

# Integral Protection Policies for Human Rights Defenders



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# EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

1. The Inter-American Commission of Human Rights (hereinafter, “the Commission,” “Inter-American Commission,” or “the IACHR”) has closely monitored the risks faced by human rights defenders as a key part of its protection and promotion mandate. This follow-up has been particularly rigorous since the creation of its Unit for Human Rights Defenders in 2001, and the establishment of the Rapporteurship on the Situation of Human Rights Defenders in 2011. The Commission has consistently received information regarding killings, threats, forms of harassment, criminalization, as well as other human rights violations perpetrated against human rights defenders in relation to their activities.
2. The Commission has published four regional reports on the situation of human rights defenders in the Americas in 2006, 2011, 2013 and 2015.<sup>1</sup> In these reports, the Commission recommended that States promptly adopt an integral and comprehensive protection policy for human rights defenders – which it referred to as a global protection policy – and proposed measures to achieve this goal. In this report, the Commission has decided to rather refer to an integral policy of protection as it finds the term better fitted to the reality it seeks to depict. However, both the terms “global protection policy” and “integral protection policy”, as well as the term “public policy of protection” used by the Inter-American Court of Human Rights (hereinafter, “the Court,” or “the Inter-American Court”) in its most recent decisions,<sup>2</sup> all relate to the same concept.

➤ An “integral protection policy” is based on the recognition of the interrelation and interdependence between the various obligations incumbent on the State to enable human rights defenders to exercise their defense work freely and safely. In this regard, it refers to a comprehensive approach which requires extending protection beyond physical protection mechanisms or systems that operate only when human rights defenders face situations of risk. It calls for the implementation of public policies and measures fomenting respect for the rights of defenders, the prevention of violations of their rights through prompt and effective investigations of

<sup>1</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, (Hereinafter “Report on the Situation of Human Rights Defenders in the Americas”); IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc.66, 31 December 2011, (Hereinafter “Second Report on the Situation of Human Rights Defenders in the Americas”); IACHR, *Guarantees for the Independence of Justice Operators*, OEA/Ser.L/II. Doc. 44, December 5, 2013 (Hereinafter “Guarantees for the Independence of Justice Operators”); IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015 (Hereinafter “Criminalization of the Work of Human Rights Defenders”).

<sup>2</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgement of October 10, 2013. Series C No. 269; IA Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No. 283, para. 142.

acts of violence against them, and the punishment of intellectual and material authors.

3. Since then, various States throughout the Americas have adopted a range of responses to the situation of risk of human rights defenders. Some have developed national protection mechanisms, while others have adopted legislation and policies to respect and guarantee their human rights. The Commission recognizes these positive efforts from States to address the very alarming situation of human rights defenders in the hemisphere. However, the Commission continues receiving very preoccupying information pointing to persistent human rights violations perpetrated against human rights defenders. This information reflects that mechanisms, laws, policies, and practices in place must be improved to provide the required results. Data provided by civil society organizations revealed that in 2016, three out of every four recorded murders of human rights defenders worldwide took place in the Americas.<sup>3</sup> Information received by the IACHR indicates that the killings, assaults, forced disappearances, threats, illegal searches, stigmatizing discourses by high-level authorities in government, criminalization, as well as other forms of financial or administrative restrictions of the work of human rights defenders have continued.
4. Certain groups of defenders are at special risk. The Commission is particularly alarmed at the increasing number of murders of human rights defenders taking place in the context of the defense of land, the environment, and the opposition to "mega projects."<sup>4</sup> Women human rights defenders, from both rural and urban areas, have continued facing significant levels of violence, especially those who work on themes of sexual violence, as well as on sexual and reproductive rights. The Commission has also observed that attacks against defenders working on the promotion and defense of sexual orientation and gender identity rights are escalating.<sup>5</sup> The murders of various high-profile human rights defenders in the recent period such as Berta Cáceres, Noel García, Isidro Baldenegro, and Miriam Elizabeth Rodríguez Martínez, some beneficiaries of precautionary measures from

<sup>3</sup> IACHR, Press Release No.167/2017, *UN Human Rights Office, Inter-American Commission Launch Joint Action Plan on Protection of Human Rights Defenders in the Americas*, October 25, 2017; Frontline Defenders, *Annual Report 2016: Stop the killing of Human Rights Defenders*, ("Annual Report 2016"), 2016, p. 12; Global Witness, *Defenders of the Earth, Global killings of land and environmental defenders in 2016*, July 13, 2017, p. 6; Amnistía Internacional, *Defendemos la tierra con nuestra sangre, personas defensoras de la tierra, el territorio y el medio ambiente en Honduras y Guatemala*, AMR 01/4562/2016, 2016; OHCHR, *Annual Report on Situation of Human Rights in Colombia in 2016*, A/HRC/34/3/Add.3.

<sup>4</sup> IACHR, *Press Releases 2017*, Nos.88/17, *Experts Condemn the Attacks and Killings of Environment Defenders in Guatemala* (June 30, 2017); 72/17, *IACHR issues call of OAS States to Protect Defenders of the Land and Environment* (June 5, 2017), 11/17, *IACHR Condemns Murder of Human Rights Defenders in the Region* (February 7, 2017); Frontline Defenders, *Annual Report 2016: Stop the killing of Human Rights Defenders*, p. 12; Foreword by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders, FIDH/OMCT, Observatory for the Protection of Human Rights Defenders, *We are not afraid, Land rights defenders: attacked for confronting unbridled development*, Annual Report 2014, p. 5.

<sup>5</sup> IACHR, Press Release No. 037/17, *IACHR Condemns Alarming Numbers of LGBT Killings in the Region So Far this Year*, March 23, 2017; IACHR, *Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas*, OEA/Ser.L/V/II. Doc.36/15 Rev.2, para. 335.

the IACHR, illustrate the stark reality faced by human rights defenders throughout the Americas.<sup>6</sup>

5. Therefore, the Commission has prepared this report to support States in their efforts to develop integral policies which are effective in achieving real protection for human rights defenders and their work. To achieve this goal, in this report the Commission analyzes the main advances and challenges in the functioning of key efforts from States, such as national protection mechanisms, legislation, policies, and programs that have been set in place in the region. The Commission also sets out key components of integral protection policies as a guideline for further State efforts in this area. Finally, the Commission concludes its report with a set of recommendations for States to guarantee better implementation of prevention, protection and investigation measures, to achieve effective integral protection policies.
6. The Commission emphasizes in this report that only five States in the region - Colombia, Mexico, Brazil, Guatemala, and Honduras - have adopted national protection mechanisms, and that, in general, very few public policies have been set in place for the prevention of violence against human rights defenders, whether stand-alone or in conjunction with national protection mechanisms. In this regard, the Commission emphasizes that although physical security measures do constitute an urgent and necessary response for the immediate and effective protection of human rights defenders, these physical protection measures alone do not suffice to properly and effectively guarantee the safety of human rights defenders. These measures must be implemented in conjunction with others to progressively address the deeper structural problems that accentuate the risks faced by human rights defenders. The need for more integral protection policies is therefore particularly imperative in countries with well-documented contexts of risk for human rights defenders to perform their work.
7. The Commission underscores that broader and integral solutions are needed to solve the current situation of insecurity that human rights defenders face. Issues such as corruption, the lack of independence and impartiality of justice operators, impunity, the stigmatization of human rights defenders' work and the delegitimizing discourse that surrounds it, as well as barriers to access to justice, all converge to perpetuate the current situation of risk that affects human rights defenders in countries in the Americas.
8. The IACHR reiterates that the work of human rights defenders is fundamental for the implementation of human rights, and for the consolidation of the rule of law. Human rights defenders are an essential pillar for the strengthening and consolidation of democracies. Acts of violence against human rights defenders not only affect the guarantees that must be afforded to them as human beings, but undermine the fundamental role they play in society.

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<sup>6</sup> See, among others, IACHR, *Press Releases 2017*, 11/17, *IACHR Condemns Murder of Human Rights Defenders in the Region* (February 7, 2017); IACHR, *Press Releases 2016*, Nos. 39/16 - *IACHR Deplores Killing of Nelson Noé García in Honduras* (March 21, 2016); 24/16 - *IACHR Condemns the Killing of Berta Cáceres in Honduras* (March 4, 2016).

9. The IACHR reaffirms that, according to Articles 1 and 2 of the Inter-American Convention on Human Rights (hereinafter “the American Convention”), and the basic protections set out in the American Declaration on the Rights and Duties of Man (hereinafter “the American Declaration”), States have the duty to act with due diligence to respect and guarantee the exercise and enjoyment of the rights of all persons, including human rights defenders. Based on the obligations found in these articles, and since its 2006 report, the Commission has referred to the importance of adopting a global or integral protection policy for human rights defenders. In its 2011 report, the Commission went on to detail the elements of this global or integral protection policy.<sup>7</sup> In the current report, the Commission develops the four components of a global or integral protection policy for human rights defenders, pursuant to the obligations mentioned above.

- **First**, States have the **obligation to respect** the rights of human rights defenders, which means that their agents must abstain from violating or tolerating violations of their rights. In this component, the Commission has highlighted the need for authorities to refrain from manipulating the punitive power of the State and its judicial apparatus with the objective of harassing human rights defenders as a result of their work; adopt mechanisms to prevent the excessive use of force in peaceful public demonstrations; or to incur in arbitrary interference in their rights, including in their freedom of speech and association.
- **Second**, States have the obligation to prevent violations of the rights of human rights defenders, through the promotion of their work and the acknowledgement of the important role that they play in democratic societies. As the regional standards set out, the State is required to foster a safe and secure environment in which human rights defenders can perform their work without reprisals: a duty to adopt an appropriate legal framework and guarantee a real and effective implementation of their rights, in order to allow human rights defenders to freely carry out their work. To satisfy this obligation, States must adopt short-term and long-term measures to allow human rights defenders to freely pursue their activities through the fostering of a human rights culture and an environment free from violence and threats; the gathering and maintaining of accurate statistics on violence against defenders; the training of public officials; the official recognition of the role and importance of the work of defenders; and the carrying out of serious and effective investigations of any human rights violations against them. The duties to prevent violations against and protect human rights defenders include the obligation to investigate and sanction human rights violations perpetrated against them, as well as other measures of non-repetition that are conducive to the building of safe contexts in which they can freely carry out their activities.

<sup>7</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, Chapter VI, Recommendations, para. 541.

- **Third**, States have the obligation to employ all means at their disposal to protect and guarantee the rights to life and personal integrity of human rights defenders when they find themselves in a situation of risk. This duty is especially acute, and increased, in contexts of known risk to the personal security of a human rights defender. In countries where violence against human rights defenders is particularly widespread, this increased obligation to protect human rights defenders requires the adoption of specialized mechanisms, legislation, policies, and urgent measures. Special protection measures must take into consideration the causes these defenders seek to advance, the context in which they work, and their geographical location. Their sex, gender, race, and ethnicity should also be taken into account since these factors can increase their risk for human rights violations. Human rights defenders working at the local level may often face increased risks. In this sense, the Commission highlights the importance of adopting specific measures to protect women human rights defenders and LGBTI defenders against violence. The Commission also underscores the need to adopt urgent measures to protect the life and integrity of human rights defenders working on behalf of indigenous, rural and afro-descendent peoples and communities, especially those questioning investment, development, and extractive projects.
- **Fourth**, States must vigorously and exhaustively investigate attacks against human rights defenders, thereby combatting impunity. This includes the consideration as a first line of investigation that the crime may have been related to or motivated by their work as human rights defenders, as well as to guarantee independent and impartial investigations and proceedings. The IACHR has highlighted the importance of exhaustive investigations, prosecution and punishment of all material and intellectual perpetrators of the acts of violence against human rights defenders, with the aim of guaranteeing that they can freely pursue their work.

10. The Commission underscores that any efforts to adopt integral protection policies should be supported by funding and human resources conducive to the adequate enforcement of their goals. It is paramount that States employ efforts to foster a human rights culture and a safe environment for human rights defenders, and initiatives to address the root causes of violence and the problem of impunity for the crimes committed against defenders. Legislative, policy, and institutional measures must include effective risk assessments and the adoption of specialized protocols to address the protection needs of any persons at particular risk.
11. This initiative has been adopted by the Commission to support further steps to fully respect and guarantee the rights of human rights defenders in the hemisphere. The IACHR reiterates its willingness to collaborate with States in the challenges addressed in this report. States must act with due diligence to prevent and respond to all human rights violations faced by human rights defenders and adopt positive measures to create contexts free from violence and other impediments to their work. The work of human rights defenders is vital to the protection of human rights, democracies, and the rule of law in the Americas. The Commission is very grateful

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CHAPTER 1  
INTRODUCTION



# INTRODUCTION

## A. Objectives and Scope of Report

12. Violence against human rights defenders and attempts at silencing them or inhibiting their ability to exercise their activities of promotion, protection, and defense of human rights is not a new phenomenon in the Americas. Since its creation, the Inter-American Commission has dedicated attention to this deeply rooted problem, continuously monitoring the situation of human rights defenders and highlighting the importance of their work, given the irreplaceable role that they play in the building of solid and lasting democracies.<sup>8</sup>
  
13. First in 2006 and then in 2011, in its regional reports on the situation of *Human Rights defenders in the Americas*, then in 2013 in its report on *Guarantees for the Independence of Justice Operators*, and again in 2015 in its report on the *Criminalization of the Work of Human Rights Defenders*, the Commission underscored the fact that the defense of human rights can only be freely exercised when defenders are not subjected to threats or any type of physical, psychological, or moral aggression or other forms of harassment. In its reports, the Commission has expressed alarm over the persistent climate of hostility in which many defenders continue to work.<sup>9</sup> The Commission has consistently highlighted that when defenders' lives and safety are in jeopardy, their work on important issues is adversely affected, thus hindering the health and vibrancy of democracies.<sup>10</sup> Most importantly, in these reports, and through other mechanisms at its disposal, the IACHR has recognized the existence of a right to defend human rights, in harmony with the *United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human*

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<sup>8</sup> See, for instance: IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 46; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 470; IACHR, *Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II. Doc. 43/15, December 31, 2015, para. 191; IACHR, *Report on the Situation of Human Rights in Honduras*, OEA/Ser.L/V/II. Doc. 42/15, December 31, 2015, para. 44; IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 498; IACHR, *Report on the Human Rights Situation in Mexico*, OEA/Ser.L/V/II. Doc. 44/15, December 31, 2015, para. 353, 354, and 355; IACHR, *Report on Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, para. 184, 185, 186, 187, 188, 192 and 193.

<sup>9</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1.

<sup>10</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 471.

*Rights and Fundamental Freedoms* (hereinafter the “UN Declaration on Defenders”).<sup>11</sup>

➤ Concretely, the Commission has consistently recommended since its first *Report on the Situation of human rights defenders in the Americas* in 2006, that integral protection policies be implemented as a **priority matter** by States struggling with violence against human rights defenders. In this regard, both the Inter-American Commission and the Court have consistently reiterated that an integral protection policy requires States to: a) adopt public policies, laws, or any other measures to ensure that defenders are able to freely engage in their activities; b) refrain from imposing administrative, legislative, or any other type of obstacle that would make their work more difficult; c) protect human rights defenders when threats are made to their lives and personal safety or integrity; and d) vigorously and exhaustively investigate threats and attacks committed against human rights defenders and punish the material and intellectual authors of those attacks, thereby combatting impunity.

14. Several States of the region have pioneered the creation of protection programs and mechanisms. The Commission has publicly recognized and welcomed these initiatives, and has monitored their implementation. Indeed, the present situation in many countries of the hemisphere is such that these national protection mechanisms are vital for the protection of human rights defenders as well as for their roles within their communities. The Inter-American Commission has considered that such programs are of utmost importance, as they enable States to comply with their obligation to protect human rights defenders when they are in danger for reasons related to their activities. This obligation has been recognized at the global level in the *United Nations Declaration on Defenders*,<sup>12</sup> and at the inter-American level through the case law of the IACHR<sup>13</sup> and the Inter-American Court of Human Rights,<sup>14</sup> as well as the thematic and monitoring work of the Commission.
15. Notwithstanding the above, the Commission observes that many of the protection mechanisms, programs or policies as currently designed must be improved in order

<sup>11</sup> United Nations General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, March 1999.

<sup>12</sup> United Nations General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, March 1999.

<sup>13</sup> IACHR, Report No 35/17, Case 12.713, *Merits, José Rusbel Lara et al., Colombia* (Spanish only), March 21, 2017; IACHR, Report No. 7/16, Case 12.213, *Merits, Aristeu Guida Silva y Familia, Brazil* (Spanish only), April 13, 2016; IACHR, Report No. 86/13, Cases 12.595, 12.596 and 12.621, *Merits, Ana Teresa Yarce et al., Comuna 13, Colombia*, November 4, 2013, among others.

<sup>14</sup> I/A Court of H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192; I/A Court of H.R., *Case of Kawas-Fernandez v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196; I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269; I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283, para. 262; I/A Court of H.R., *Case of Yarce et al v. Colombia*. Preliminary Objections, Merits, Reparations and Costs, Judgment of November 22, 2016. Series C No. 325.

to produce the required results. The Commission has observed with profound concern the continued and increased situation of vulnerability that many defenders face in the countries of the region due to their activities in defense of human rights. Of utmost concern to the Commission is the loss of the lives of hundreds of defenders in recent years, and the increase of such killings in some specific regions of the Americas for certain groups of human rights defenders, such as those defending causes related to the environment and land rights. The Commission observes that the killings of human rights defenders despite their inclusion in these protection programs, demonstrates the profound shortcomings of these national protection mechanisms and the catastrophic results these shortcomings entail.<sup>15</sup>

16. For these reasons, the IACHR has identified the need to establish clear guidelines for the design of effective integral protection policies in the hemisphere that comply with international and inter-American human rights standards. As part of this initiative, this report analyzes the advances and challenges that existing national protection mechanisms face, as well as the legislation and policies that have been adopted in various countries. The purpose of this report is to provide guidance for the States of the region on developing internal policies, programs, mechanisms and practices for the effective protection of human rights defenders consistent with universal and inter-American human rights standards.
17. Firstly, this report begins with a section that references the preoccupying situation that human rights defenders face. Secondly, the Commission compiles some of the standards developed in its decisions on the merits, in judgments adopted by the Inter-American Court, in the practice of precautionary and provisional measures adopted by the inter-American system, as well as in the Commission's thematic and monitoring work. The purpose of this section is to provide an update of the newest developments in the inter-American system following the publication of its previous reports on the matter<sup>16</sup>.
18. More specifically, since the last report on the situation of human rights defenders, the inter-American Court has issued four seminal rulings related specifically to standards which are relevant to the protection of human rights defenders. In the cases of *Luna López vs. Honduras*<sup>17</sup> and *Human Rights Defender et al. vs. Guatemala*,<sup>18</sup> the Inter-American Court of Human Rights recently provided additional guidance with respect to public policies for the protection of human rights defenders, underscoring the importance of an integral policy of protection as a measure of non-

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<sup>15</sup> See for instance: IACHR, Press release No. 24/16, *IACHR Condemns the Killing of Berta Cáceres in Honduras*, Washington, D.C., March 4, 2016; IACHR, Press Release No. 11/17, *IACHR Condemns Murders of Human Rights Defenders in the Region*, February 7, 2017.

<sup>16</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1; IACHR, *Guarantees for the Independence of Justice Operators*, *supra* note 1; IACHR, *Criminalization of the Work of Human Rights Defenders*, *supra* note 1.

<sup>17</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013, Series C, No. 269.

<sup>18</sup> I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No.283.

repetition. In the case of *Ana Teresa Yarce et al. vs. Colombia*,<sup>19</sup> the Court focused specifically on the duty of the State to protect women human rights defenders in the face of the increased risk that they face because of their gender and their work defending human rights in the context of armed conflict. Finally, the Court issued its sentence in the case of *Acosta y otros v. Nicaragua*<sup>20</sup>, in which it developed its jurisprudence regarding investigation of possible acts of retaliation against human rights defenders.

