the prime independent institution safeguarding human rights.<sup>181</sup>

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175 Republic of The Philippines, House of Representatives Website. “House Bills and Resolutions”.

176 See Focus Report 2014. op. cit. p.33.

177 Karapatan. “Alternative Report on the Philippines submitted to the office of the High Commissioner on Human Rights for the 27<sup>th</sup> Session of the Universal Periodic Review in the United Nations Human Rights Council in May 2017”.

178 Ibid. p. 6.

179 Ibid. p. 6.

180 Amnesty International. “Annual Report 2015/2016 on the situation of human rights in the world”. pp. 417-421.

181 INFORM Human Rights Documentation Centre. “Human Rights Situation in Sri Lanka”. August 17 2015 – August 17 2016.

The HRCSL has developed guidelines for state authorities on the protection of HRDs (“Guideline for Protecting Human Rights Defenders”)website. A draft of the document was initially presented to the Civil Society Committee on 20 January 2015. Subsequently, the HRSL held a series of meetings<sup>182</sup> with different civil society representatives across the island, intended to gather feedback, and improve and promote the draft. The HRCSL also had plans to discuss the document with the state authorities before finalising it.<sup>183</sup>

That it has elaborated such a document indicates the HRCSL’s recognition of the importance of the work of HRDs and the challenges they face as a result of their efforts to promote and defend human rights. Although the guidelines do not provide clear instructions on how protection measures should be implemented or by whom, it does remind state authorities of their duty to respect and promote the right to defend human rights. These duties include, among others, the obligation to:<sup>184</sup>

- Recognise the activities of HRDs to promote and protect human rights without discrimination, taking gender into account;
- Respect and protect HRDs’ rights, such as the freedom of association, speech, movement, etc. (as set out in the Constitution);
- Avoid the criminalisation of the lawful activities of HRDs, unlawful arrests and degrading treatment;
- Provide effective protection for HRDs, including timely and effective protection measures;
- Ensure HRDs are able to lodge complaints directly with the relevant authorities;
- Strengthen coordination with state authorities;
- Promote and train state officials; and
- Allocate adequate resources for effective implementation.

Although this is a positive development, PI is not aware of any concrete application of the guidelines to date. PI also wishes to emphasise that the existence of guidelines should not be seen as a replacement for a comprehensive public policy on the protection of HRDs.

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182 These meetings took place in Jaffna, Batticaloa, Trincomalee, Vauniya and Anuradhapura between May and July 2016. South Asian for Human Rights. “Sri Lanka HR Commission issues guidelines to protect Human Rights Defenders”. 19 July 2015.

183 Human Rights Commission of Sri Lanka. “HRCSL Held Island Wide Discussions with Civil Societies to Strengthen the Human Rights Defenders Guideline”. 16 July 2015; Colombo Gazette. “Sri Lanka HR Commission issues guidelines to protect Human Rights Defenders”. 17 July 2015. Asia Pacific Forum of National Human Rights Institutions. “Commission prepares human rights defenders guidelines”. 5 August 2015.

184 Human Rights Commission of Sri Lanka. “Guideline for Protecting Human Rights Defenders”Guideline for Protecting Human Rights Defenders. Available at <http://hrsl.lk/english/wp-content/uploads/2015/07/HRD-English.pdf>

## 4.5 Thailand

The protection of HRDs remains ineffective in Thailand. The National Human Rights Commission of Thailand (NHRCT) has frequently failed to address serious human rights violations in a timely and effective manner.<sup>185</sup> State institutions such as the Department of Special Investigation and the Witness Protection Office also fail to take actions that are required to protect HRDs and investigate crimes committed against them.<sup>186</sup>

In 2013, the NHRCT proposed creating a 'White List' that would include the names of HRDs at risk in order to create public awareness and prompt the authorities to provide protection.<sup>187</sup>

Following the military coup of 22 May 2014, an interim government took over,<sup>188</sup> adopting a new Interim Constitution in July, which promised to protect and uphold "all human dignity, rights, liberties and equality of the people".<sup>189</sup>

Under the interim government, the Ministry of Justice adopted Order 412/2557 on 28 October 2014, giving the Rights and Liberties Protection Department of the Ministry of Justice the power to develop regulations and a protection system to promote Human Rights and Civil Liberties. In order to provide effective measures for the protection of HRDs at risk (i.e., those on the 'White List'), the Department established a Working Group, whose main function is to propose guidelines and work on measures for the protection of HRDs. Its tasks also include the development of criteria and the implementation of the agreed measures.<sup>190</sup>

The principal members of the Working Group are: state representatives (including officials from the Rights and Liberties Protection Department; the Thai Police and the Judge Advocate Generals' Department); the (independent) National Human Rights Commission; and civil society representatives (including an academic and organisations promoting Human Rights).<sup>191</sup>

On 24 July 2015, the Working Group met to discuss the conclusions of two sub-groups. The first sub-group presented a definition of HRDs in line with the UN Declaration on HRDs, but excluded HRDs who violate the law. The second sub-group -on risk analysis

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185 The Commission is independent in theory but not in practice.