19. The following section of the report is focused on establishing the components of an integral protection policy for human rights defenders. To this aim, the Commission will summarize some of the obligations that States must observe in order to respect and adequately guarantee the human rights of defenders. These include the obligation to adopt an integral protection policy, to act with due diligence to prevent violations, to protect human rights defenders that are facing situations of risk, as well as to prosecute and punish the violations of human rights. In particular, as part of the obligation to protect, the Commission identifies and analyzes national programs and/or protection mechanisms in the region, noting – in cases where information is available – practices and challenges regarding their laws and regulations, as well as their implementation and functioning. The Commission has identified five countries – Brazil, Colombia, Guatemala, Honduras, and Mexico – that have adopted laws and/or regulations aimed at the protection of human rights defenders. These five programs are in different stages of implementation, with the mechanism in Honduras, established in 2015, being the newest and in the earliest operational phase. The Commission has received a large amount of important information regarding their needs and the challenges they face from human rights defenders themselves, from experts in the field, and from States involved in protection mechanisms. The information provided by these interested parties and their points of view on the needs of human rights defenders in their respective countries are reflected in the content and the final recommendations of this report.
20. In its research, the Commission has also found that other entities or institutions whose mandates do not pertain exclusively to the protection of human rights defenders have an impact on their protection. This is the case of some national human rights institutions or ombudspersons' offices. For instance, special protection measures in Mexico are issued by the National Human Rights Commission (CNDH, by its acronym in Spanish) and the Human Rights Commission of the Federal District (CDHDF, by its acronym in Spanish). The CNDH may also intervene in protection requests presented to the Unit for the Defense of Human Rights, the institution in charge of Mexico's national protection mechanism for human rights defenders and journalists, as well as issue recommendations to improve the latter's functioning. As such, the report will also make reference to other instances that indirectly engage in defending and protecting human rights defenders.

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<sup>19</sup> I/A Court of H.R., *Case of Yarce et al v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C, No. 325.

<sup>20</sup> I/A Court of H.R., *Case of Acosta y otros v. Nicaragua*. Preliminary objections, Merits, Reparations and Costs. Judgement of March 25, 2017. Series C No. 334.

## **B. Important Definitions**

21. There is a consensus at the international level indicating that the criterion to determine whether a person is a human rights defender or not rests upon the activity undertaken by the person.<sup>21</sup> Defenders can be of any gender, of varying ages, and from all sorts of backgrounds. They can be pursuing a personal battle for justice, or a professional objective, regardless of whether they do so on a temporal or permanent basis. Their activities can vary from monitoring, reporting, disseminating, educating, advocating, or defending rights before the justice system.<sup>22</sup> Indeed, any individual who, individually or in association with others, in any way promotes or seeks the realization of human rights and fundamental freedoms at the local, national and/or international levels is considered a human rights defender.<sup>23</sup>
22. The spectrum of human rights and freedoms that can be promoted and protected by defenders is broad. The Commission and Court have emphasized that the defense of rights not only applies to civil and political rights, but also necessarily covers economic, social and cultural rights, according to the principles of universality, indivisibility and interdependence of human rights.<sup>24</sup> Furthermore, the right to promote and to strive for the protection of human rights that are not yet recognized as such in some countries or that are still a matter of debate, has also been established in the *Declaration on Defenders* and recognized in the inter-American system: individuals are therefore free “to develop and discuss new human rights ideas and principles and to advocate for their acceptance.”<sup>25</sup>
23. The definition of a human rights defender lies in the work carried out, regardless of whether the individual acts as a private individual or as a

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<sup>21</sup> Article 1 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*, March 1999; IACHR, *Criminalization of the Work of Human Rights Defenders*, *supra* note 1, para. 19; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 13; I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No.283, para. 129.

<sup>22</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, *supra* note 1, para. 21.

<sup>23</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 13.

<sup>24</sup> I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No.283, para. 129; I/A Court of H.R., *Case of Kawas Fernandez v. Honduras*. Judgment of April 3, 2009. Merits, Reparations and Costs, Series C No. 196, para. 147.

<sup>25</sup> Article 7 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*, March 1999, *supra*; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 326.

public servant.<sup>26</sup> The State, as a duty bearer, must guarantee the protection of all of these defenders without exception. As such, in some instances, government officials, civil servants or members of the private sector might also be or act as human rights defenders.<sup>27</sup> Public servants - such as judicial operators for instance – frequently suffer threats and violence in the execution of their functions, and must be regarded as human rights defenders and afforded the same guarantees of prevention and protection.<sup>28</sup> The IACHR Rapporteurship on Human Rights Defenders has been the focal point for the monitoring and follow-up of the situation of justice operators, in recognition of the special function that they perform in the defense of human rights, as the guarantors of the right of access to justice and to redress.<sup>29</sup>

24. The work of human rights defenders is fundamental for the universal implementation of human rights, the existence of full and lasting democracies, and the consolidation of the rule of law. Human rights defenders are an essential pillar for the strengthening and consolidation of democracies, since they exercise the “necessary social oversight of public officials and democratic institutions.”<sup>30</sup> In this sense, acts of violence against human rights defenders not only affect the guarantees that must be afforded to every human being, but undermine the fundamental role defenders play in society. These acts directly impact the persons they work for, by eliminating their voice, causing fear, and by creating an intimidating effect among other human rights defenders,<sup>31</sup> contributing to the vulnerability and defenselessness of those whose causes they champion. Accordingly, when a person is kept from defending human rights, the rest of society, and in general, the rule of law and the functioning of a democratic society, are directly impacted.<sup>32</sup>

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<sup>26</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgement of October 10, 2013. Series C No.269, paras. 117-118.

<sup>27</sup> OHCHR, *Informative Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights*, April 2004.

<sup>28</sup> IACHR, *Hearing on the National Protection System for Defenders and Justice Operators in the Americas*, 157<sup>th</sup> Period of Sessions, April 8, 2016; IACHR, *Guarantees for the Independence of Justice Operators*, *supra* note 1.

<sup>29</sup> In its 2006 Report, the Commission underscored the importance of the work of defending human rights done by those charged with administering justice and investigating human rights violations (at para. 110). Likewise, in its 2011 Report, the Commission made reference to the work that judges, prosecutors, solicitors, public defenders, and agents of the administration of justice perform in the defense of human rights (at para. 349). In 2013, the Commission also published a specific report on the situation of justice operators: IACHR, *Guarantees for the Independence of Justice Operators*, *supra* note 1.

<sup>30</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, *supra* note 1, para. 22.

<sup>31</sup> I/A Court of H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 96; I/A Court of H.R., *Case of Huilca Tecse, v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No.121, para. 78.

<sup>32</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 34.

25. This is one of the reasons for which the international community has recognized the right to defend human rights, and the resulting obligation of States to guarantee it. The inter-American system has worked to develop standards related to the protection of the right to defend human rights, through the rights recognized in the international instruments within its jurisdiction. In this regard, for instance, the Inter-American Court has noted on repeated occasions that “States must implement the necessary measures to ensure that those who denounce human rights violations can carry out their activities freely; to protect human rights defenders when they are threatened in order to avoid attacks on their life and personal integrity; to generate the conditions necessary to eradicate human rights violations by State agents or individuals; to abstain from imposing obstacles to the work of human rights defenders; and to investigate effectively and efficiently violations committed against them, in order to combat impunity.”<sup>33</sup>
26. The Commission considers important to highlight its understanding of the terms “integral protection policy” and “national protection mechanisms” for the purpose of this report.
27. With the term “integral protection policy” the Commission refers to a broad and comprehensive approach to the effective protection of human rights defenders, based on the general obligations to respect and guarantee rights as well as to adopt measures for the effective realization of human rights, which contemplates a series of obligations of a different nature that ensure the continuity of the defense of human rights in a free and safe manner, in the face of various obstacles that human rights defenders face in the exercise of their work.<sup>34</sup>
28. In this regard, an integral protection policy includes measures directed at preventing human rights violations, at removing obstacles faced by human rights defenders, and at guaranteeing that State agents abstain from interfering with or curtailing their rights. These measures should be joined by public policies, laws, and measures aimed at increasing awareness of the key role of human rights defenders in society and among public officials; and the fostering of a safe environment for the performance of their work. In addition, one of the essential components of an integral protection policy is to include measures for the physical protection of human rights defenders that are at risk as a result of their activities, in such a way that they may

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<sup>33</sup> I/A Court of H.R., *Case of Kawas Fernandez v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 145; I/A Court of H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs, Judgment of November 27, 2008. Series C No. 192, para. 96; I/A Court of H.R., *Case of Huilca Tecse, v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No.121, para. 91.

<sup>34</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, supra note 1; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, supra note 1; IACHR, *Guarantees for the Independence of Justice Operators*, supra note 1; IACHR, *Criminalization of the Work of Human Rights Defenders*, supra note 1.

continue their work in safe and secure conditions. Finally, an integral protection policy must also be accompanied by measures aimed at eradicating impunity for violations of the rights of human rights defenders, through diligent and exhaustive investigations, persecution and sanction of material and intellectual authors of the crime. All these components are closely interrelated, and although they involve obligations of a different nature, they must all be fulfilled integrally to enable the creation of a safe and secure environment for the exercise of human rights defense.

29. With the term “national protection mechanism,” the Commission refers to State programs which aim to guarantee safety and security to human rights defenders and their families when they find themselves in a situation of risk to their rights. In this regard, these programs are part of the integral protection policy for human rights defenders, more concretely as they pertain to the duty to protect rights, and can encompass the granting of physical protection measures such as bodyguards, armored vehicles, police supervision, and installment of lights, security cameras, doors or locks, among many others. Measures can also include temporary relocation, transportation costs when a defender needs to seek refuge, the direct phone number of a high official, cellular phones and panic buttons, accompaniment, manuals or trainings on self-protection, and other protection safeguards or support services. The types of protection measures adopted should be chosen in consultation with each human rights defender and considering their specific risks and needs. The protection measures granted should be integral and broad in scope, considering means beyond armed protection.
30. The Commission has observed that material protection measures tend to focus largely on protection in the face of at-risk situations, which is necessary and important. However, they may not necessarily include an integral and preventive approach, along with a series of other measures, which are needed in order to forge an effective overall policy geared not just to preventing the most imminent threats, attacks, or reprisals, but their root causes as well. As mentioned above, such a policy requires adopting broader prevention measures and ensuring that State agents refrain from violating or arbitrarily meddling with the defenders’ rights. It also requires diligent investigation of the perpetrators: a prerequisite for averting a repetition of the acts of violence and effectively mitigating the risks the defenders face.

## ***C. Methodology of the Report***

31. The Rapporteurship implemented a number of activities described below as part of the information-gathering process which preceded the publication of this report.

32. The Rapporteurship organized an expert meeting on April 1, 2016, focused on national protection mechanisms, in which experts from civil society and State authorities participated, as well as Commissioner and Rapporteur José de Jesús Orozco Henríquez, and staff of the IACHR Secretariat. Those present offered specialized inputs and technical information regarding applicable standards in international and comparative law which should guide the creation and execution of national protection mechanisms for human rights defenders, including justice operators. The discussion centered on four topics in particular: 1) methodologies for risk evaluation and the lifting/removal of protection measures; 2) dialogue with heads of national protection systems, and other national institutions involved in the protection of human rights defenders; 3) identification of suitable and effective protection measures, as well as 4) challenges and good practices.
33. During the expert meeting, those present highlighted concerns with current protection mechanisms, and their insufficient focus on eliminating impunity. A main consensus of the meeting was that States should undertake effective investigations, prosecutions, and punishment as a first response to human rights violations against defenders, and that protection mechanisms should be conceptualized as a specialized tool when general approaches are insufficient. Experts expressed concern over the lack of flexibility in the criteria for the evaluation of risk, and insisted on the importance of taking into account the specific circumstances, the causal nexus with the defender's work, the identity of alleged perpetrators, the *modus operandi* and structure of criminal groups, the capacity of the aggressor to carry out the threat, the aggressor's interest in carrying out an attack against the defender, and the defender's personal background and identity. They also insisted on the importance for defenders to be informed of the conclusion of the risk analysis and its reasoning, as well as their right to appeal it. Experts highlighted concerns with regard to the enforcement of measures, such as the lack of appropriate coordination between the authorities in charge, the failure to concert measures with the beneficiary, and the fact that some protection schemes implemented by national protection mechanisms would hinder the human rights work of the defender rather than facilitate it. The participants also expressed concern with regard to the lack of political will, reflected in the insufficient budget and human resources being allocated to the protection mechanisms, as well as the lack of confidence in the protection system. The recommendations that were shared during the expert meeting, and in particular those about which the experts found consensus, have been taken into consideration in formulating the final recommendations of this report.
34. The Rapporteurship also convened a thematic hearing during its 157<sup>o</sup> Period of Sessions on April 8, 2016, focused on national protection systems for human rights defenders and justice operators. The organizations reported various challenges which affect the functioning of national protection systems in the Americas, and emphasized the need to find ways to guarantee the right to defend human rights, including the obligation to adopt measures aimed at removing the structural causes of risk inherent to the work of human rights defenders. The organizations proposed a protection focus which takes into account civil society participation and expressed their concern over the lack of prevention and investigation tools and how this works against the eradication of the structural causes of risk. The organizations stressed

the need to evaluate protection from a holistic perspective that takes into account the multiple, diverse, and concurrent factors which accentuate risk, considering the specific needs of human rights defenders.

35. The Commission also prepared a questionnaire in the four languages of the Organization of American States, which was circulated to all 35 Member States of the OAS and to civil society and academic institutions on July 6, 2016. In total, 47 responses were received. Responses were received from 15 States,<sup>35</sup> from five State bodies or institutions whose mandates relate to the protection of human rights defenders,<sup>36</sup> as well as from 24 civil society organizations<sup>37</sup> and individuals.
36. This report was also greatly informed by the historic work of the Commission to address the numerous risks faced by human rights defenders. Throughout the report, the Commission refers to case decisions adopted by both itself and the Court, precautionary and provisional measures, hearings, on-site visits, and the findings of other mechanisms of the inter-American system of human rights. The Commission, through its Rapporteurship on the Rights of Human Rights Defenders, country reports, thematic reports, annual reports, as well as its precautionary measures mechanism, monitors the situation of human rights defenders in the region on a daily basis; process through which it collects valuable amounts of information on the situation of human rights defenders generally within different countries across the hemisphere, as well as risks to specific defenders, and on the advances and setbacks in the implementation of national protection mechanisms. Much of this information, obtained through research, public hearings, information from civil society organizations at the local and national level, or publicized by international organizations, has also contributed to the content of this report.
37. The Commission is grateful to the Open Society Foundations and the Government of Finland for the support it offered in making these activities possible.

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<sup>35</sup> The Commission thanks the States of Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, and Venezuela for their answers.

<sup>36</sup> The Commission thanks the office of the Ombudsman of Belize, the *Comisión de Derechos Humanos del Distrito Federal* of Mexico, the *Procurador de los Derechos Humanos* of Guatemala, the *Procuraduría General de la República* of Honduras, the *Comisión de Derechos Civiles de Puerto Rico* for their answers.

<sup>37</sup> The Commission wishes to thank the following civil society organizations for their answers: the *Asociación de Travestis, Transexuales y Transgéneros de Argentina*, the *Grupo de mujeres de la Argentina – Foro de VIH – mujeres y familia* of Argentina, the *Colegio de abogados de Chuquisaca* de Bolivia, the *Asamblea Permanente de Derechos Humanos La Paz* of Bolivia, the *Associação Nacional de Juristas Evangélicos* of Brazil (ANAJURE), the *Cascos Azules de Chile*, *Corporación Casa de la Mujer* of Colombia, *Red de Ciudadanos Veedores y Veedurías del Area Metropolitana de Bucaramanga* of Colombia, *Colombia Diversa*, *Acción Ecológica* of Ecuador, the *Comisión Ecuémica de Derechos Humanos de Ecuador* (CEDHU), the *Asociación Silueta X* of Ecuador, *UDEFEQUA* of Guatemala, the *Espacio de Organizaciones de la Sociedad Civil para la Protección de Personas Defensoras de Derechos Humanos y Periodistas (Espacio OSC)* of México, the *Casa del migrante de Saltillo*, the *Centro de Investigación y Capacitación Propuesta Cívica A.C.* of México, the *Comité de familiares de detenidos desaparecidos en Honduras*, the *Voces de mujeres afrodescendientes en Panamá/Red de mujeres afrolatinoamericanas afrocaribeñas y de la diáspora* of Panama, the *Coordinadora Nacional de Derechos Humanos* of Peru, the *ACLU* in the United States, the *Fundacion Provene* of Venezuela, the *CEPRODEH* of Venezuela, *Peace Brigades International* of Mexico, *ISHR*.

CHAPTER 2  
SITUATION OF HUMAN RIGHTS  
DEFENDERS IN THE AMERICAS



## SITUATION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS

38. Defending human rights has notoriously been – and remains – an extremely dangerous activity in the Americas. Despite efforts adopted by State authorities in the last decade to improve the situation of human rights defenders, the Inter-American Commission on Human Rights continues to observe, through its different monitoring mechanisms, an increase in violence, threats, and intimidation against human rights defenders, the deterioration of the general situation of security in which they operate, and the ineffectiveness of protection measures.<sup>38</sup> The Commission regularly publishes press releases to express its concern over the situation of killings of human rights defenders.<sup>39</sup>
39. Following the adoption of its first thematic report on the situation of human rights defenders, published in 2006, and after its follow-up report in 2011<sup>40</sup>, the Commission has continued receiving information on the situation of human rights defenders in countries of the region, where patterns of threats, harassment, attacks, and assassination attempts, as well as excessive use of force have been brought to light.<sup>41</sup> Civil society organizations have informed the Commission, for instance, that in 2016, three out of every four recorded murders of human rights defenders

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<sup>38</sup> See for instance IACHR, *Annual Report 2015*, Chapter 4 reports on *Cuba* (pars. 40, 89), *Guatemala* (para. 18), *Venezuela* (pars. 234, 244, 246, 250), and Chapter 5, *Follow-up Report on Recommendations issued by the IACHR in its Country or Thematic Report on Colombia*, paras. 336-344, 359.

<sup>39</sup> See for instance, IACHR, *Press Releases 2017*, Nos.88/17, *Experts Condemn the Attacks and Killings of Environment Defenders in Guatemala* (June 30, 2017); 72/17, *IACHR issues call of OAS States to Protect Defenders of the Land and Environment* (June 5, 2017), 11/17, *IACHR Condemns Murder of Human Rights Defenders in the Region* (February 7, 2017); IACHR, *Press Releases 2016*, Nos. 39/16 - *IACHR Deplores Killing of Nelson Noé García in Honduras* (March 21, 2016); 28/16 - *IACHR Condemns Killing of Members of the Toluán Indigenous Peoples in Honduras* (March 7, 2016); 27/16 - *IACHR Condemns Killings and Other Acts of Violence against Human Rights Defenders of LGBT Persons in Honduras* (March 7, 2016); 24/16 - *IACHR Condemns the Killing of Berta Cáceres in Honduras* (March 4, 2016); 21/16 - *IACHR Condemns Killings and Threats Directed against Human Rights Defenders in Colombia* (February 25, 2016); 123/15 - *IACHR Condemns Killing of Trans Human Rights Defender in Argentina* (October 30, 2015); 89/15 - *IACHR Condemns Killing of Human Rights Defender in Mexico* (August 17, 2015); 70/15 - *IACHR Condemns Murder of Human Rights Defenders in Colombia* (June 12, 2015); 63/15 - *IACHR Condemns Killing of Human Rights Defender of Trans Persons in El Salvador* (June 8, 2015); 60/15 - *IACHR Condemns Killings of Indigenous Human Rights Defenders in Brazil* (June 4, 2015); 11/15 - *IACHR Condemns Killing of Human Rights Defender in Mexico* (February 12, 2015); 7/15 - *IACHR Condemns Killing and Threats Against Defenders and Journalists in Colombia* (January 30, 2015).

<sup>40</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1.

<sup>41</sup> IACHR, *Annual Report 2015*, Chapter IV.A, para. 198 et s., Chapter 4B and Chapter 5.

worldwide took place in the Americas; and were mostly concentrated in Brazil, Colombia, El Salvador Honduras, Guatemala, Mexico, and Nicaragua.<sup>42</sup>

40. In fact, in 2016, an increasing number of murders of human rights defenders took place in the context of the defense of land rights and the opposition to "mega projects" – especially those developed by mining companies – and their work denouncing the negative impacts of these mining activities.<sup>43</sup> In this regard, Global Witness reported that in 2016, "at least 200 land and environmental defenders were murdered – the deadliest year on record".<sup>44</sup> It reported that Brazil was the "deadliest country" for land and environmental defenders in terms of sheer numbers of killings, with 49 murders; that Honduras was "the most dangerous country *per capita* historically" for these defenders, with a total of 127 killings over the last decade; and that Nicaragua was qualified as the country with the most of these killings *per capita* in 2016.<sup>45</sup> In Colombia, in 2016, killings of defenders reached an alarming level,<sup>46</sup> despite the recent signing of the *Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace*.<sup>47</sup>

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<sup>42</sup> IACHR, Press Release No.167/2017, *UN Human Rights Office, Inter-American Commission Launch Joint Action Plan on Protection of Human Rights Defenders in the Americas*, October 25, 2017; Frontline Defenders, *Annual Report 2016: Stop the killing of Human Rights Defenders*, ("Annual Report 2016"), 2016, p. 12; Global Witness, *Defenders of the Earth, Global killings of land and environmental defenders in 2016*, July 13, 2017, p. 6; Amnistía Internacional, *Defendemos la tierra con nuestra sangre, personas defensoras de la tierra, el territorio y el medio ambiente en Honduras y Guatemala*, AMR 01/4562/2016, 2016; OHCHR, *Annual Report on Situation of Human Rights in Colombia in 2016*, A/HRC/34/3/Add.3.

<sup>43</sup> IACHR, Press Release No.011//7, *IACHR Condemns Murders of Human Rights Defenders in the Region*. February 7, 2017; United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst, *Situation of environmental human rights defenders*, A/17/281, August 3, 2016; Frontline Defenders, *Annual Report 2016: Stop the killing of Human Rights Defenders*, p. 12; Amnistía Internacional, *Defendemos la tierra con nuestra sangre, personas defensoras de la tierra, el territorio y el medio ambiente en Honduras y Guatemala*, AMR 01/4562/2016, 2016; Foreword by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders, FIDH/OMCT, Observatory for the Protection of Human Rights Defenders, *We are not afraid, Land rights defenders: attacked for confronting unbridled development*, Annual Report 2014, p. 5. See also: The Guardian, *Environmental defenders being killed in record numbers globally, new research reveals*, July 13, 2017; Leah Temper, Daniela del Bene and Joan Martinez-Alier. *Mapping the frontiers and front lines of global environmental justice: the EJAtlas*. Journal of Political Ecology, 2015, vol. 22, pp. 255-278.

<sup>44</sup> Global Witness, *Defenders of the Earth, Global killings of land and environmental defenders in 2016*, July 13, 2017, p. 6.

<sup>45</sup> *Ibidem*, pp. 6-7, 48.

<sup>46</sup> Defensoría del Pueblo de Colombia, *Al menos 120 líderes y defensores de DD.HH. han sido asesinados en los últimos 14 meses, reportó la Defensoría del Pueblo*, March 3, 2017; CCEU, *Ataques a los Defensores de Derechos humanos en Colombia se incrementan por falta de voluntad para esclarecer y dismantelar las estructuras criminales que los perpetraron*, April 21, 2017; Observatorio de Derechos Humanos y Derecho Internacional Humanitario, *Programa Somos Defensores, Contra las cuerdas*, Annual Report 2016, p. 43; Global Witness, *Defenders of the Earth, Global killings of land and environmental defenders in 2016*, July 13, 2017, p. 6; OHCHR, *Annual Report on Situation of Human Rights in Colombia in 2016*, A/HRC/34/3/Add.3; BBC Mundo, *El preocupante aumento de asesinatos de líderes sociales en Colombia que las autoridades no logran detener*, 12 de abril de 2017.

<sup>47</sup> Oficina del Alto Comisionado para la Paz, *Texto completo del Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, August 24, 2016. Translation of the Colombian Government. See Presidencia de la República, *Summary of Colombia's Agreement to End the Conflict and Build Peace*, 2016.

41. The groups that have been identified as being more vulnerable to risk are those working in the defense of the environment, land rights, and indigenous peoples' rights,<sup>48</sup> which pursuant to information received in 2017, amounted to 41% of the killings of defenders in the region.<sup>49</sup> These groups have been identified as particularly vulnerable in countless occasions.<sup>50</sup>
42. The Commission agrees with the UN Special Rapporteur on the situation of human rights defenders, Michel Forst, that "the environment of operation of land rights defenders is particularly deleterious. Their isolation and the implication of powerful economic actors make them particularly vulnerable."<sup>51</sup> Only in 2017, the Commission issued various press releases calling on OAS Member States to protect defenders of the land and the environment.<sup>52</sup> It has expressed concern over the number of attacks faced by the defenders of the environment in Guatemala due to their opposition to large-scale projects;<sup>53</sup> the growing number of socio-environmental conflicts in the region; the increased risks for defenders of the land

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<sup>48</sup> Frontline Defenders, *Annual Report 2016: Stop the killing of Human Rights Defenders*, p. 12; Global Witness, *Defenders of the Earth, Global killings of land and environmental defenders in 2016*, July 13, 2017, p. 6; United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst, *Situation of environmental human rights defenders*, A/17/281, August 3, 2016, para. 1-6, 24-40; Global Witness, *How Many More*, April 20, 2015; Global Witness, *Deadly Environment*, 15 April 2014; FIDH/OMCT, Observatory for the Protection of Human Rights Defenders, *We are not afraid, Land rights defenders: attacked for confronting unbridled development*, Foreword by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders, Annual Report 2014.

<sup>49</sup> IACHR, Press Release No.167/2017, *UN Human Rights Office, Inter-American Commission Launch Joint Action Plan on Protection of Human Rights Defenders in the Americas*, October 25, 2017; Frontline Defenders, *Annual Report 2016: Stop the killing of Human Rights Defenders*, p. 12; World Resources Initiative, *Protecting Environmental Defenders: Panel on Emerging State Practices in Latin America and the Caribbean*, February 28, 2017; Article 19, *A deadly shade of green, Threats to environmental human rights defenders in Latin America*, 2016, p. 4.

<sup>50</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 469 et ss.; United Nations, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/19/55, December 21, 2011; FIDH/OMCT, Observatory for the Protection of Human Rights Defenders, *We are not afraid, Land rights defenders: attacked for confronting unbridled development*, Foreword by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders, Annual Report 2014; United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst, *Situation of environmental human rights defenders*, A/17/281, August 3, 2016; Global Witness, *Deadly Environment*, 15 April 2014; Global Witness, *How Many More*, April 20, 2015; Global Witness, *Defenders of the Earth, Global killings of land and environmental defenders in 2016*, July 13, 2017.

<sup>51</sup> Foreword by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders, FIDH/OMCT, Observatory for the Protection of Human Rights Defenders, *We are not afraid, Land rights defenders: attacked for confronting unbridled development*, Annual Report 2014, p. 5.

<sup>52</sup> IACHR, Press Release No.72/17, *IACHR issues call of OAS States to Protect Defenders of the Land and Environment* (June 5, 2017).

<sup>53</sup> IACHR, Press Release No.88/17, *Experts Condemn the Attacks and Killings of Environment Defenders in Guatemala* (June 30, 2017).

and of the environment in the region;<sup>54</sup> and the murders of high-profile leaders and defenders of the right to land and to the environment.<sup>55</sup>

43. In relation with other groups of defenders in a special situation of vulnerability, the Commission has observed that women human rights defenders, both from rural or urban areas, face significant levels of violence, especially those who work on issues of sexual violence, as well as on sexual and reproductive rights.<sup>56</sup> In many countries of the region, women defenders continue to be in an increased situation of risk of violence because of gender stereotypes, historical discrimination, and prejudicial beliefs regarding how they should dress, behave, or the roles they should hold in society.<sup>57</sup> During 2016, civil society organizations in Guatemala, for instance, expressed their concern over the increase in attacks resulting in deaths of women human rights defenders;<sup>58</sup> and civil society organizations from Ecuador, Peru and El Salvador insisted on the differentiated types of violence – mostly gender-based and sexual – faced by women human rights defenders who defended their rights to their land, territories, water or to a healthy environment.<sup>59</sup> Just recently, the Commission expressed its concern over the murder of Miriam Elizabeth Rodríguez Martínez, who worked on behalf of women and girls disappeared in the Mexican state of Tamaulipas.<sup>60</sup> After the disappearance of her daughter in 2012, Miriam Rodríguez investigated her whereabouts on her own and vigorously sought justice for her death until her own killing.
44. The Commission also observes that attacks against defenders working on the promotion and defense of sexual orientation and gender identity rights are escalating.<sup>61</sup> The IACHR has followed this situation closely in its recent *Report on*

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<sup>54</sup> IACHR, Press Release No.72/17, *IACHR issues call of OAS States to Protect Defenders of the Land and Environment* (June 5, 2017).

<sup>55</sup> *Idem*; IACHR, Press Release No. 11/17, *IACHR Condemns Murder of Human Rights Defenders in the Region* (February 7, 2017).

<sup>56</sup> Frontline Defenders, *Annual Report 2016: Stop the killing of Human Rights Defenders*, p. 12.

<sup>57</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para 283; IACHR, Report No. 86/13, Cases 12.595, 12.596 and 12.621, *Merits, Ana Teresa Yarce et al., Comuna 13*, Colombia, November 4, 2013, para. 167-174.

<sup>58</sup> UDEFEGUA, *Exprésate con otro rollo, sin odio, Informe sobre situación de Defensoras y Defensores de Derechos Humanos*, Semi-annual Report 2016, gráfica 5; *Interreligious task force on Central America on Central America, Letter to President Morales and Attorney General Aldana*, September 25, 2016.

<sup>59</sup> IACHR, Hearing, 156 Period of Sessions, *Situation of Defenders of the Human Rights of Indigenous Peoples and of the Environment in Ecuador*, October 19, 2015; IACHR, Hearing, 165 Period of Sessions, *Women defenders of the environment in Latin America*, October 25, 2017.

<sup>60</sup> IACHR, Press Release No.067/17, *IACHR Repudiates Killing of Human Rights Defender in Tamaulipas, Mexico* (May 24, 2017).

<sup>61</sup> In this section, the IACHR uses the *LGBTI* acronym when referring to lesbian, gay, bisexual, trans and intersex persons. When referring to violence only experienced by lesbian, gay, bisexual, and trans persons, the IACHR uses the *LGBT* acronym. IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 330 et al; IACHR, *Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas*, OEA/Ser.L/V/II. Doc.36/15 Rev.2, para. 335. (Hereinafter, “Violence against LGBTI persons”).

*Violence against Lesbian, Gay, Bisexual, Trans and Intersex peoples in the Americas*<sup>62</sup> and noted that three reasons led to an increase in risk for these defenders. A first level of risk was attributable to the identification of some of these defenders as members of the LGBT community, a second level owed to their role as human rights defenders, and a third level was related to the causes that they champion.<sup>63</sup> In this respect, the report underscored that “human rights defenders who both identify as LGBT and who work to protect and promote the human rights of LGBT persons, experience alarming levels of vulnerability created by the intersection of their sexual orientation and gender identity, role as defenders, and the issues on which they work.”<sup>64</sup> The UN Special Rapporteur on Human Rights Defenders has expressed concern over continuing smear campaigns and violent threats against LGBT human rights defenders.<sup>65</sup> With regards to the killings of LGBTI defenders, the IACHR has observed that there is a serious problem of lack of identification and acknowledgment of the magnitude of these events, mainly because many of these attacks against LGBTI defenders take place within a context of generalized violence against persons based on their sexual orientation or non-conforming gender identity.<sup>66</sup>

45. In addition to violence and attempts on their right to life, the Commission observes that human rights defenders in the region also have suffered incidents of judicial harassment, physical aggression, threats, intimidation, and defamation campaigns, particularly in Brazil, Colombia, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay and Peru.<sup>67</sup> The Commission has called attention to the excessive, and unwarranted use of criminal law against human rights defenders and participants of peaceful social protest movements, in the form of presumably unfounded criminal proceedings, arbitrary arrests, and prolonged use of pretrial detention. In half of the cases of criminalization reported, the defender was an indigenous leader.
46. This rising tendency to criminalize the defense of human rights and peaceful social protest movements has become an issue of such concern to the Rapporteurship on the Rights of Human Rights Defenders, that it became the subject of a thematic

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<sup>62</sup> In this section, the IACHR uses the *LGBTI* acronym when referring to lesbian, gay, bisexual, trans and intersex persons. When referring to violence only experienced by lesbian, gay, bisexual, and trans persons, the IACHR uses the *LGBT* acronym.

<sup>63</sup> IACHR, *Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas*, *supra* note 59, para. 335; IACHR, *Report on Criminalization of the Work of Human Rights Defenders*, *supra* note 1, para. 158 et ss.; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, paras. 325-337.

<sup>64</sup> IACHR, *Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas*, *supra* note 59, para. 335.

<sup>65</sup> Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/13/22, 13th session, December 30, 2009, para. 49.

<sup>66</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 331.

<sup>67</sup> Frontline Defenders, *Annual Report 2016: Stop the killing of Human Rights Defenders*, p. 12; Observatorio de Derechos Humanos y Derecho Internacional Humanitario, *Programa Somos Defensores, Contra las cuerdas*, Annual Report 2016, p. 43; Global Witness, *Defenders of the Earth, Global killings of land and environmental defenders in 2016*, July 13, 2017, p. 6; OHCHR, *Annual Report on Situation of Human Rights in Colombia in 2016*, A/HRC/34/3/Add 3.

report adopted in December 2015.<sup>68</sup> In the Americas, both State and non-State actors, such as businesses and illegal groups, have been the driving force behind the initiation of judicial proceedings against human rights defenders, community leaders, and indigenous peoples.<sup>69</sup> This criminalization and stigmatization of defenders contributes to their marginalization, their identification as “traitors” or “opponents,” their isolation from society, and to their increased vulnerability and risk in the face of aggression.<sup>70</sup> This Commission observes that the process of criminalization of leaders frequently results in the obstruction or weakening of the movements they serve.

47. The Commission has also monitored the situation of judges, public defenders, attorneys and prosecutors in the region, and has identified a series of obstacles which include institutional deficiencies in the guarantee of the independence of the judicial branch, as well as attacks, aggression, and harassment in retaliation for the actions of justice operators.<sup>71</sup> The Commission emphasizes that some States confront a serious situation of personal and professional risk and insecurity for justice operators. This is evidenced by the significant number of attempts against their lives and physical integrity; by frequent unjustified job transfers or removals from their positions when their work is viewed as critical of the government in place; as well as by the activities of organized crime organizations against them.<sup>72</sup> Finally, it is worth mentioning that journalists and media workers are also increasingly the subject of violence and attacks.<sup>73</sup>

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<sup>68</sup> IACHR, *Report on Criminalization of the Work of Human Rights Defenders*, *supra* note 1.

<sup>69</sup> United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst, A/17/281, August 3, 2016, para. 1-6, 24-40; Amnistía Internacional, *Defendemos la tierra con nuestra sangre, personas defensoras de la tierra, el territorio y el medio ambiente en Honduras y Guatemala*, AMR 01/4562/2016, 2016; Frontline Defenders, *Annual Report 2016: Stop the killing of Human Rights Defenders*, p. 12; Foreword by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders, FIDH/OMCT, Observatory for the Protection of Human Rights Defenders, *We are not afraid, Land rights defenders: attacked for confronting unbridled development*, Annual Report 2014, p. 5. See also: The Guardian, *Environmental defenders being killed in record numbers globally, new research reveals*, July 13, 2017; Leah Temper, Daniela del Bene and Joan Martinez-Alier, *Mapping the frontiers and front lines of global environmental justice: the EJAtlas*, *Journal of Political Ecology*, 2015, vol. 22, pp. 255-278.

<sup>70</sup> See for instance: IACHR, *Resolution No. 36/2015*, Precautionary Measure No. 438-15, Marino Alvarado et al. regarding Venezuela, October 14, 2015.

<sup>71</sup> IACHR, *Guarantees for the Independence of Justice Operators*, *supra* note 1.

<sup>72</sup> IACHR, *Hearing on the National Protection System for Defenders and Justice Operators in the Americas*, 157<sup>th</sup> Period of Sessions, April 8, 2016.

<sup>73</sup> IACHR, *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*, OEA/Ser.L./V/II CIDH/RELE/INF.12/13. IACHR, Press Release R 91/16, *Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala*, July 1, 2016; IACHR, Press Release R 91/16, *Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala*, July 1, 2016.

CHAPTER 3  
DEVELOPMENT OF STANDARDS  
IN THE INTER-AMERICAN  
SYSTEM OF HUMAN RIGHTS IN  
RELATION TO THE PROTECTION  
OF HUMAN RIGHTS DEFENDER



## DEVELOPMENT OF STANDARDS IN THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS IN RELATION TO THE PROTECTION OF HUMAN RIGHTS DEFENDERS

48. The following section discusses the most relevant developments in the inter-American system of human rights with regard to the situation of human rights defenders and the obligations of States relating to integral protection policies. This is relevant as it seeks to register the advances achieved following the adoption of the first report on this subject matter in 2006, and its follow-up report in 2011<sup>74</sup>. This section presents standards and practices concerning the duties to prevent, protect, investigate and prosecute human rights violations perpetrated against human rights defenders according to existing obligations under international law. This brief compilation of recent work concerning standards and practice in the system is included as useful background for understanding State obligations in the areas of protection and prevention, and how these must be brought together within an integral policy that addresses both the causes and consequences of human rights violations against defenders.

### A. *Thematic IACHR Reports*

49. The present report builds on recommendations made by the IACHR in its *Report on the Situation of Human Rights Defenders in the Americas*, approved on March 7, 2006 (hereinafter “the 2006 Report”);<sup>75</sup> its *Second Report on the Situation of Human Rights Defenders in the Americas*, approved on December 31, 2011 (hereinafter “the 2011 Report”);<sup>76</sup> its report on *Guarantees for the Independence of Justice Operators*, approved on December 5, 2013 (hereinafter “the Guarantees Report”),<sup>77</sup> and its report on *Criminalization of the work of Human Rights Defenders*, approved on December 31, 2015 (hereinafter “the Criminalization Report”).<sup>78</sup>

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<sup>74</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1.

<sup>75</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1.

<sup>76</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1.

<sup>77</sup> IACHR, *Guarantees for the Independence of Justice Operators*, *supra* note 1.

<sup>78</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, *supra* note 1.

50. In the 2006 Report, the IACHR analyzed the main problems human rights defenders face in the hemisphere.<sup>79</sup> The report also referred to the situation of groups of defenders at particular risk and the protection mechanisms available within the inter-American human rights system for human rights defenders throughout the region, such as the precautionary measures issued by the IACHR. Among the recommendations issued in the 2006 Report, the IACHR called upon the States of the region to adopt measures to guarantee the protection of human rights defenders' lives and safety, as well as effective and adequate guarantees to ensure that defenders may freely carry out their activities in defense of human rights.<sup>80</sup>
51. In its 2011 Report, the IACHR presented an update to the situation of human rights defenders in the region, finding that assaults, threats, and other acts of harassment took place with "systemic continuity" and, specifically, that murders, extrajudicial executions, and forced disappearances had been on the rise.<sup>81</sup> Additionally, through its monitoring activities following the 2006 Report and due to the severity of the human rights violations committed and their repetition, the IACHR expanded upon the groups of human rights defenders it had previously identified as at an increased risk, including: union leaders, *campesinos* and community leaders, indigenous and Afro-descendent leaders, justice operators, women human rights defenders, giving particular attention to environmental defenders, defenders of the rights of LGBTI (lesbian gay, trans, bisexual, and intersex) persons, and defenders of the rights of migrant workers and their families.<sup>82</sup> The Commission in this report also "recognized the positive value of the creation of specialized national mechanisms for protecting human rights defenders in some countries," but expressed concern over information received about "persist[ent] deficiencies" in the design and operation of these mechanisms.<sup>83</sup> Similarly, the Commission reported having received information on the "absence of protection mechanisms in other States,"<sup>84</sup> and recommended accordingly that States "implement, as a priority matter, a global policy of protection for human rights defenders."<sup>85</sup>

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<sup>79</sup> In its 2006 Report, the IACHR considered the following obstacles (a) extrajudicial executions and forced disappearances, assaults, threats, and harassment; (b) smear campaigns and baseless judicial actions; (c) home raids and other arbitrary interference; (d) intelligence activities directed against human rights defenders; (e) restrictions on access to information and *habeas data* actions; (f) abusive administrative and financial controls of human rights organizations; and (g) impunity in the investigations of attacks suffered by human rights defenders.

<sup>80</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, see Chapter 10.

<sup>81</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, paras. 29, 48.