186 Front Line Defenders and Protection International. "Joined Submission on Thailand". 21 September 2015. § 48-49.

187 ISHR. "Documentation Package, Model National Law on the Protection of Human Rights Defenders". Bangkok. 23-30 April 2014. p.58.

188 Al Jazeera. "Thai army vows interim government in months". 13 June 2014.

189 Interim Constitution of Thailand 2014. English translation available at [https://www.constitute-project.org/constitution/Thailand\\_2014.pdf?lang=en](https://www.constitute-project.org/constitution/Thailand_2014.pdf?lang=en). The interim constitution was superseded by a new constitution ratified on 6 April 2017.

190 Protection International. Internal report 2015. Not for external distribution.

191 Ibid.

and lessons learned- suggested measures to recognise, reward and engage in follow-up with HRDs working on issues that put them at risk. Although HRDs do not have permanent representation on the Working Group, community-based HRDs were present.

The Working Group has organised several meetings but no concrete actions have been taken since. So far, it has not presented any results.<sup>192</sup>

**PI** participates as a technical advisor to the Working Group and has provided advice on lessons learnt from other experiences of HRD protection regimes. **PI** also helped the Southern Peasants Federation of Thailand (SPFT) attend Working Group meetings.

**PI** recommends, furthermore, that the Rights and Liberties Protection Department, which convenes the Working Group, should: a) increase civil society and HRD participation in the Working Group and invite HRDs from outside Bangkok to attend; b) ensure that HRDs are defined using criteria that conform to international standards; and c) work on establishing a mechanism for a state response to emergency situations faced by HRDs at imminent risk.

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192 Created in 2006 by the Rights and Liberties Protection Department of the Ministry of Justice.

## 5. CONCLUSIONS

This new edition of Focus Report took us over two years to publish since the launch of our Focus report 2014 because we wanted to properly record and analyse recent and fast paced developments experienced in the field of national protection mechanisms (i) the adoption of a national law in Honduras and legislation at local levels in Mexico and DRC; (ii) the rapid expansion of interest in national HRD protection laws in West Africa; (iii) the publication of a model law by the Geneva-based ISHR; (iv) efforts by some national human rights institutions to step up their efforts to protect HRDs; and (v) the more recent discussions to adopt a national public policy in Guatemala.

The increasing interest of governments, state institutions, human rights commissions and civil society actors to discuss the adoption of protection laws and legal frameworks at national level in different continents is indeed a promising sign. This is why this topic continues to be part of PI research agenda.

Nevertheless, current experience and lessons learned in Latin America – where it all started, demonstrate the need to go beyond current approaches. The implementation gap continues to be a big headache. One important consideration to make in this respect is that adopting legislation is only the first step in a longer process. Indeed, the bottomline of a public policy for protection should be to make it possible for state institutions to fulfil their obligation to promote and protect the right to defend human rights. Such a policy should be based on the necessary political will and backing by state officials while encouraging and allowing participation of HRDs in all its governance stages – from adoption to implementation, to evaluation. This also means that protection policies should address the root causes and structural violence against HRDs and strengthen an enabling environment for the defence of human rights. Moreover, effectively protecting those who are at risk, equally entails repealing legislation used to criminalise and hamper the work of HRDs and fighting the impunity that perpetrators enjoy.

Finally, rather than merely seeking to create uniform legislative models through which countries may fulfil the duties enshrined in the UN Declaration on Human Rights Defenders, what is of fundamental importance is that any specific normative developments or public policy for protection, respond to the real needs of local civil society and HRDs. Their objectives and methods should be defined in conjunction with civil society organisations, as should the measures designed to monitor, evaluate and improve programmes once they are in place.



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A man wearing a cap and glasses is looking down at a document. The image is overlaid with a blue tint.

# FOCUS

REPORT

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OF HUMAN RIGHTS DEFENDERS:  
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