<sup>82</sup> IACHR, 2011 Report, paras. 253-255. Cf. IACHR, *Criminalization of the Work of Human Rights Defenders*, *supra* note 1, para. 48 (It found that, in the context of the defense of certain rights, some groups of defenders have been particularly subject to the criminalization – or the misuse of criminal law – of their work, and these include: *campesino*, indigenous, and Afro-descendent leaders involved in the defense environmental and land rights; union leaders or labor rights defenders; sexual and reproductive rights defenders; and defenders of the rights of LGBT persons).

<sup>83</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 10.

<sup>84</sup> *Idem*.

<sup>85</sup> *Ibidem*, para. 541(2).

52. The IACHR, in its *Guarantees Report*, addressed the grave situation of intimidation, threats, and attacks carried out against justice operators in the region.<sup>86</sup> The Commission expressed its profound concern with the violence practiced against justice operators in the region, in which the prospect of being murdered, threatened, and intimidated continues to be one of the main obstacles they face in the performance of their functions.<sup>87</sup> The Commission also noted that many attacks against justice operators are related to the work they do and are intended to instill fear and to undermine their impartiality and independence, and it observed that such attacks against justice operators and/or their families tend to increase when they are overseeing or presiding over cases of national importance involving serious human rights violations.<sup>88</sup> The Commission warned that if States fail to guarantee the personal safety of their justice operators from every type of external pressure, including reprisals directly aimed at attacking their lives or personal integrity, or those of their family members, exercise of the judicial function may be seriously affected and access to justice obstructed.<sup>89</sup> In particular, the Commission explained that an assault against a justice operator because of his or her activities had particularly serious consequences, because it instills fear not only for the victim, but can spread to other justice operators and to the population. These acts can have a “chilling effect”, leading to the impunity of human rights violations and a general mistrust in the justice system.<sup>90</sup> Accordingly, the IACHR recommended to States to protect justice operators when their lives and personal integrity are at risk; to adopt an effective and comprehensive prevention strategy; to develop specialized protection programs; and to conduct more thorough and independent investigations into these attacks.<sup>91</sup>
53. In its *Criminalization Report*, the Commission observed it was receiving continuous and alarming reports of a trend indicating that human rights defenders were systematically subjected to unfounded criminal proceedings in order to paralyze their ability to defend human rights or to delegitimize their causes. The IACHR identified the main forms of criminalization against human rights defenders, such as the filing of baseless allegations or complaints based on criminal offenses not properly codified in law; the subjecting of defenders to extended criminal proceedings; and the applying of measures such as preventive detention in the absence of a due justification. Additionally, the Commission identified the State and non-State actors who usually participate in the processes of criminalization, as well as highlighted the groups of defenders most affected by this practice, and the contexts in which processes most often take place. In this regard, it highlighted that

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<sup>86</sup> IACHR, *Guarantees for the Independence of Justice Operators*, *supra* note 1, paras. 151-159.

<sup>87</sup> See, *El Mostrador Mundo*, May 2, 2012, *Injerencia política e inseguridad son los mayores problemas que enfrentan los jueces en América Latina* [Political interference and insecurity are the major problems facing judges in Latin America], available in Spanish.

<sup>88</sup> IACHR, *Guarantees for the Independence of Justice Operators*, *supra* note 1, paras. 160-161.

<sup>89</sup> IACHR, *IACHR condemns murder of judge in Honduras*, July 30, 2013.

<sup>90</sup> Cf., *mutatis mutandi*, I/A Court of H.R. *Case of the La Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, paras. 79 to 81.

<sup>91</sup> IACHR, *Guarantees for the Independence of Justice Operators*, *supra* note 1, para. 249(17)-(19).

the misuse of criminal law most often occurs in contexts of tension or conflicts of interest with State or non-State actors, such as the case of communities protesting the development of mega-projects on their lands and the exploitation of natural resources. The report also identified appropriate practices under international law standards to eliminate and prevent the misuse of criminal law against human rights defenders. For instance, the Commission recommended that laws and policies, whose vagueness or content have allowed for the criminalization of defenders for their legitimate work, be reformulated so that they are fully in accordance with the principle of legality;<sup>92</sup> that States recognize the importance of the work of human rights defenders in democratic societies and abstain from making statements that accuse defenders of crimes in the absence of court decisions;<sup>93</sup> and that States take precautions so that justice operators act according to the principle of legality and ensure that the law is properly applied according to international legal standards.<sup>94</sup>

## ***B. Recent Inter-American Case law***

### **1. Merits Report of the Inter-American Commission of Human Rights**

54. The standards of the system in the areas of protection of defenders have been developed by the IACHR through the case system in conjunction with its diverse range of other mechanisms. The IACHR has developed a historical and contextual perspective with respect to the causes and consequences of such violations for human rights defenders and for the interests they serve. In particular, as from the 1990's the Commission began developing standards concerning the duty to prevent violations against defenders in the face of a risk known by State officials, including in situations where the source of the risk originated in the conduct of private individuals.<sup>95</sup>
55. Most recently, on March 21, 2017, the Commission published the *Matter of José Rusbell Lara et al., Colombia*, in which it established the international responsibility of the Colombian government for the murder, in 2002, of human rights defender José Rusbell Lara by a paramilitary group known as *Bloque vencedores de Arauca*.<sup>96</sup> In its merits report, the Commission reiterated the well-established jurisprudence within the inter-American system that the duty to prevent encompasses “all measures of a legal, political, administrative and cultural nature that promote the

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<sup>92</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 286.

<sup>93</sup> *Ibidem*, para. 285.

<sup>94</sup> *Ibidem*, para. 287.

<sup>95</sup> See, for example, IACHR, Report on the Merits No.24/98, Case 11.287, Joao Canuto de Oliveira, Brazil, April 7, 1998, paras.1, 49-53.

<sup>96</sup> IACHR, Merits Report No.35/17, Case 12.713, *José Rusbell Lara et al., Colombia*, (Spanish only), March 21, 2017.

protection of human rights and ensure that any potential violation of these rights is effectively considered and treated as an unlawful act which, as such, may result in the punishment of the person who commits it, as well as the obligation to compensate the victims for the harmful consequences.”<sup>97</sup> In this case, the Commission emphasized that, for human rights defenders, States have a duty to provide individual protection when defenders are in a situation of danger as a result of their activities, but also “the obligation to address the structural causes that affect the security of the persons threatened, in order to create the necessary conditions for the effective exercise and enjoyment of the rights established in the American Convention,”<sup>98</sup> for instance, through the establishment of a comprehensive and integral protection policy and the prevention of aggressions against human rights defenders.<sup>99</sup> The IACHR gave similar attention to these related obligations of protection and prevention in its 2016 publication of the case of the killing of journalist Aristeu Guida da Silva.<sup>100</sup> In particular, in its Merits report in the case of José Rusbell Lara et al, in its analysis of the responsibility of the State to provide protection for human rights defenders, the IACHR gave special consideration to the fact that, at the time of his murder, Mr. Rusbell Lara was a beneficiary of precautionary measures granted by the IACHR, which gave rise to a special duty of protection.<sup>101</sup> The Commission found that, despite having been made aware of the specific situation of risk, the State did not implement the necessary measures of protection to prevent the risk from materializing and to protect the life and integrity of the human rights defender.

## 2. Decision of the Inter-American Court of Human Rights

56. In the past five years, the Inter-American Commission has heard and submitted to the Court many cases, which have allowed for the development of case-law focused on the protection of human rights defenders. In the *Case of Luna Lopez v. Honduras*,<sup>102</sup> and the case of *Human Rights Defender v. Guatemala*,<sup>103</sup> the Court further elaborated on the obligation to guarantee the rights of human rights defenders, as well as the duty to prevent and to investigate violations of their rights with due diligence. The Court also underscored these principles in the *Case of Yarce*

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<sup>97</sup> I/A Court of H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits, Judgment of July 29, 1988. Series C No. 4, para. 175.

<sup>98</sup> IACHR, [Report No. 35/17](#), Case 12.713, Merits, José Rusbell Lara et al. Colombia, March 21, 2017, para. 152.

<sup>99</sup> *Idem*, See footnote 276.

<sup>100</sup> IACHR, [Report No.7/16](#), Case 12.213, Merits, Aristeu Guida da Silva and Family, Brazil, April 13, 2016, paras. 136, 139.

<sup>101</sup> IACHR, [Report No. 35/17](#), Case 12.713, Merits, José Rusbell Lara et al. Colombia, March 21, 2017, paras. 152, 157.

<sup>102</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269.

<sup>103</sup> I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No. 283, para. 142.

*et al v. Colombia*,<sup>104</sup> focusing specifically on the situation of women human rights defenders who face increased risks due to their leadership work and gender in the context of the armed conflict in Colombia.<sup>105</sup> More recently, in March 2017, the Court issued its sentence in the case of *Acosta y otros v. Nicaragua*<sup>106</sup>, in which it developed its jurisprudence regarding investigation of possible acts of retaliation against human rights defenders.

57. In the *Case of Luna Lopez v. Honduras*, the Inter-American Court developed the obligations of States to prevent the killings of human rights defenders, and analyzed the specific case of Carlos Antonio Luna Lopez, a human rights advocate and member of the city council of Catacamas, Olancho Province, Honduras, who fought for the protection of the environment. In this decision, the Court found that States have the obligation to prevent violations to the rights of human rights defenders requires the State to adopt all appropriate measures to protect and preserve the right to life (positive obligation), in accordance with the obligation to guarantee the full and free exercise of the rights of all persons under its jurisdiction.”<sup>107</sup> The Court established a broad scope for the obligation of prevention, encompassing “all measures of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any potential violation of these rights is effectively considered and treated as an unlawful act which, as such, may result in the punishment of the person who commits it, as well as the obligation to compensate the victims for the harmful consequences.”<sup>108</sup>
58. The Court also affirmed that the obligation to guarantee, pursuant to Article 1(1) of the American Convention, can also entail special obligations for States as a result of the particular needs of some members of society, arising either because of their personal situation or the specific situation in which they find themselves. The Court therefore reiterated that States have the obligation to adopt all necessary and reasonable measures to guarantee the right to life, personal liberty, and personal integrity of individuals who find themselves in situations of special vulnerability,<sup>109</sup> particularly as a consequence of their work,<sup>110</sup> whenever the State is or should have

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<sup>104</sup> I/A Court of H.R., *Case of Yarce et al v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325.

<sup>105</sup> *Idem*.

<sup>106</sup> I/A Court of H.R., *Case of Acosta et al. v. Nicaragua*. Preliminary objections, Merits Reparations and Costs. Judgment of March 25, 2017. Series C No. 334.

<sup>107</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgement of October 10, 2013. Series C No. 269, paras. 117-118.

<sup>108</sup> *Ibidem*, para. 118.

<sup>109</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, citing: I/A Court of H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 123 and I/A Court of H.R., *Case of Castillo González et al. v. Venezuela*. Merits. Judgment of November 27, 2012. Series C No. 256, para. 128. Similarly, Cf. ECHR, *Case of Kiliç v. Turkey*, No. 22492/93. Judgment of March 28, 2000, pars. 62 and 63, and *Case of Osman v. United Kingdom*, No. 87/1997/871/1038. Judgment of October 28, 1998, pars. 115 and 116; UN, Committee on Human Rights, *Case of Delgado Páez v. Colombia*, Communication No. 195/1985, UN Doc. CCPR/C/39/D/195/1985(1990), July 12, 1990, pars. 5(5) and 5(6).

<sup>110</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, citing: UN, Committee on Human Rights, *Case of Orly Marcellana and Daniel Gumanoy*,

been aware of a situation of real and immediate danger, in the face of which it must adopt the measures that can reasonably be expected in order to prevent the materialization of said risk.<sup>111</sup>

59. The Court also held that States have the obligation to guarantee the right of defenders to defend human rights, providing them with the necessary means to “freely carry out their activities; protect[ing] them when they receive threats so as to prevent attacks on their lives and integrity; creat[ing] the conditions to eradicate violations by State agents or other individuals; refrain[ing] from hindering their work and seriously and effectively investigating violations committed against them, combating impunity.”<sup>112</sup> The Court underscored that the State’s obligation to guarantee rights went beyond the relationship between its agents and the persons under its jurisdiction, encompassing the obligation to prevent, within the private sphere, third parties from violating protected judicial rights – although this obligation is not unlimited.<sup>113</sup>
60. A year later, the Court issued the decision of *Human Rights Defender v. Guatemala*, in which it built upon the Luna Lopez decision, and established that human rights defenders must be afforded an increased protection.<sup>114</sup> In this sentence, and referring to the Commission’s Second Report on the Situation of Human Rights Defenders of 2011, the Court held that the measures to be adopted to protect a human rights defender must be “adequate” and “effective”. For protective measures to be “adequate”, it held that they must be “an appropriate or suitable means of protecting the person at risk”, and to be “effective”, that they must be able to “produce the expected results, so that the risk to the person being protected ceases.”<sup>115</sup>
61. In addition to pronouncing itself with respect to the obligation of protection, in the case of *Human Rights Defender v. Guatemala*, the Court analyzed the obligation to investigate with due diligence the violations of the rights of human rights defenders. As part of this “due diligence” obligation, the Court held that investigations must take into consideration the contexts in which the facts took place, and whether the victim was a human rights defender.<sup>116</sup>

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*representing Eden Marcellana and Eddie Gumanoy v. Phillipines*, Communication No. 1560/2007, UN Doc. CCPR/C/94/D/1560/2007, October 30, 2008, pars. 7(6) and 7(7). Also, *Cf. Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C, No. 161, para. 77 and *Case of García and Family v. Guatemala. Merits, Reparations and Costs*. Judgment of November 29, 2012. Series C No. 258, para. 179.

<sup>111</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 123.

<sup>112</sup> *Idem*.

<sup>113</sup> *Ibidem*, para. 120.

<sup>114</sup> I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No. 283, para. 142.

<sup>115</sup> *Ibidem*, para. 157.

<sup>116</sup> *Ibidem*, para. 216.

62. In the reparations that it granted, the Court ordered the State to elaborate and implement, within a reasonable timeframe, a public policy for the protection of human rights defenders, which includes measures of a legislative, institutional, judicial, or administrative nature, aimed at reducing the risks faced by human rights defenders.<sup>117</sup> The Court then provided a series of requirements which must be included in a protection policy, including “the creation of a risk analysis model to adequately determine the risk and the protection needs of each defender or group, [...] the design of protection plans in response to specific risks faced by each defender and to the nature of his/her work, [...] the promotion of a culture of legitimization and protection of the work of human rights defenders, and the provision of sufficient human and financial resources to respond to the real needs for protection of human rights defenders,” among others.<sup>118</sup>
63. In November of 2016, the Inter-American Court rendered its judgment in the Case of *Yarce et al v. Colombia*, which addressed the situation of women human rights defenders working in the context of the armed conflict in Colombia. It dealt specifically with the situation of women human rights defenders in the locality of *Comuna 13*, in Medellín, Colombia, involving killings, detentions, and internal displacement, followed by a denial of justice. In its decision, the Court established that there was, at the time, a generalized and systematic situation of insecurity and violence for women who worked in the defense of human rights in Colombia because of the armed conflict and of the prominent roles they played in community initiatives and organizational processes. Women human rights defenders were subject to increased risk to their personal integrity and their lives, those of their families, and to their ability to carry out their work.<sup>119</sup> With regard to the killing of Ana Teresa Yarce in particular, the Court reiterated the special obligation to protect incumbent upon the State pursuant to Article 1(1) of the American Convention and Article 7b) of the *Belém do Para Convention* in cases such as this one, where the State was aware of the context of real and immediate risk that women human rights defenders faced.<sup>120</sup> In this context, the Court established that the State had failed to fulfill its duty to adopt specific measures to prevent the materialization of the situation of risk, and to guarantee the rights to life, personal liberty, and personal integrity.<sup>121</sup> It should be noted that in this specific case, and following the position of the expert presented by the Commission, the Court recognized that it is possible that “a threatening situation against a human rights defender can have persistence over time,” and that, in this context, the situation could reach an “unstable balance”, until specific events trigger the actions of the perpetrator.”<sup>122</sup> The Court also held the State responsible for the illegal and arbitrary detention of three of the women

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<sup>117</sup> I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No. 283, para. 262.

<sup>118</sup> *Ibidem*, para. 263.

<sup>119</sup> I/A Court of H.R., *Case of Yarce et al v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325, para. 91 et ss.

<sup>120</sup> *Ibidem*, paras. 181, 196.

<sup>121</sup> *Ibidem*, para. 196.

<sup>122</sup> *Ibidem*, para. 188.

defenders, and among other aspects, for failing to create the conditions for them to return to their places of residence after facing forced displacement.

64. More recently, in March 2017, the Court issued its Judgment in the case of *Acosta et al. v. Nicaragua*.<sup>123</sup> In its decision, the Court found that when an aggression occurs against a member of the family of a human rights defenders and that there are indications or allegations that the specific act or crime could have constituted an act of retaliation for the activities of a human rights defender, the investigating authorities must take into consideration the context and the interests that could have been affected by the human rights defense activities, in order to establish lines of investigations and a hypothesis of the crime, in addition to carrying out the relevant proceedings to determine if the above-mentioned indications or allegations could be linked to the motive of the crime.<sup>124</sup> On the other hand, in said sentence, reiterating the content of one of its previous decisions, the Court considered that it was possible that a situation of uncertainty, insecurity and intimidation related to the existence of a criminal proceeding incompatible with the American Convention, could generate an intimidating or inhibiting effect in the free and full exercise of their right to freedom of speech.<sup>125</sup>

### **3. Measures of Protection within the Inter-American System**

65. The Inter-American Commission and Court have developed a significant body of standards and practice concerning precautionary and provisional measures, respectively. Such measures have provided important protection for human rights defenders at risk. While the granting of measures of protection does not presuppose a determination on the substance or merits of the situation presented, the standards the Commission and Court apply to determine seriousness, urgency and risk of irreparable harm to persons provide important guidance for national mechanisms that grant measures of protection directly or that are charged with implementing measures granted by the IACHR or Court.

#### **a) Precautionary Measures of the Inter-American Commission on Human Rights**

66. Pursuant to Article 25 of its Rules of Procedure and as it has always done when assessing the seriousness and urgency of the situation giving rise to a request for a precautionary measure on behalf of a defender, the Commission takes into account both the context and aspects specific to the case at hand. This involves, among other

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<sup>123</sup> I/A Court of H.R., *Case of Acosta y otros v. Nicaragua*. Preliminary objections, Merits, Reparations and Costs. Judgement of March 25, 2017. Series C No. 334.

<sup>124</sup> *Ibidem*, para. 143.

<sup>125</sup> *Ibidem*, para. 197, referring to the case of *Uzcátegui et al v. Venezuela*. Merits and Reparations. Sentence of September 3, 2012, para. 189.

factors, taking into account the current situation in the country in question, the existence of possible documented cases of attacks on defenders, and the possibility that the proposed beneficiaries' situation of risk is exacerbated by gender, other special conditions of vulnerability, or historical discrimination. In its 2011 report, the Commission already summarized several of the factors analyzed when it comes to appraising the requirements needed for a precautionary measure to be granted, along with the various mechanisms for implementing such measures.<sup>126</sup>

67. Notwithstanding the foregoing, with the development of national protection mechanisms within the jurisdictions of some States in the region, the Commission has had to make ever more frequent assessments of their real impact on the protection of proposed beneficiaries. In so doing, the Commission has been mindful of the fact that the *principle of complementarity* is mainstreamed into the inter-American system inasmuch as international jurisdiction “contributes to” or “complements”, yet does not replace, national jurisdictions.<sup>127</sup> Accordingly, the party primarily responsible for attending to the protection needs of defenders in an at-risk situation is the State in which they are located.
68. The Commission has, nevertheless, taken the view that invoking the *principle of complementarity*, as a basis for considering that it would not be appropriate to adopt precautionary measures because a defender has been assigned a national protection mechanism or arrangement, would presuppose that, by virtue of the measures adopted by the State, the persons applying for precautionary measures are not in the circumstances required under Article 25 of the Rules of Procedure. The foregoing would be so given that the protection measures allotted to them have had a demonstrated substantive impact in terms of reducing the risk to which they were exposed, so much so that it is no longer possible to discern a situation whose seriousness and urgency are such that they require international intervention to prevent irreparable damage.
69. In light of the above, the Commission considers that the assignment of an internal protection mechanism does not, per se, suffice to invoke the complementarity principle, since it is necessary to evaluate, in any concrete case, whether the requirements of seriousness, urgency and irreparability are met in the specific circumstances of the case at hand. This is particularly the case when, despite the protection measures adopted by the State, the defenders applying for precautionary measures remain at risk due to the unsuitability or ineffectiveness of the measures

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<sup>126</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, supra note 1, para. 442 and ss.

<sup>127</sup> In this regard, the Preamble to the American Convention establishes that human rights “justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states.” Concerning this principle and its applicability to provisional measures, the Inter-American Court has pointed out that “it is likewise applicable to the adoption and maintenance of provisional measures because, given that it is stated in the preamble to the American Convention, it is supposed to guide the actions of States whenever a situation of extreme seriousness and urgency is alleged, with a risk of irreparable damage, for persons covered by the inter-American system for the protection of human rights. Thus, not just in litigation cases, but also those involving the provisional measures mechanism, the protection system established by the American Convention does not replace national jurisdictions; rather, it complements them.” I/A Court of H.R., *Case of the Rochela Massacre v. Colombia*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 16, 2017, p. 42.

adopted, a situation which may manifest itself through a continuation of the acts of aggression, attacks, or harassment to which they are subjected.

70. When the Commission requests that the State adopt precautionary measures, the Commission has acknowledged in its resolutions how important it is that the measures adopted by the State ensure that their activities in defense of human rights can continue, and, in that context, it has in turn recognized the importance of diligent and effective investigation of the alleged risk factors as a means of mitigating the risk to which the proposed beneficiaries are exposed.
71. In the process of implementing the precautionary measures that are in effect, the Commission has obtained ample information regarding the level of effectiveness and/or deficiency in the adoption of such measures by States, including those that have programs designed to protect human rights defenders, and regarding the (in some cases, nonexistent) coordination between the authorities charged with providing the protection and those charged with investigating the reported risk factors.
72. Since the publication of its latest report on the situation of human rights defenders and entry into force of the amendment to Article 25 of its Rules of Procedure in 2013,<sup>128</sup> the Commission has published resolutions granting precautionary measures in which it has underscored that it is vital that these national protection programs in fact protect human rights defenders in order “to enable them to act freely, preventing actions that might limit or obstruct their work.”<sup>129</sup> Thus, the Commission has stressed the crucial role played by human rights defenders in the consolidation of democratic institutions<sup>130</sup> and the need for State agents not only to refrain from stigmatizing defenders, but also to publicly acknowledge the important part they play.<sup>131</sup> The IACHR has likewise reaffirmed the duty of States to guarantee an environment in which human rights defenders can freely go about their work.<sup>132</sup> Along those same lines, the Commission has again pointed out that acts of violence and other attacks on human rights defenders not only affect guarantees for every

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<sup>128</sup> Article 25 of the Rules of Procedure regulates the precautionary measures mechanism. One of the implications of the amendment in effect since August 2013 has been the need to adopt resolutions embodying decisions to grant, lift, expand the scope, or modify the purpose of, precautionary measures.

<sup>129</sup> IACHR, [Resolution 13/2013](#), Precautionary Measures No. 195/13, *Matter of leaders and human rights defenders of the Community of Nueva Esperanza and the Regional Board of Florida Sector regarding Honduras*, December 24, 2013, para. 15

<sup>130</sup> IACHR, [Resolution 6/2017](#), Precautionary Measures No. 688/16, *Érick Pérez et al.*, Honduras, February 20, 2017, para 17; IACHR, [Resolution 4/2017](#), Precautionary Measures No. 507/16, *Víctor Vásquez et al.*, Honduras, February 6, 2017, para. 15; IACHR, [Resolution 37/2016](#), Precautionary Measures No. 236/16, *Juana Mora Cedeño et al.*, Cuba, July 3, 2016, para.14; and others.

<sup>131</sup> IACHR, [Resolution 5/2017](#), Precautionary Measures No. 5/14, *Alberto Yepes Palacio and daughter*, Colombia, February 10, 2017, para. 25; IACHR, [Resolution 46/2015](#), Precautionary Measures No. 589/2015, *Ana Miran Romero et al.*, Honduras, November 24, 2015, para. 12; IACHR, [Criminalization of the Work of Human Rights Defenders](#), *supra* note 1, para. 227.

<sup>132</sup> IACHR, [Resolution 46/2015](#), Precautionary Measures No. 589/15, *Ana Miran Romero et al.*, Honduras, November 24, 2015, para. 12; IACHR, [Resolution 2/2013](#), Precautionary Measures No. 157/13, *Members of Union des Citoyens Conséquents pour le Respect des Droits de l'Homme*, Haiti, September 23, 2013, para. 13.

human being; they also undermine the key role performed by human rights defenders in society, given that defenders push forward complaints, grievances and demands at the social and collective levels that contribute to the realization of the Rule of Law and Democracy.<sup>133</sup>

73. In connection with precautionary measures to protect human rights defenders, the Commission has offered specific guidance to States regarding particular at-risk situations and how to respond to them by analyzing the seriousness, urgency, and risk of suffering irreparable harm, through its resolutions. The Commission has condemned and deplored the information it received regarding the murder of persons who were beneficiaries of precautionary measures.<sup>134</sup>
74. Finally, through its petitions and cases system, the Commission has expounded the implications of the failure by the State to implement a precautionary measure effectively in relation to its international responsibility, specifically in respect of its obligation to protect. Thus, in its report on the *Matter of José Rusbell Lara et al.*, when analyzing the responsibility of the State for failure to comply with its duty to protect, the IACHR paid particular attention to the fact that, at the time of his murder, human rights defender Rusbell Lara was a beneficiary of precautionary measures granted by the Inter-American Commission, which generated a special duty of protection for the State. As to the function of precautionary measures within the context of the prevention obligations of the State, the Commission considered that “granting precautionary measures enables the State to be aware of a situation of risk and, therefore, a special duty of protection exists to prevent the foreseeable acts of actors who contribute to that situation, with the result that effectively implementing the measures constitutes a reasonable means of prevention to stop the risk from materializing”<sup>135</sup>.

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<sup>133</sup> IACHR, *Resolution 8/2016*, Precautionary Measure No. 112/16, *Matter of Members of COPINH, Berta Cáceres' relatives and others, regarding Honduras*, March 5, 2016; IACHR, *Resolution 46/2015*, Precautionary Measure No. 589/15, *Matter of Members of "Asociación para una Vida Mejor de Honduras"* [Association for a better life in Honduras] (APUVIMEH), regarding Honduras, January 22, 2014, para. 12.

<sup>134</sup> Thus, the Commission reiterates its profound repudiation of the murder on March 3, 2016 of Berta Cáceres, a well known defender of human rights, indigenous leader, and coordinator general of the *Consejo Cívico de Organizaciones Populares e Indígenas de Honduras* (COPINH). Berta Cáceres was a beneficiary of precautionary measures granted by the IACHR in 2009, who had repeatedly and publicly denounced the serious risks and harassment to which she was exposed. The Commission also extended protection to the *Members of COPINH and Family Members of Berta Cáceres*. In 2016, the Commission also repudiated the murders of defender of Evelyn Zulma, leader and trans rights activist of the organization *Reinas de la Noche* (Queens of the night) in Guatemala; of José Ángel Flores and Silmer Dionisio George, President and member, respectively, of the *Movimiento Unificado Campesino del Aguán* (MUCA); Nelson Noé García, leader and member of the Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (COPINH); and Santos Matute, member of the *Movimiento Amplio por la Dignidad y la Justicia* (MADJ), all of which were beneficiaries of precautionary measures of the IACHR.

<sup>135</sup> IACHR, *Report No. 35/17*, Case 12.713, Merits, *José Rusbell Lara et al.*, Colombia, March 21, 2017, paras. 152, 157.

## b) Provisional Measures of the Inter-American Court of Human Rights

75. Within the context of provisional measures, the Court has also reiterated that the obligation to guarantee a favorable environment to the free exercise of activities by human rights defenders is a part of the general duty of State parties to respect and guarantee the enjoyment of the rights contained in the American Convention on Human Rights.<sup>136</sup> The Court has further elaborated on this obligation by establishing that regardless of whether a person is the beneficiary of provisional measures, the State has the duty to guarantee the rights of persons who are facing situations of risk, and has emphasized that this includes the obligation to expedite the investigation necessary to clarify the facts and, where applicable, punish those responsible.<sup>137</sup>
76. With regard to the need to address the obstacles that can undermine the work of defenders, as far back as 2003, in the matter of *Lysias Fleury* regarding Haiti, the Court indicated that “[r]espect for human rights in a democratic State depends, to a large extent, on effective and adequate guarantees enjoyed by human rights advocates to freely conduct their activities, and special attention should be paid to actions limiting or hindering, whether directly or indirectly, the work of human rights advocates.”<sup>138</sup> Since then, in the analysis of other provisional measures regarding human rights defenders, the Court has emphasized that “States have the duty to provide the necessary means to enable human rights defenders to do their work freely,”<sup>139</sup> and that “States have a specific duty to protect those who work in non-governmental organizations, as well as provide effective and adequate guarantees to human rights defenders so that they can freely carry out their activities, avoiding actions that limit or hinder their work.”<sup>140</sup> Finally, recognizing

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<sup>136</sup> I/A Court H.R., *Matter of Guerrero-Gallucci regarding Venezuela*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 21, 2011, e) considering para. 33; I/A Court of H.R., *Matter of the Colombian Commission of Jurists*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of November 25, 2010, considering para. 24; I/A Court of H.R., *Matter of Giraldo Cardona and others*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of January 28, 2015, considering para. 40 (only available in Spanish); I/A Court of H.R., *Matter of Nadege Dorzema et al.* Provisional Measures regarding Dominican Republic. Order of the Inter-American Court of Human Rights of February 23, 2016, considering para. 12 (only available in Spanish).

<sup>137</sup> I/A Court H.R., *Matter of Giraldo Cardona and others regarding Colombia*. Provisional Measures. Order of the Inter-American Court of Human Rights of January 28, 2015, considering paras. 21 and 40 (only available in Spanish).

<sup>138</sup> I/A Court of H.R., *Matter of Lysias Fleury*. Provisional Measures Regarding Haiti. Order of the Inter-American Court of Human Rights of June 7, 2003, considering para. five.

<sup>139</sup> I/A Court of H.R., *Matter of Álvarez et al.* Provisional Measures regarding Colombia. *Order of the Inter-American Court of Human Rights of May 22, 2013*, Considerations of the Court regarding the scope of the Order issued in 2008.

<sup>140</sup> I/A Court H.R., *Matter of Carlos Nieto et al. regarding Venezuela*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 09, 2004, considering para. 8; I/A Court of H.R., *Matter of the Forensic Anthropology Foundation of Guatemala*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of April 21, 2006, considering para. 9; I/A Court of H.R., *Matter of Mery Naranjo et al.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights

the essential contribution of defenders to democracy and the defense and promotion of human rights, the Court has pointed out that the “prevalence of human rights in a democratic state depends largely on the respect and freedom afforded to these defenders in their work.”<sup>141</sup>

77. The Court has also given more specific guidance to States with regards to particular situations of risk and how to respond to them through its analysis of the situation of extreme seriousness, urgency and risk of irreparable harm as well as through its resolutions. Although these analyses are based on the criteria of the Court, and not that of the national protection mechanism, they provide useful guidance for public officials who undertake risk analyses within national protection mechanisms.
78. In the *Matter of Castro Rodríguez regarding Mexico*,<sup>142</sup> the Court established that the beneficiary Luz Estela Castro was in a situation of risk, by reason of i) her activities as a human rights defender involved in high-profile cases, ii) the groups she worked with, who worked on matters related to gender-based violence, forced disappearances, extra-judicial killing, iii) the situation of generalized danger for human rights defenders in the State of Chihuahua, and iv) the recent threats she had received, that *prima facie* satisfied the requirements of extreme risk, urgency and the need to prevent irreparable harm. In a follow-up order,<sup>143</sup> the Court resolved that the beneficiary, remained at risk, and that in making its evaluation it was important to take into consideration an array of political, historical, cultural or other factors or circumstances, which could place the beneficiary in a situation of vulnerability in a specific moment. The Court affirmed that a conjunction of factors or circumstances indicating risk for a group of persons can also indicate risk for a particular beneficiary, even in the absence of recent and direct threats to the beneficiary, and can therefore justify the granting or continuation of provisional measures. In this context, the Court found that the situation of risk of Ms. Castro Rodríguez had not disappeared and called on the State to undertake an updated risk analysis, in consultation with the beneficiary, including with a gender perspective.
79. This situation is just one example of key elements to be taken into account in analyzing the situation of risk of a human rights defender. Especially important among these are a contextual analysis, political, cultural, historical among other factors; due consideration for risk factors associated with the groups and/or issues

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of July 5, 2006, considering para. 8; I/A Court H.R., *Matter of Guerrero-Gallucci regarding Venezuela*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 21, 2011, Considerations of the Court 33; I/A Court of H.R., *Matter of Danilo Rueda*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of May 28, 2014, considering para. 16; I/A Court of H.R., *Matter of Community of Punta Piedra and its members*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 14, 2014, considering para. 17 (Available in Spanish); I/A Court of H.R., *Matter of Giraldo Cardona and others*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of January 28, 2015 (Available in Spanish); among many others.

<sup>141</sup> I/A Court of H.R., *Matter of the Colombian Commission of Jurists*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of November 25, 2010, considering para. 24.

<sup>142</sup> I/A Court of H.R., *Matter of Castro Rodríguez*. Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 13, 2013. Available in Spanish only.

<sup>143</sup> I/A Court of H.R., *Matter of Castro Rodríguez*. Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of June 23, 2015. Available in Spanish only.

the defender is working with; and attention to the specific situation of the defender, in this case the requirement that the analysis of risk be done with a gender perspective.

## **C. Country Reports**

80. Following the publication of its thematic reports on the matter (see para.49 above), the Commission also has developed important standards, as well as a set of conclusions and recommendations which are relevant to identifying State obligations in terms of protection and prevention in various contexts. In this section, the Commission will provide a compilation of the country reports that it has produced in the exercise of its monitoring and promotion functions, both as a result of on-site visits and a State's inclusion in the annual report.

### **1. Colombia**

81. The Commission must begin by acknowledging that, since the publication of this country report in 2013, Colombia has reached a historical Peace Agreement, which constitutes a major step forward in the exercise and observance of human rights. It also acknowledges the Peace Agreements it has signed addresses many of the recommendations issued by the Commission in its *Fourth country report on Colombia*,<sup>144</sup> such as: the establishment of a truth commission in charge of clarifying violations of human rights defenders' rights during the conflict, which is to be integrated by representatives of human rights defense organizations; the creation of an Investigation Unit, for the search of disappeared persons; and the constitution of a Unit in charge of investigating criminal organizations that resort to violence against defenders.<sup>145</sup> Nonetheless, the conclusions and recommendations in this report remain relevant for the State of Colombia and for other States in the region, as they help identify essential State obligations for the protection of human rights defenders.
82. The IACHR reiterated the information at its disposal on threats and acts of intimidation and acts of violence suffered by judges and prosecutors, indigenous leaders, trade union leaders, women human rights defenders, Afrodescendant human rights defenders, defenders of displaced persons and of those claiming land restitution. It also expressed its profound concern with the information received on the climate of hostility towards the work of human rights defenders in Colombia. In addition, the Commission highlighted the preoccupying levels of impunity for crimes against human rights defenders in the country.

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<sup>144</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, supra note 8.

<sup>145</sup> Oficina del Alto Comisionado para la Paz, *Texto completo del Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, August 24, 2016.

83. The Commission reiterated the State obligation to continue designing and implementing comprehensive and effective public policies for protecting human rights defenders at risk with special attention to those groups of defenders who may be especially vulnerable. In this regard, the Commission observed that the State must guarantee the security of its judges as well as prosecutors and public defenders from all kinds of pressure aimed at attacking their person and family, their stability and professional future, or else the exercise of the judicial and the consolidation of peace in Colombia may be seriously impaired.
84. It also called on the State to increase efforts to consolidate a culture of respect for those who defend human rights and observed that only through strong government backing for the work of human rights defenders and effectively punishing public officials who may be responsible for violations of their rights can the State progressively eradicate the unlawful stigmatization that human rights defenders have suffered during years of conflict. This is necessary, given that defenders were often referred to as “subversive” or “guerrillero” groups, associating them to parties to the conflict. The IACHR noted that it is essential for the State to strengthen its public policies for protecting human rights defenders at risk, and to adopt measures aimed at consolidating and legitimating definitively the role of human rights defenders in society, particularly in a period of transition towards peace such as the one it is currently undergoing.
85. The Commission recommended as part of this policy that the State establish specialized protocols for coordination among prosecutors and, as the case may be, unify the investigations into crimes committed against same civil society organizations and same human rights defenders to give impetus to the investigations and possibly determine of patterns of attacks, other acts of aggression, and harassment.
86. The IACHR reiterated that the most effective means for protecting human rights defenders in the hemisphere is to systematically carry out effective investigations of all the acts of violence against them. It called on the State to develop a public policy aimed at fighting impunity in cases involving violations of the rights of human rights defenders through exhaustive and independent investigations that make it possible to punish both the direct perpetrators and those who planned and ordered the violations.
87. In addition, the IACHR considered that in order to make progress in fighting impunity, it is essential for the public servants in charge of investigating crime and imparting justice from the highest level to be aware of the key role of human rights defenders in seeking peace in Colombia and in consolidating a democratic society.

## 2. Cuba

88. Ever since its 1992-1993 Annual Report,<sup>146</sup> the Commission has continuously observed with deep concern the use of summary arbitrary arrests as a means of harassing human rights defenders, independent journalists, activists, trade union leaders, and anyone openly voicing criticism of the Cuban Government. In particular, in 2016, the Commission stated that it was “alarmed by the sudden increase in summary arbitrary detentions in the year under review, accompanied by a surge in the violence with which they are carried out.”<sup>147</sup> Thus, despite being beneficiaries of precautionary measures granted by this Commission, the members of the Damas en Blanco movement documented more than 1,600 summary arbitrary arrests between January and October of 2016.<sup>148</sup> They highlighted, for instance, that mothers demonstrating together with their under-age children were both detained anyway for 24 hours, and the children were prevented from attending school during the detention.<sup>149</sup> The Commission has likewise taken note that “human rights defenders, journalists, activists, and social leaders complain of stepped up levels of violence in the civilian population’s acts of repudiation against them, in which they have their limbs twisted, bones broken, and injuries caused by bites and blows, all with the alleged acquiescence of the State authorities.”<sup>150</sup>
89. The Commission has also received information about the criminal justice system being used to criminalize the activities of human rights defenders, journalists, and activists. Thus it transpired, for instance, that repeatedly detained individuals sometimes ended up being accused in summary criminal proceedings that could lead to imprisonment for “pre-criminal social dangerousness”, a legal characterization that, in the Commission’s view, fails to meet the requirements of the legality principle under criminal law (*principio de legalidad penal*).<sup>151</sup> The Commission “has also noted a similar vagueness in the description of the statutory crime called “pre-criminal social dangerousness,” set forth in Article 72 of the Criminal Code, and related conduct.”<sup>152</sup> In addition to the foregoing “Decree No. 128, [...] once again prescribes a summary procedure for prosecuting persons whose conduct fits within the vague statutory definition”<sup>153</sup>. Here, the IACHR has pointed out that “[a]mbiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal

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<sup>146</sup> IACHR, Annual Report 1992-1993, *Chapter IV, Status of Human Rights in Several Countries, Cuba*. See section III. *Methods of Harassment used against Human Rights Activists*.

<sup>147</sup> IACHR, Annual Report 2016, *Chapter IV, Status of Human Rights in Several Countries, Cuba*, para. 45.

<sup>148</sup> Damas de Blanco, *Derechos humanos: Informes semanales de represión contra el Movimiento Damas de Blanco*. Note that not all the Sunday reports on repression could be accessed.

<sup>149</sup> Damas de Blanco, *Informe semanal de represión contra el Movimiento Damas de Blanco*, September 18, 2016.

<sup>150</sup> IACHR, Annual Report 2016, *Chapter IV, Status of Human Rights in Several Countries, Cuba*, para. 59.

<sup>151</sup> IACHR, Annual Report 2008, *Chapter IV, Status of Human Rights in Several Countries, Cuba*, para. 177.

<sup>152</sup> IACHR, Annual Report 2016, *Chapter IV, Status of Human Rights in Several Countries, Cuba*, para. 65.

<sup>153</sup> *Idem*.

responsibility of individuals and punishing their criminal behavior with penalties that affect the right to life or liberty.”<sup>154</sup>

### 3. Guatemala

90. In its 2015 Report on the *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*,<sup>155</sup> the Commission highlighted that the situation of human rights defenders in Guatemala had been a constant concern for the IACHR, given the levels of danger and harassment to which they were exposed. The Commission underscored that these violent attacks mainly targeted defenders who work to address the country’s predominant human rights problems, such as those who defend the rights of indigenous peoples, land rights and the environment, and the rights of victims of the internal armed conflict and trade union leaders. In fact, the Commission highlighted that recent years had seen a rise in attacks on human rights defenders who advance indigenous people’s rights and economic, social and cultural and environmental rights, which “represents 90% of attacks, while civil and political rights represent 5%”.<sup>156</sup> In fact, members of indigenous peoples or land rights defenders would represent 60% of cases of criminalization of human rights defenders.<sup>157</sup> The Commission also highlighted that a preoccupying level of women were the targets of these attacks. Trade union leaders and justice operators were also recognized as groups of particular concern. As it relates to trade union leaders, given that it remained unclear whether criminal groups had been the perpetrators or if they had to do with trade union internal fights, the Commission pointed out that the State is bound to investigate whether these acts were committed because of the victims’ activities in human rights defense.
91. As a result of the high levels of violence highlighted in the report, the IACHR issued a reminder that, pursuant to the State’s obligation to guarantee human rights, protecting the right to life of human rights defenders entailed obligations of a positive nature, such as that of taking positive steps conducive to generating the conditions needed to eradicate violations of the right to life and personal security by state agents or private individuals, in such a way that human rights defenders can freely carry out their work.<sup>158</sup>
92. With regards to criminalization of human rights defenders, the Commission recalled that, in addition to the obligation to investigate and punish those who violate the law within their territory, States have the duty to take all necessary measures to prevent unfair or unfounded trials to people who legitimately demand respect and protection of human rights. The Commission warned against the opening of groundless criminal investigations or judicial actions against human rights

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<sup>154</sup> *Idem*.

<sup>155</sup> IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, *supra*.

<sup>156</sup> *Ibidem*, para. 194.

<sup>157</sup> *Ibidem*, para. 195.

<sup>158</sup> *Ibidem*, para. 206.

defenders not only has a chilling effect on their work but as it can also paralyze their efforts to defend human rights, since their time, resources, and energy must be dedicated to their own defense.<sup>159</sup>

93. The Commission also expressed its special preoccupation with the security of justice system operators, recalling that, on several occasions, it had had to grant precautionary measures to request protection for them. Indeed, it voiced its concern about the assaults, murders, threats and intimidation of justice system operators, highlighting that those engaged in transitional justice proceedings and/or proceedings relating to corruption by officials and authorities are the main victims of attacks. The Commission also expressed its concern about reprisals against those who denounced irregularities in the process for selecting and appointing high court judges, in form of unwarranted dismissal, “preventive supervision”, and allegedly illegal transfers. The IACHR recalled the importance of transfers of justice system operators being based on public and objective criteria, otherwise they could be considered or used as reprisals.

#### 4. Mexico

94. In its *Report Situation of Human Rights in México*, approved in December 2015, the IACHR reported on the important efforts undertaken by the State in order to provide human rights defenders with protection, as well as observed the ongoing situation of grave threats to their human rights.<sup>160</sup> The IACHR received information about high levels of disappearances and attacks on the lives of human rights defenders and journalists, harassment, threats, surveillance, communication interception, as well as challenges to the application of the protection mechanism for the protection of human rights defenders and journalists.<sup>161</sup> The Commission also highlighted the presence of legislation that directly or indirectly criminalizes social protest and the work of human rights defenders, as well as a series of statements by State authorities that disparage and stigmatize them due to their work as human rights defenders, making them more vulnerable.<sup>162</sup> The Commission specifically highlighted the increased situation of risk for women human rights defenders. It also highlighted the situation of risk of leaders and defenders in rural areas, including defenders of the environment opposing extractive projects, who were being subjected to violence at the hand of individuals with relations to the companies undertaking these projects, as well as to criminalization processes.
95. The Inter-American Commission reiterated that the potential opening of groundless criminal investigations or judicial actions against human rights defenders in retaliation of their work had a chilling effect on their work and the causes they advance. The IACHR also observed that the State must ensure that their authorities

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<sup>159</sup> *Ibidem*, para. 218.

<sup>160</sup> IACHR, *Situation of Human Rights in Honduras*, *supra* note 8, para. 44.

<sup>161</sup> IACHR, *Situation of Human Rights in Mexico*, *supra* note 8, paras. 353-373.

<sup>162</sup> *Ibidem*, paras. 354-356, 369.

or third persons will not manipulate the punitive power of the state and its organs of justice in order to harass those who are dedicated to legitimate activities, such as human rights defenders.

96. In its report, the Commission noted that statements delegitimizing and discrediting the work of human rights defenders makes them more vulnerable. The Commission insisted that such comments at times suggest that non-governmental organizations work with dissenting armed groups, or design campaigns against State security to tarnish the international image of countries. Specifically, the Commission considered that these types of statements that come from public officials, expressed within the context of political violence, or high polarization or social conflict, send a message that acts of violence used to silence human rights defenders and their organizations have governmental acquiescence or tolerance.
97. The IACHR also reiterated that the most effective means to protect human rights defenders in the hemisphere is to investigate effectively acts of violence against them and sanction those responsible. Therefore, States have the obligation to fight impunity with all means available, because impunity facilitates the continuing repetition of human rights violations and the total defenselessness of victims and their families. Impunity before these types of aggressions, feed the perception that these acts are tolerated by the State and its institutions.

## 5. Honduras

98. In its *Report Situation of Human Rights in Honduras*, also approved in December of 2015, the Commission observed with concern that it had received information on the persistence of attacks, threats, harassment and alleged criminalization of social leaders and human rights defenders.<sup>163</sup> Indeed, civil society organizations presented information to the Commission on repression and political persecution against human rights defenders throughout the country, and in particular against defenders of indigenous communities and peoples in relation to the defense of their territory and natural resources. According to the information received, union workers and women human rights defenders also continued to be victims of threats and murders.<sup>164</sup> In the case of LGBTI defenders, it was reported to the IACHR that they were in a situation of extreme vulnerability to suffering both State and non-State violence as a reprisal for their human rights activism and for carrying out sex work.<sup>165</sup> The Commission also noted the preoccupying amounts of prosecutions resulting from the misuse of criminal law, undertaken both by State and non-State actors to intimidate human rights defenders.
99. The Commission recalled that attacks on the lives of human rights defenders have a multiplier effect that goes beyond the effect on the defender's person, because when

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<sup>163</sup> IACHR, *Situation of Human Rights in México*, *supra*, para. 44.

<sup>164</sup> *Ibidem*, paras. 49-51.

<sup>165</sup> *Ibidem*, paras. 52-55.

aggression is committed in retaliation for their activity, this produces an intimidating effect that extends to those who advocate similar causes.<sup>166</sup> The Commission also reiterated that the State had to adopt an effective and comprehensive prevention strategy, with the goal of preventing attacks, so as to fulfil its duty to protect defenders when they encounter risks to their life and personal integrity. Within this framework, it called on the State to avoid declarations that delegitimize and discredit the work of human rights defenders. It observed that the State must publicly acknowledge that the exercise of the promotion and defense of human rights is a legitimate action and that, in exercising these actions, human rights defenders do not act against state institutions or the State but, on the contrary, promote the strengthening of the rule of law and the enlargement of the rights and guarantees of all people. All state authorities and local officials should be aware of the principles governing the activities of defenders and their protection, as well as guidelines for compliance.

100. Therefore, the Commission also highlighted its serious preoccupation with the levels of impunity in the country, and reiterated that it was a State obligation to investigate with due diligence and determine material and intellectual responsibilities for acts of violence against human rights defenders. The Commission called on the State to take comprehensive steps to attack the structural causes of that violence and of impunity, and reaffirmed that States have the obligation to take all necessary measures to avoid having State investigations lead to unjust or groundless trials for individuals who legitimately claim the respect and protection of human rights.
101. The Commission reiterated its concern about acts of violence against justice operators, after having received during its visit to the country consistent information on the recurrent insecurity and lack of adequate protection measures for justice operators and their families in light of the threats they receive, and the risks associated to the work they perform. The Commission recalled the obligation of the State to investigate *ex motu proprio* crimes of this nature, and emphasized the need for special protocols for conducting investigations concerning cases of attacks against justice operators in order to effectively punish those responsible. The Commission urged the State of Honduras to adopt as a matter of urgency all necessary measures to ensure the right to life, integrity and security of all judges, magistrates, and all justice operators generally in Honduras. It emphasized the importance of effective protection schemes, based on risk evaluations that take into consideration the cases they work on and the risk circumstances they face rather than their title or position, and that are tailored according to their needs and those of their families. The Commission reiterated that if States do not guarantee the safety of judges and magistrates against all kinds of external pressures, including reprisals directly aimed at their person and family, the exercise of the judicial function may be severely affected, thus frustrating the free development of the judicial process and access to justice for victims of human rights violations.

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<sup>166</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, supra note 1, para. 43; I/A Court of H.R., *Case of Kawas Fernandez vs. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C, No. 196, para. 153; I/A Court of H.R., *Case of Huilca Tecse, v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005. Series C No.121, para. 78.

## 6. Dominican Republic

102. In its Report on the *Situation of Human Rights in the Dominican Republic*,<sup>167</sup> approved in December of 2015, the Commission expressed its preoccupation with expressions used against journalists, intellectuals, human rights defenders, and public figures critical of the treatment by the State of Dominicans of Haitian Descent and of the judgment of the Constitutional Court TC/0168/13. At times, critics of the judgment were publically called “traitors to the homeland,” and public demonstrations were staged under the slogan “death to the traitors”, in the absence of a clear rejection of this type of conduct by the country’s authorities. The IACHR also received complaints of various acts of intolerance, threats and incitement to violence against those who defend the right of Dominicans of Haitian descent to nationality. It observed that, during demonstrations, rallying cries like “Duarte said ‘death to the traitors’” had been heard. According to the information received by the IACHR, opponents to the judgement, amongst them human rights defenders, were accused of harboring “anti-nationalist” sentiment; and the two judges who had written dissenting opinions in the Court’s judgement were allegedly called “traitors to Duarte’s legacy”, among other stigmatizing events. Against this backdrop, the IACHR received information claiming that a number of human rights defenders had been the targets of intimidation and stigmatization for the work they did.
103. As a result, the Commission reiterated that the right to freedom of expression, which is recognized in Article 13 of the American Convention on Human Rights, protects the right of all persons and groups in society to express differing opinions, even opinions that differ radically from the opinion of the majority, provided they do not violate the legitimate restrictions on freedom of expression, among them those that prohibit threats to a person’s life and personal integrity and “incitement to violence”, understood as a clear incitement to the commission of crimes, as defined under international human rights law.
104. The IACHR observed that some journalists and human rights defenders have been the targets of direct threats and acts of intimidation because of their defense of the right to nationality in the case of Dominicans of Haitian descent. This poses a serious danger to their rights to life and personal integrity, given the context in which the threats were made. The Commission was particularly troubled by the fact that these alleged threats and acts of intimidation elicited no response from the Dominican authorities.
105. The IACHR stated that one simple yet highly effective protective measure is for the highest State authorities to speak out, in consistent, clear, public, and firm terms, advocating the legitimacy and value of the defense of human rights and of journalism, and condemning cultural discrimination, intolerance, and incitement to violence. It is essential that the authorities vigorously condemn the attacks committed against persons who contribute to the public discourse by expressing and circulating their thoughts and by calling upon the competent authorities to act swiftly and with due diligence to shed light on the facts. The IACHR also reiterated

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<sup>167</sup> IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II. Doc.45/15, December 31, 2015.

that authorities must conduct effective investigations to identify the source of any threats or acts of intimidation reported and, where called for, carry out independent, immediate, and effective judicial proceedings.

## 7. Venezuela

106. Since its 2009 report and in subsequent Chapters IV of its annual reports, the Commission has noted an atmosphere of hostility and threats against the life and bodily integrity of human rights defenders. The information received by the IACHR makes reference to State acts designed to delegitimize and criminalize the activities of defenders and of Venezuelan and international nongovernment human rights organizations working in Venezuela.<sup>168</sup>
107. These obstacles have figured constantly in the course of the IACHR's thematic work, which has involved monitoring the criminalization and judicial harassment of human rights defenders, including the opening of criminal and administrative investigations against them,<sup>169</sup> restrictions on access to international funding for defenders' organizations,<sup>170</sup> and the subjection of defenders to harassment and defamation by the authorities.<sup>171</sup> Thus, the IACHR has observed that the authorities have continued to label actions by civil society organizations and human rights defenders as crimes of "treason" or "destabilization" in a number of media.<sup>172</sup>
108. Given the obstacles faced by civil society organizations in obtaining funding, the Commission has also maintained that "in order to carry out these activities, human rights defenders have the right to seek and obtain economic resources to finance their work. The states must guarantee the exercise of this right in the broadest possible manner, and promote it."<sup>173</sup> The IACHR has reiterated that civil society organizations may legitimately receive funds from foreign or international NGOs, or from foreign governments, in order to promote human rights, and that the State is

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<sup>168</sup> IACHR, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/II., Doc.54, December 30, 2009.

<sup>169</sup> HRW, *Report: Venezuela's Humanitarian Crisis. Severe Medical and Food Shortages, Inadequate and Repressive Government Response*, October 24, 2016.

<sup>170</sup> Presidential Decree 2.323, May 13, 2016, published in the Official Gazette Special Edition No. 6.227, Article 2(18).

<sup>171</sup> Request for a hearing by CDH-UCAB and PROVEA on discrimination for exercising political rights, filed with the IACHR on October 8, 2016.

<sup>172</sup> Diario Las Américas, *Opositores acusados de "traición a la patria" continuarán denunciando la situación de Venezuela*, May 10, 2016; El Nuevo Herald; *Diputados opositores venezolanos continuarán periplo pese a denuncia*, May 10, 2016; Efecto Cocuyo, *Qué hay detrás de la "traición a la patria" que el Gobierno imputa a los diputados opositores*, June 29, 2016; See: Presidential Decree 2.323, May 13, 2016, published in the Official Gazette Special Edition No. 6.227.

<sup>173</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para 40.

obliged to guarantee their establishment and operations with no restrictions other than those allowed under the right to freedom of association.<sup>174</sup>

## D. Thematic and Country Hearings

109. Over the course of the past few years, the IACHR has monitored the situation of human rights defenders in the Americas by convoking hearings concerning themes, countries and cases. The Commission has convened hearings on the general situation of human rights defenders in the Dominican Republic, Honduras, Cuba, Peru, Guatemala, Colombia, Venezuela, Ecuador, and Brazil, and other countries.<sup>175</sup> The Commission has additionally held regional hearings on the implementation of national protection systems in the Americas, and country specific ones, such as in Honduras;<sup>176</sup> and has focused hearings on categories of human rights defenders who are particularly exposed to violence, such as justice operators, women human rights defenders, defenders of the environment, defenders of the rights of indigenous peoples, and defenders of the rights of LGBTI persons.<sup>177</sup>

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<sup>174</sup> IACHR, Press Release No. 71/16, *IACHR Expresses its Concern Regarding the Declaration of a “State of Exception and Economic Emergency” in Venezuela*, June 1, 2016.

<sup>175</sup> IACHR, *Hearings*, 161 Period of Sessions, *Investigations of Attacks against Human Rights Defenders in Colombia*, March 21, 2017; 161 Period of Sessions, *Situation of Human Rights Defenders in Honduras*, March 17, 2017; 159 Period of Sessions, *Situation of Human Rights Defenders in the Dominican Republic*, December 6, 2016; 159 Period of Sessions, *Justice Situation and Human Rights Defenders in Honduras*, December 1, 2016; 159 Period of Sessions, *Situation of Human Rights Defenders in Cuba*, December 1, 2016; 157 Period of Sessions, *Situation of Human Rights Defenders in Cuba*, April 8, 2016; 157 Period of Sessions, *Human Rights Situation in Bajo Aguán, Honduras*, April 5, 2016; 156 Period of Sessions, *Reports of Criminalization of Human Rights Defenders and Justice Operators in Guatemala*, October 22, 2015; 156 Period of Sessions, *Situation of Human Rights Defenders who Advocate for Land Restitution in Colombia*, October 22, 2015; 156 Period of Sessions, *Reports of Harassment and Attacks on Human Rights Defenders in Venezuela*, October 19, 2015; 154 Period of Sessions, *Human Rights Situation of Leaders and Defenders of the Shuar People in Ecuador*, March 17, 2015; 153 Period of Sessions, *Situation of Human Rights Defenders in Guatemala*, October 28, 2014; 149 Period of Sessions, *Situation of Human Rights Defenders in Brazil*, October 29, 2013, among others.

<sup>176</sup> IACHR, Hearing, 161 Period of Sessions, *Protection Mechanism for Human Rights Defenders in Honduras*, March 17, 2017; IACHR, Hearing, 159 Period of Sessions, *Follow-Up on Protection Mechanism for Human Rights Defenders in Honduras*, December 1, 2016; IACHR, Hearing, 157 Period of Sessions, *National Protection System for Defenders and Justice Operators in the Americas*, April 8, 2016; IACHR, Hearing, 150 Period of Sessions, *Situation of Human Rights Defenders in the Americas*, March 24, 2014.

<sup>177</sup> IACHR, *Hearings*, 161 Period of Sessions, *Independence of justice operators in Chile*, March 18, 2017; 161 Period of Sessions, *Situation of criminalization of defenders who oppose hydroelectric projects in Guatemala*, March 20, 2017; 161 Period of Sessions, *Situation of defenders of the environment in Panama*, March 17, 2017; 159 Period of Sessions, *Situation of Justice Operators in El Salvador*, December 5, 2016; 159 Period of Sessions, *Situation of Defenders of Women’s Rights and the Environment in America*, October 23, 2015; 156 Period of Sessions, *Situation of Defenders of the Human Rights of Indigenous Peoples and of the Environment in Ecuador*, October 19, 2015; 156 Period of Sessions, *Human Rights Situation of Defenders of the Environment in the Context of Extractive Industries in America*, October 19, 2015; 154 Period of Sessions, *Forced Migration and Persecution of LGBT Defenders in Central America*, March 17, 2015; 150 Period of Sessions, *Situation of Justice Operators in Chile*, March 17, 2014; 147 Period of Sessions, *Situation of Human Rights of Justice Operators in Guatemala*, March 15, 2013; 143 Period of Sessions, *Situation of Women Human Rights Defenders in Mesoamerica*, October 28, 2011.

110. In addition, the Commission has a hearing on *National Protection Systems for Human Rights Defenders and Justice Operators in the Americas* during its 157<sup>o</sup> Period of Sessions specifically to receive information to prepare this report.<sup>178</sup> As indicated earlier, in the context of the hearing, the participating civil society organizations reported to the Commission on the state of the national protection mechanism in their respective countries, and while they acknowledged the advances that had been achieved, they also highlighted series of crucial challenges. The participating organizations identified key features that States should include in the public policy they adopt to protect human rights defenders. The features which were consistently highlighted throughout the hearing were:
- the fostering of a culture which values human rights protection and promotion; the monitoring of patterns of violence through data compilation;
  - an improvement in investigation protocols;
  - the allocation of sufficient human and financial resources; as well as
  - the development of inter-institutional cooperation and coordination for the implementation of the program.
111. The participants to the hearing also suggested different approaches to render risk evaluations more efficient, and for them to respond more adequately and effectively to the circumstances in which defenders who require specific measures of protection may find themselves.

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<sup>178</sup> IACHR, Hearing, 157 Period of Sessions, *National Protection Systems for Defenders and Justice Operators in the Americas*, April 8, 2016.



CHAPTER 4  
AN INTEGRAL PROTECTION  
POLICY FOR HUMAN RIGHTS  
DEFENDERS



## AN INTEGRAL PROTECTION POLICY FOR HUMAN RIGHTS DEFENDERS

112. As the IACHR has previously pointed out, States' obligations to allow free exercise of the right to defend rights pursuant to the United Nations Declaration on Defenders<sup>179</sup> correlate with various obligations derived from rights recognized in numerous international conventions and declarations.<sup>180</sup>
113. In the context of the inter-American system, both the American Declaration and the American Convention recognize rights such as those to life, personal integrity, freedom of expression, freedom of association, judicial guarantees, and judicial protection, which, taken together, permit the free exercise of activities designed to defend and promote human rights. That is why, as the Commission has recognized, attacks on a defender in reprisal for his or her activities may entail violation of multiple rights recognized in inter-American instruments.<sup>181</sup>
114. Based on the general obligations to respect and guarantee human rights, as well as the duty to adopt provisions under domestic law recognized in Articles 1.1 and 2 of the American Convention and which form part of the general obligations relating to rights recognized in the American Declaration, the Commission has recognized that State obligations with respect to protecting the exercise of activities in defense of human rights are closely inter-related and inter-dependent for the purpose of achieving integral protection.
115. Thus, in order to guarantee the free and safe exercise of the work undertaken by human rights defenders, States must fully comply with their international obligations in such a way as to ensure not only that their agents refrain from violating the rights of defenders but also that they appropriately prevent acts of aggression, harassment, and attacks against them, in recognition of the importance of the part they play in a democratic society. In addition, States have a duty to defend them against real and imminent threats. Furthermore, in the Commission's perspective, effective investigations of violations of their rights are an essential part of this policy, because, as the Commission has repeatedly pointed out, the best way to protect defenders is by punishing those responsible for acts against them.
116. The Commission has stated, for example, that simply providing security arrangements for at-risk defenders, without investigating the origin of the threats made against them, would not constitute an integral response aimed at protecting their rights. Likewise, the Commission has taken the view that merely initiating an

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<sup>179</sup> Declaration approved by the UN General Assembly through *Resolution A/RES/53/144*, March 8, 1999.

<sup>180</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 15; Consejo Económico y Social, *Promoción y Protección de los Defensores de Derechos Humanos: Defensores de los Derechos Humanos*. Informe presentando por la señora Hina Jilani, Representante Especial del Secretario General sobre la cuestión de los defensores de derechos humanos de conformidad con la Resolución 2000/61 de la Comisión de Derechos Humanos, E/CN.20010/94, 26 de enero de 2001, para. 14.

<sup>181</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 19.

investigation into threats against them does not provide sufficient protection for the defender in question when there is no assessment of the risk to which he or she is exposed and no provision of security arrangements, should they be necessary, that are tailored to that risk. In addition, integral protection is not provided if, on the one hand, States decide to undertake an investigation of the acts of violence against a defender, while, on the other, authorities foster an atmosphere intended to discredit and belittle that defender. The IACHR observes that the failure to craft an integral protection policy evidenced in the above examples establishes a state of defenselessness detrimental to the work of human rights defenders.

117. It is for that reason that, starting with its 2006 Report and again in 2011,<sup>182</sup> the Commission formulated the notion of an overall or integral protection policy which, as already noted, is founded upon recognition of the right to defend rights and the fact that the obligations incumbent upon the State to make it possible to exercise that right to defend rights are both inter-related and inter-dependent. This policy requires that States:

- adopt public policies, laws, and any other measure needed to ensure that defenders can freely go about their work;
- ensure that their agents refrain from impairing or arbitrarily interfering with their rights and that no administrative, legislative, or other kinds of hindrances are imposed in order to hamper their work;
- protect those who defend human rights when their own rights to life and personal integrity are at risk; and
- investigate with due diligence violations perpetrated against defenders, thereby combating impunity.

118. In the case of *Luna Lopez v. Guatemala* and later in the case of *Human Rights Defender v. Honduras*, the Inter-American Court called on the respective States to implement a public protection policy within a reasonable time period, and identified a number of important components which should be included within an integral protection policy. These components include:

- the participation of human rights defenders, civil society organizations, and experts in the formulation of the standards to regulate protection for the persons affected;
- the implementation of protection measures in a comprehensive manner, with inter-institutional cooperation to the extent necessary, according to the risk of each situation;

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<sup>182</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 479; I/A Court of H.R., *Case of Kawas Fernandez vs. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C, No. 196, para. 91.

- the establishment of procedures for beneficiaries to report on deficient or insufficient implementation of measures of protection and to resolve such situations once reported;
  - the creation of an analysis model that allows for the effective assessment of the risk and protection needs of each defender or group;
  - the creation of an information management system on the situation of prevention and protection of human rights defenders;
  - the design of protection plans that respond to the specific risk faced by each defender and the characteristics of their work;
  - the promotion of a culture that legitimates and protects the work of human rights defenders; and
  - the allocation of sufficient human and financial resources to respond to the real protection needs of human rights defenders.<sup>183</sup>
119. When formulating an integral protection policy, the Commission deems it essential to address the specific needs of defenders at special risk due to the causes they defend, in some cases taking their diversity into account, with respect to their sex, gender, race, and ethnic group, among other factors. That includes also paying attention to the particular characteristics of the work performed by defenders with regard to the environment; indigenous territories and communities; activists who focus on the rights of LGBTI persons; defenders of sexual and reproductive rights; and others.
120. At the same time, as the Commission pointed out in its 2011 Report, the effectiveness of a protection policy largely depends on how much support and commitment it enjoys from the State concerned.<sup>184</sup> Serious political will is required to adopt the laws, regulations, policies, and programs needed for an integral protection policy. All pertinent branches of the State must be well coordinated to make an integral protection policy work and to implement it effectively. Political commitment on the part of the State is demonstrated when an integral protection policy is accompanied by comprehensive insightful legislation, when capable and well-coordinated authorities are put in charge of it, and when sufficient human and financial resources are allocated to it.<sup>185</sup>
121. Accordingly, a legal and administrative framework that recognizes the content of an integral protection policy and clearly regulates the obligations

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<sup>183</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*, Merits, Reparations and Costs, Judgement of October 10, 2013, paras. 243-244.

<sup>184</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1; IACHR *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 133.

<sup>185</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 487; IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 133.

of the authorities involved and how they must coordinate with one another is vital for ensuring that it works. As the former United Nations Special Rapporteur on Human Rights Defenders, Margaret Sekagayya has said: “in countries where human rights are specifically recognized and protected in domestic law, those rights are more likely to be respected and realized in practice.”<sup>186</sup> In federal states, especially, the domestic legal framework needs to clearly designate the central government and local government institutions responsible for implementing the policy. In addition, States must pass the laws needed to ensure that central and local government authorities are clear as to their functions with regard to protecting human rights defenders, so that no ambiguity or confusion arises when powers and information are handed down from the national to the local level. In federal states, the national government must ensure that all the entities involved take the necessary steps to guarantee proper compliance with the protection programs for human rights defenders.<sup>187</sup>

122. Legislation in this field must also be directed, inter alia, to highlighting the importance and validity of the work done by human rights defenders and their organizations; to proclaiming a policy of zero tolerance of threats or violence against human rights defenders; and to organizing training activities for government officials, the press, and society in general, about the work done by human rights defenders. States and the actions they undertake must serve as catalysts for social values fostering respect for those who defend human rights and the forging of a safe environment.
123. In the following section, the Commission analyzes the content of States’ obligations which, through their interconnectedness and inter-dependence, constitute the materialization of what an integral policy means in practice.

## **A. *Obligation to Respect***

124. The protection of human rights, “particularly the civil and political rights set forth in the Convention, is in effect based on the affirmation of the existence of certain inviolable attributes of the individual that cannot be legitimately restricted through the exercise of governmental power.”<sup>188</sup> Thus, “the protection of human rights must necessarily comprise the concept of the restriction of the exercise of state power.”<sup>189</sup> The obligation to respect human rights requires precisely that the State refrain from

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<sup>186</sup> United Nations, *Report of the Special Rapporteur on the situation of Human Rights Defenders, Margaret Sekagayya*, A/HRC/25/55, December 23, 2013, para. 63.

<sup>187</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, supra note 1, para. 492.

<sup>188</sup> I/A Court of H.R., *Advisory Opinion OC-6/86*, May 9, 1986. *The Word "Laws" in Article 30 of the American Convention on Human Rights.*, Series A, No. 6, para. 21.

<sup>189</sup> I/A Court of H.R., *Advisory Opinion OC-6/86*, May 9, 1986. *The Word "Laws" in Article 30 of the American Convention on Human Rights.*, series A, N° 6, para. 21.

impairing or arbitrarily interfering with human rights, so that “whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention.”<sup>190</sup>

125. The IACHR emphasizes that an integral protection policy must start with respect by State agents for the rights of defenders, so that their work is not hampered by the State itself creating hostile environments which, instead of recognizing their legitimate role in society, encourage acts of violence against them. In its 2006<sup>191</sup> and 2011<sup>192</sup> reports, the Commission already pronounced itself on the obligation of States to respect the human rights of defenders and voiced its concern at the serious and recurrent violations derived from failure to comply with the duty to respect those rights, manifested in stigmatization, threats, killings, and disappearances directly attributable to State agents or armed groups acting with the acquiescence or tolerance of the State. The Commission has also pronounced itself on arbitrary interferences with the rights of assembly, social protest, and freedom of association, and has pointed to the tendency toward criminalization of the defense of human rights, which could result in the impairment of multiple human rights, including the rights to personal integrity and the rights to freedom of expression and assembly, as well as the rights to judicial guarantees and judicial protection. In particular, in 2015, given the worrying nature of the information it had received, the IACHR adopted a report specifically addressing the issue of criminalization of the work of human rights defenders.<sup>193</sup>
126. States must ensure that the rights of defenders are not left to the discretion of the government but, rather, that they are surrounded by “a set of guarantees designed to ensure that the inviolable attributes of the individual not be impaired. Perhaps the most important of these guarantees is that restrictions to basic rights only be established by a law passed by the Legislature.”<sup>194</sup> States must ensure that in general their regulatory framework, including secondary norms, decrees, protocols, and rules of procedure abide by international standards on the subject.
127. Lawmakers must play a positive part in protecting human rights defenders, by strictly abiding by the principle of legality when characterizing offenses, which need to be rigorously and unambiguously defined, using precise and accurate language. Whenever criminal offenses are not drafted in accordance with the principle of legality because their content is ambiguous, the door is left wide open for discretionality and arbitrary decisions when justice operators apply the law.<sup>195</sup> One example of that is the formulation of laws punishing the organization of, and participation in, demonstrations that have not received prior authorization, or the

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<sup>190</sup> I/A Court of H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 169.

<sup>191</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1.

<sup>192</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1.

<sup>193</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, *supra* note 1.

<sup>194</sup> I/A Court of H.R., *Advisory Opinion OC-6/86*, May 9, 1986. *The Word "Laws" in Article 30 of the American Convention on Human Rights*, Series A, No. 6, para. 22.

<sup>195</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, *supra* note 1.

passing of laws designed to combat terrorism in which the language is so vague and ambiguous that they can be used to intimidate human rights defenders whose work is conducted peacefully but may be opposed by certain sectors.<sup>196</sup>

128. Likewise, the State should refrain from taking part in defamation campaigns and the dissemination of negative and stigmatizing depictions of human rights defenders and the work they do.<sup>197</sup> States must not tolerate any attempt by government authorities to question the legitimacy of the work done by human rights defenders and their organizations. In highly politicized, polarized countries, with high levels of social conflict, such messages send a signal that acts of violence against human rights defenders and their organizations have the backing of the State.<sup>198</sup> The Commission has received information regarding a number of States in the region with parallel but inconsistent discourse on human rights defenders. For example, in the course of its monitoring work, the IACHR has been informed of statements by high-level authorities belittling human rights defenders, stigmatizing them as “criminals or promoters of criminals,” “enemies of development,” or “enemies of the State.”<sup>199</sup> At all levels, therefore, the State needs, in accordance with inter-American and universal standards, to combat the dissemination of hate speech or any language inciting discrimination, hostility, or violence against those who defend human rights.
129. It is, furthermore, crucial that States eschew any improper use of their punitive powers and judicial system to persecute human rights defenders engaged in legitimate and legal activities, and that they refrain from unwarranted criminalization, arrests, arbitrary detentions, or excessive use of force during public demonstrations.<sup>200</sup>
130. Judges and justice operators can help protect human rights defenders by refusing to participate in any word of unwarranted criminalization of human rights defenders. There have been reports of some prosecutors aiding and abetting criminalization, by initiating investigations off their own bat or based on complaints by individuals seeking to undermine the work of human rights defenders.<sup>201</sup> The IACHR has noted that a frequent concern regarding complaints against human rights defenders is that “the authorities in charge of investigating the crime—perhaps due to a lack of precision in the criminal codes themselves, or due to a lack of diligence in the investigation—do not verify, when gathering evidence before a criminal indictment

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<sup>196</sup> I/A Court of H.R., *Case of Kimel v. Argentina*. Merits, Reparations, and Costs. Judgment of May 2, 2008. Series C No. 177, para. 63.

<sup>197</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1.

<sup>198</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 177; IACHR, *Situation of Human Rights in Honduras*, *supra*, para. 64.

<sup>199</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 177; IACHR, *Situation of Human Rights in Honduras*, *supra*, para. 64.

<sup>200</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, Recommendations 13 and 14.

<sup>201</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, *supra* note 1, para. 58.

is issued, that unlawful conduct has definitely occurred.”<sup>202</sup> For their part, judges also participate in the criminalization of human rights defenders when they agree to allow proceedings without proper evidence or based on the testimony of individuals lacking credibility; or to expedite proceedings in order to repress the defender who has been accused;<sup>203</sup> to arbitrarily order the arrest of human rights defenders;<sup>204</sup> to subject defenders to lengthy proceedings; and to issue rulings contrary to domestic legislation. Judges likewise collude with criminalization proceedings when they improperly interpret the law and omit to consider instruments protecting human rights defenders; all of which obstruct the defenders’ work.<sup>205</sup>

131. Both at the administrative and legislative levels, States must also refrain from creating obstacles or any other impediment or disproportionate restrictions on the registration, establishment, financing, and operations of human rights organizations.<sup>206</sup> As pointed out above, the Commission considers that State must give government officials precise instructions along these lines and must impose disciplinary sanctions on those who fail to comply with those instructions.
132. Finally, the Commission reiterates that the State must take the necessary steps to modify those rules, by removing obstacles to the defense of human rights. Nevertheless, even when the applicable regulations or legal framework violate the rights of defenders, the authorities are also obliged, within their own spheres of competence and in respect of the functions they perform, to monitor their actions or omissions ex officio, to make sure that they do not violate human rights, if necessary by not applying regulations that could turn out to be detrimental to the rights of defenders.<sup>207</sup>

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<sup>202</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, supra note 1, para. 94.

<sup>203</sup> Protection International, *Guide for Human Rights Defenders against Criminalization*, December 2009, para. 5.

<sup>204</sup> Peace Brigades International (PBI), *Report of Short-term Mission to Honduras: The Situation of Human Rights Defenders*, 2011, para. 14.

<sup>205</sup> INREDH, *Criminalización de los Defensores y Defensoras de Derechos Humanos en Ecuador*, 2011, para. 145.

<sup>206</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, supra note 1, Recommendations 18-21.

<sup>207</sup> Thus, the Inter-American Court has, for instance, indicated that the State “must ensure that the General Amnesty Law for the Consolidation of Peace does not once again pose an obstacle for the investigation of the facts of the instance case or for the identification, prosecution, and possible punishment of the perpetrators of those deeds and other similar serious violations of human rights that occurred during the armed conflict in El Salvador. This obligation is binding upon all branches and organs of the State as a whole, which are duty-bound, ex officio, to monitor conformity (“convencionalidad”) between domestic provisions and the American Convention, evidently within the framework of their respective spheres of competence and the corresponding procedural regulations [...]” I/A Court of H.R., *Case of Rochac Hernández et al. v. El Salvador*. Merits, Reparations, and Costs. Judgment of October 14, 2014, para. 213.

## **B. *Obligation to Prevent***

133. As a result of their obligation to guarantee rights, States have the obligation to prevent violations against human rights defenders in the exercise of their work. This duty is of particular importance in countries where there is a demonstrated context of violence and intimidation against human rights defenders. This obligation of prevention encompasses “all measures of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any potential violation of these rights is effectively considered and treated as an unlawful act which, as such, may result in the punishment of the person who commits it, as well as the obligation to compensate the victims for the harmful consequences.”<sup>208</sup>
134. It is important to reiterate that, although the obligation to prevent is one of “means or conduct”<sup>209</sup>, it involves the State adopting “comprehensive measures” to “comply with due diligence” by addressing the legal circumstances in which possible infringement is to be prevented. For that, States “should have an appropriate legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken.”<sup>210</sup> Although “It is not possible to make a detailed list of all such measures, since they vary with the law and the conditions of each State Party”<sup>211</sup>, the Commission considers that in those countries familiar with efforts to combat violence against human rights defenders, it is to be expected that the State develop an appropriate legal framework to prevent violations of their rights, that it ensure its effective application, and that it implement appropriate and effective prevention policies in response to the defenders’ complaints. The prevention strategy also needs to be broad; in other words, it should prevent risk factors and, at the same time, strengthen the institutions capable of delivering effective responses.
135. Following is the Commission’s list of some of the aspects to be borne in mind in connection with measures that the State should adopt to prevent violations of defenders’ rights.

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<sup>208</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No.269, para. 118, and I/A Court of H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits, Judgment of July 29, 1988. Series C No. 4, para. 166.

<sup>209</sup> I/A Court of H.R., *Case of González et al (“Cottonfield”) v. México*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 252.

<sup>210</sup> I/A Court of H.R., *Case of González et al (“Cottonfield”) v. México*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258.

<sup>211</sup> I/A Court of H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 175.

## 1. Obligation to Create a Culture of Human Rights and Recognition of the Work Done by Human Rights Defenders

136. The Commission has stressed the obligation of States to ensure that human rights defenders can go about their work without fear of reprisals or improper pressure. The IACHR has emphasized that the defense of human rights can only be exercised freely when those involved are not subjected to threats, or any kind of physical, psychological or moral aggressiveness, or any other form of harassment. It has also asserted that when defenders operate in a hostile environment, the important matters that they are addressing may be relegated to second place and other defenders may be intimidated.<sup>212</sup> It is therefore an obligation of the State not only to establish an appropriate and effective legal framework but also to make sure that actual conditions on the ground are such that human rights defenders can accomplish their functions. Those who defend human rights must be able to document and denounce human rights violations, lend support to victims, denounce and prosecute corruption and impunity, talk to the press, lobby government officials with a view to discussing the issues they deal with, and, if need be, criticize the government. They must be able to freely exercise all the rights upheld in the American Convention, without hindrances due to their being human rights defenders.
137. Accordingly, States must take pro-active steps to allow human rights defenders to operate freely, by fostering a culture of human rights; educating the general public; acknowledging the value and importance of human rights and an environment free from violence and threats that will empower their work on behalf of human rights; by training public servants in the work done by defenders; and conducting serious and effective investigations into any violation of their rights, thereby preventing impunity.
138. The Commission has established that the obligation to create an environment in which defenders can safely go about their work begins with the recognition that every human being is entitled to promote and defend human rights. The Commission has recommended that States foster a culture that is mindful of human rights, in which the key part played by human rights defenders in shoring up democracy and the rule of law is unequivocally and publicly recognized and in which practicing the defense of human rights is acknowledged as a legitimate activity.<sup>213</sup> It is vital that authorities at every level publicly acknowledge that defending human rights does not mean working against State institutions, but, rather, that defenders

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<sup>212</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 46; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 471; I/A Court of H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs, Judgment of November 27, 2008. Series C No. 192, para. 96; I/A Court of H.R., *Case of Hilca Tecse v. Peru*. Merits, Reparations, and Costs. Judgment of March 3, 2005. Series C No. 121, para. 78.

<sup>213</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, Recommendations 3 and 4.

perform much needed oversight of government institutions and thereby help to strengthen the rule of law and to expand guarantees and rights for everyone. The Commission has pointed out that insufficient recognition by the authorities and by society in general of the importance of the work done by defenders reinforces their vulnerability and poses one of the biggest challenges when it comes to achieving protection for them.<sup>214</sup>

139. Accordingly, the Commission urges States to promote the *United Nations Declaration on Human Rights Defenders* and to adopt laws, policies, and protocols that publicly recognize the right to defend human rights in their countries. States must make the existence and contents of those instruments widely known, in government and educational circles, and in society as a whole.

## 2. Obligation to Educate and Train Government Officials

140. The Commission considers that the State must train government officials and society as a whole regarding the importance of the part played in society by human rights defenders. Accordingly, the IACHR has recommended that States conduct training and promotional activities for all State agents, society, and the press, in order to raise awareness of the importance and value of the work done by human rights defenders and their organizations.<sup>215</sup> These training activities and awareness campaigns must be geared towards providing information about the rights of defenders under applicable international instruments, including the *United Nations Declaration on Human Rights Defenders*; about the type of work they do and its importance; and about the key part they play in consolidating the rule of law and strengthening democracy.
141. The training must include mainstreaming of a gender – and diversity – sensitive approach aimed at achieving understanding of the special protection needs of certain groups most exposed to criminalization, threats, and physical violence. Thus, training in the particular impacts of violence against women, LGBTI persons, persons of African descent, and defenders of indigenous peoples, as well as other particularly at-risk groups of defenders, is essential to ensure that prejudices and stereotypes do not lead to an inequitable allocation of protection measures or, in the case of official investigations, to unwarranted delays in, or the closure of, preliminary enquiries.

## 3. Obligation to Tackle Structural Issues

142. A comprehensive and insightful approach to prevention must also address the underlying structural problems that lead to violence against human rights

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<sup>214</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, *supra* note 1, para. 276; IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OAS/Ser.L/V/II. Doc 48/13, para. 276.

<sup>215</sup> *Ibidem*, Recommendation 5.

defenders, such as impunity and corruption. The Commission has also called upon State to instruct government authorities to establish forums for public discussion between high-ranking officials and organizations devoted to the defense of human rights, with a view to hearing what the latter have to say about existing public policies and gaps in legislation and how they impact their work. Thus, the Commission deems it important that human rights organizations have opportunities for active participation in discussions relating to public policy proposals or legislation that could affect their rights.<sup>216</sup>

143. The Commission considers that, to comply with their prevention duty, States should begin by implementing a serious policy aimed at helping them identify possible patterns in the attacks, acts of aggression, and obstacles faced by human rights defenders. These include actions by illegal armed groups and organized crime entities, as well as companies that may be involved in attacks and efforts to intimidate defenders, leaders, and indigenous or Afrodescendent peoples. In view of States' international obligations to oversee business activities under their jurisdiction, the State must establish a clear legal framework that provides for sanctions against companies involved in criminalizing, stigmatizing, or committing other abuses against human rights defenders.

➤ States, in observance of their obligation to address root causes, must not overlook the involvement of businesses in the creation or exacerbation of a situation of risk faced by human rights defenders. States shall thus consider, in the spirit of the "Guiding Principles on Business and Human Rights,"<sup>217</sup> informing businesses about the content of the right to defend rights; about their positive and negative responsibilities in respecting this right; as well as include concrete measures to be undertaken to ensure that businesses contribute to a secure and enabling environment for human rights defenders.<sup>218</sup> States should stress to businesses operating under their jurisdiction that their responsibility includes refraining from harming human rights defenders, restricting their rights, or interfering with their legitimate activities; consulting and engaging with defenders to identify, mitigate, and remedy any adverse human rights impacts of their business operations; and ensuring that private security firms or contractors acting for or on behalf of businesses are not involved in threats or attacks against human rights defenders.<sup>219</sup> In light of the international obligation of the State to oversee the operation of businesses within its jurisdiction, it is important for the State to establish a clear legal framework which provides for sanctions against businesses that are involved in abuses against human rights defenders.

<sup>216</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, *supra* note 1, Recommendation 5.

<sup>217</sup> United Nations Report of the Special Representative of the Secretary-General on Business and Human Rights, John Ruggie. *Guiding Principles on Business and Human Rights: implementation of the framework of the United Nations "Protect, Respect and Remedy"*. A/HRC/17/31. March 21, 2011.

<sup>218</sup> See in this regard, ISHR and ICAR, *Human Rights Defenders in National Action Plans (NAPs), A Thematic Supplement to National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation and Review of State Commitments to Business and Human Rights Framework*, June 2016.

<sup>219</sup> *Idem*.

144. Compiling up-to-date and accurate statistics and data on threats or acts of violence against human rights defenders is another means to address root causes of violence against human rights defenders. The mapping out of the violence they face allows for a better understanding of the breadth of the issue and its regional particularities, and to design a more efficient public policy of prevention. It is important to signal that the lack of statistics in many States is one of the reasons for which States do not have the necessary tools to identify the seriousness of many of the obstacles that human rights defenders face, particularly for groups that find themselves in particular situations of vulnerability or historical discrimination. In this regard, in relation to gender violence against women for example, the Commission has considered that the absence of precise, updated and disaggregated data can constitute an important obstacle to solve the problem of violence.<sup>220</sup>
145. As such, the Commission concludes to the importance of setting up a register to collect detailed, accurate, and up-to-date disaggregated statistics on attacks, acts of violence, and intimidation, taking place in the territory as an essential prerequisite for designing, implementing, and evaluating effective public policies of prevention, protection, and criminal prosecution of violence against human rights defenders. These statistics should include, for example: name, job or economic activity, employer, and sex and gender of the victim; causes that were advanced at the time of the events; type, location, and date of attack or threat suffered (with details on the type, such as if the threat was carried out orally, in a pamphlet, etc); suspected person or group responsible (including the perspective of the victim); investigating authority and investigation reference number or code; and status of investigation and/or prosecution of the perpetrator. Such detailed information serve to map out the breadth, shape, trends and patterns of recurrence of threats and violence that affect human rights defenders, and are crucial for the implementation of effective prevention policies. The importance of maintaining accurate statistics on violence against journalists was also stressed by various international experts and institutions representing the rights of media workers and journalists in a joint press release, in which they observed that “States should maintain detailed and disaggregated statistics on crimes against freedom of expression and the prosecution of these crimes, among other things to facilitate better planning of prevention activities.”<sup>221</sup>
146. Stereotypes also participate in increasing the vulnerability of some specific groups of human rights defenders, such as women, LGBTI, indigenous, and Afrodescendant human rights defenders, among others. Therefore, States must take the necessary short, medium and long term measures to eradicate the discrimination that is both

<sup>220</sup> IACHR, Press Release, No. 172/2016, *Joint Call of the UN Rapporteur on Violence Against Women and All other Global and Regional Mechanisms to End Femicides and Gender Based Violence*, November 22, 2016; IACHR, *Access to Information, Violence against Women, and the Administration of Justice*, OAS/Ser.L/V/II.154, Doc.19, March 27, 2015, pars. 43-51; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II., Doc. 68, January 20, 2007, *Conclusions and Recommendations for administration of justice bodies* Nos. 7-8.

<sup>221</sup> United Nations’ Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe’s Representative on Freedom of the Media, Organization of American States’ Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights’ Special Rapporteur on Freedom of Expression and Access to Information. *Joint Declaration on Crimes Against Freedom of Expression*, June 25, 2012.

the cause and consequence of the violence they face. For instance, because of gender stereotypes attached to their traditional role in society, women defenders continue to be especially vulnerable to human rights violations. For women human rights defenders, it is imperative that States adopt measures to eradicate the prevailing sexism and gender stereotyping engrained in the language and reasoning of many officers of the courts and of law enforcement in charge of the investigations, which often result in inaction when following-up on complaints and carrying out timely investigations of violations of their rights.

147. In 2013, the UN General Assembly adopted the resolution *Promotion 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: protecting women human rights defenders*.<sup>222</sup> The resolution took a strong stance on the protection of women human rights defenders, calling on States to integrate a gender perspective into their efforts to create a safe and enabling environment for the defense of human rights, as well as other prevention and investigation measures. The following year, the OAS General Assembly included a recommendation in its annual resolution on *Human Rights Defenders: Support for Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas*, which emphasized that the rights of women human rights defenders should be afforded special attention to ensure that they are fully empowered and that their rights are protected to enhance the effectiveness of the important activities that they carry out.<sup>223</sup>
148. Corruption is another root cause of violence against human rights defenders, as its pervasive presence in societies undermines the independence of judicial institutions and the rule of law, and allows for the continuation of manifestly unlawful or groundless claims against human rights defenders. Corruption also allows for an uneven access to justice and discrepancies in delays in treatment of complaints when presented either by businesses or by human rights defenders, indigenous leaders or communities; which all lead to creating high-risk environments for human rights defenders. The Commission considers that States must set in place the necessary mechanism to resolve allegations of corruption, promptly and in an independent manner, in order to limit its effects on the causes that human rights defenders bring forward; as well as to sanction the responsible public officials.

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<sup>222</sup> United Nations General Assembly, *Promotion 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: protecting women human rights defenders*, [A/68/456/Add.2](#), Resolution adopted on 18 December 2013.

<sup>223</sup> General Assembly of the OAS, *Human Rights Defenders: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas*, [AG/RES. 2851 \(XLIV-O/14\)](#), Adopted at the second plenary session, held on June 4, 2014, Resolution No.2; See also the first time the General Assembly of the OAS included a gender-specific approach in its resolution on *Human Rights Defenders: General Assembly of the OAS, Human Rights Defenders: Support for Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas*, [AG/Res.2579 \(XL-O/10\)](#), Adopted at the fourth plenary session, held on June 8, 2010, Resolution No.2.

## C. *Obligation to Protect in At-Risk Situations*

149. States have the obligation to protect the life and personal integrity of human rights defenders in at-risk situations, even when the risk stems from a non-State actor. This is because of the *erga omnes* effect of human rights, by which States are obliged to enforce protection rules and ensure the effectiveness of human rights under all circumstances and for everyone.<sup>224</sup> This obligation becomes especially important in the circumstances currently found in several States in the region, particularly when human rights defenders are at risk because of the causes they promote, which may affect gangs or criminal or illegal groups, persons connected with major business sectors, and others.
150. Under international law, the State has a duty to protect the rights of defenders against acts or omissions by non-State actors under the following conditions: i) when a risk is real and imminent; and ii) when the State knew of or should have known of that real and imminent risk. When those two conditions are met, the authorities possessing that knowledge must adopt necessary measures within their sphere of competence that could reasonably be expected to prevent or avoid that risk.<sup>225</sup> Should it fail to comply with that obligation, the State shall be internationally responsible for violating the duty to protect.
151. As noted earlier, a good way to put an integral protection policy in place is to establish mechanisms, laws, and policies that provide responses tailored to the risk faced by human rights defenders. Particularly when confronted with increases in killings and pervasive violence against human rights defenders, appropriate implementation of a protection mechanism may make it easier for a State to comply with its duty to protect by affording greater proximity and concrete knowledge of the particular circumstances of the at-risk defender and thus enabling the State to

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<sup>224</sup> I/A Court of H.R., *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs*. Merits. Judgment of January 31, 2006. Series C No. 140, para. 123; I/A Court of H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Merits. Judgement of September 15, 2005. Serie C No. 134, para. 111.

<sup>225</sup> I/A Court of H.R., *Case of Velásquez Paiz et al v. Guatemala*. Preliminary objections, Merits, Reparations and Costs. Judgement of November 19, 2015. Serie C No. 307, para. 109; I/A Court of H.R., *Case of Yarce et al v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325, para. 182; I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No.269, para. 123; and I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No.283, para. 140; I/A Court of H.R., *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 123. In this regard, the European Court of Human Rights has established that “[...] not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk [...]” *cfr.* ECHR *Case Kilic v. Turkey*, No. 22492/93, Judgement of March 28, 2000, pars. 63 y ECHR, *Osman v. United Kingdom*, No. 23452/94, Judgement of October 28, 1998, para. 116.

carry out a more timely, specialized intervention proportional to the risk to which the defender is exposed.<sup>226</sup>

## 1. National Protection Mechanisms for Human Rights Defenders in the Region

152. Over the last decade, five countries in the Americas have created national protection mechanisms. Others have set in place public policies or programs attending to some aspects of an integral protection policy. The Commission celebrates the significant efforts undertaken by the States that have created national protection mechanisms, and the advances that have been made. Nonetheless, the continued and increased situation of vulnerability that many defenders face in the countries of the region due to their activities in the defense of human rights, as well as the murders of a number of high profile human rights defenders despite their inclusion in these protection programs in the past months and years,<sup>227</sup> illustrate that the protection schemes as they are currently designed and implemented need improvement to achieve the expected results. In addition, the Commission has been informed of the persistence of some challenges in the design and functioning of these protection mechanisms, the failure to fully implement the recommendations contained in prior IACHR reports, as well as the lack of adequate resources for the implementation of specialized protection measures.
153. Therefore, the Commission has decided to offer a close look at the national protection mechanisms in place, with the goal of analyzing their structures, functioning, and results in practice. Examining existing experiences and learning from obstacles can pave the way for improved responses and increased human rights protection. The lessons learned from these national protection mechanisms have also informed the analysis presented by the Commission on the key components required for an effective integral protection policy presented in the following section of this report.

### a) Colombia

154. Colombia was a pioneer country in the hemisphere in establishing a national program to protect human rights defenders in 1997. The “Program for the protection of human rights defenders, trade unionists, journalists, and social leaders” is focused on the protection of the rights to life, integrity, liberty, and personal security of various at-risk groups within Colombian society.<sup>228</sup> The

<sup>226</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 485.

<sup>227</sup> See for instance: IACHR, Press Release No. 24/16, *IACHR Condemns the Killing of Berta Cáceres in Honduras*, March 4, 2016; IACHR, Press Release No. 11/17, *IACHR Condemns Murders of Human Rights Defenders in the Region*, February 7, 2017.

<sup>228</sup> See, among others: IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, *supra* note 8, para. 146.

Protection mechanism was created by Law 418 of 1997, which remains applicable to this day, but has since been further developed and strengthened. This law has been complemented by the enactment of various other decrees and resolutions, following through on recommendations issued by the IACHR and other international organizations. The functioning of the current mechanism has also been informed by the signing and approval of the *Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace*<sup>229</sup> between the Colombian government and the Revolutionary Armed Forces of Colombia – People’s Army [*Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo*] (hereinafter “FARC-EP”) on November 12, 2016.<sup>230</sup>

155. Colombia’s protection program is divided into three categories of beneficiaries. Firstly, victims and witnesses of serious human rights violations and breaches of international humanitarian law may turn to the “Program for the protection of witnesses, victims, persons involved in the proceeding, and staff of the Attorney General” and to the “Program for the protection of victims and witnesses who participate in the judicial proceedings established in Law 975 of 2005.” Second, public servants who are at extraordinary risk as a consequence of their position or of the work they perform may resort to the Protection Programs of the Office of the Attorney General – if they are staff of that institution – and the human rights protection program of the Colombian National Protection Unit (*Unidad Nacional de Protección*, hereinafter “the UNP”) of the Ministry of Interior and the National Police. Third, those who are at extraordinary or extreme risk as a result of their political, public, social, or humanitarian activities or functions may be covered under the “human rights protection program of the UNP under the Ministry of Interior and the National Police” or the “Route for protection of the displaced population.” It is important to note that 85% of the protection schemes in the country are granted through this risk-based human rights protection program of the UNP.<sup>231</sup>
156. Since the passing of Decree 4065 in 2011, and as it currently stands, the UNP, a legal body with administrative and financial autonomy, is the institution that assumes the protection functions. The UNP is responsible for “articulating, coordinating and executing the provision of protective services” to those persons facing situations of extraordinary or extreme risk in Colombia.<sup>232</sup> Specifically, the UNP is responsible for dealing and processing requests for protection; carrying out risk assessments; implementing approved measures of protection; following up on the measures of protection granted; and communicating reported threats to the Office of the Attorney General of the Nation.<sup>233</sup>
157. Decree 4912 of 2011 establishes five different protection schemes, based on different combinations of the following material and human resources: common

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<sup>229</sup> Oficina del Alto Comisionado para la Paz, *Texto completo del Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, August 24, 2016. [Translation of the Colombian Government]. See: Presidencia de la República, *Summary of Colombia’s Agreement to End the Conflict and Build Peace*, 2016.

<sup>230</sup> See also: Decree 300 of February 23, 2017; Decree 301 of February 23, 2017.

<sup>231</sup> Unidad Nacional de Protección, *Acta informe de gestión*, August 22, 2016.

<sup>232</sup> Presidencia de la República. Decreto No. 4065 de 31 de octubre de 2011, Articles 1 and 3.

<sup>233</sup> Presidencia de la República. Decreto No. 4912 de 26 de diciembre de 2011, Article 28.

vehicle or armored vehicle or one of each, one or more drivers, and one or more bodyguards. It also provides for additional material resources to support the security measures (motorcycles, bulletproof jackets, bulletproofed vehicles, and gun shields), means of travel (domestic or international airfare, or support for land or water transportation), as well as support for relocation and means of communications (cell phones or panic buttons). The protection program also can provide for the bulletproofing of buildings and the installation of technical security systems to secure households or office buildings, for instance.

158. In addition, Law 1448 of 2011 establishes the obligation to weigh the information from the Early Warning Systems of the Office of the Ombudsperson in the establishment of preventive measures and mitigation of existing risks; and to adopt reinforced protection for women beneficiaries. Law 1448 also sets forth a series of parameters for protection measures, whereas its Regulatory Decree provides for guidelines with respect to the application of the differential approach and the adoption of collective measures of protection. The differential approach is a principle that seeks to take into consideration characteristics, conditions, and specific vulnerabilities of particular groups or minorities, such as age, cultural or ethnic background, gender, handicap, sexual orientation, among others, in both the evaluation of the risk faced by a member of these groups, and the determination of effective and adequate protection measures.
159. The protection program also has a Technical Body for the Collection and Analysis of Information [*Cuerpo Técnico de Recopilación y Análisis de Información*] (hereinafter “the CTRAI”), composed of UNP and National Police officials. Among other things, it is responsible for collecting and analyzing *in situ* information following a request for protection and reporting new threats to the Protection Program. For its part, the Preliminary Evaluation Group [*Grupo de Valoración Preliminar*] (hereinafter “the GVP”) is the body responsible for undertaking risk assessments based on the information provided by the CTRAI and recommending to another body, the Risk Assessment and Measure Recommendation Committee [*Comité de Evaluación de Riesgo y Recomendación de Medidas*] (hereinafter “the CERREM”), the protective measures most suitable to be adopted in a specific case within a period of 30 days upon receiving consent from the applicant.
160. The CERREM is in charge of the analysis of requests, the ordering of the protective measures that should be granted in each case, as well as the determination of their duration. In its analysis, the CERREM must take into account the recommendations of the Preliminary Evaluation Group and the information provided by the institutions participating in the Committee in order to validate the risk level determination made by the GVP. Moreover, the CERREM has the authority to recommend the adjustment, suspension, or cancellation of prevention and protection measures based on the results of risk re-assessments. The CERREM is a permanent body comprising five senior public officials with voice and vote.<sup>234</sup>

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<sup>234</sup> They are: the Director of the Human Rights Program of the Presidency and IHL, the National Police Director of Protection and Special Services, the Director of the Special Administrative Unit for Integral Reparation and

161. The evaluation of risk is based on a methodology that focuses on threats, risks, and vulnerability of the person seeking protection.<sup>235</sup> Only victims of extraordinary or extreme risk are guaranteed protection by the State. Whereas “ordinary risk” is defined as a risk to which “all persons are subjected, under equal conditions, due to the mere fact of belonging to a specific society, which requires the State to adopt general public security measures, and that does not give rise to an obligation to adopt measures of protection.” For its part, “extraordinary risk” is defined as risk that “on being a direct consequence of political, public, social or humanitarian activities or duties [...] people are not required to bear, and includes the right to receive special protection from the State through the Program.”<sup>236</sup> It is also established that extraordinary risk must be “specific and personalized, concrete, present, significant, serious, clear and discernible, exceptional, and disproportionate.” When the extraordinary risk is serious and imminent, it is considered to be an extreme risk.<sup>237</sup>
162. Given that a 30-day delay is long in the presence of extreme risk, the protection program was improved with the inclusion of a mechanism of “emergency processing” by which the Director of the UNP can implement transitory protection measures prior to a risk analysis, when a situation so requires.<sup>238</sup> These measures will be in place until the risk analysis is properly undertaken, and the protection measures will then either be confirmed, increased, or even lifted according to the evaluation.<sup>239</sup> In some circumstances, a constitutional presumption of risk will apply and immediately guarantee emergency processing, such as is the case for displaced populations.<sup>240</sup>
163. As was briefly mentioned above, Colombia’s protection program includes a “differential approach” for populations particularly affected by internal displacement, as well as for four groups identified as being in a situation of particular risk. This “differential approach” came through Decree 4912 of 2011, which establishes that “for the Risk Assessment and for the recommendation and adoption of measures of protection, specific characteristics and vulnerabilities of age, ethnicity, gender, disability, sexual orientation, and the urban or rural origins of the individuals being protected must be taken into account.”<sup>241</sup>
164. Momentum towards the inclusion of this differential approach was the result of a ruling by the Colombian Constitutional Court setting out the constitutional and international obligation of the State to adopt special measures for the protection of

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Attention to Victims, and the Coordinator of the Human Rights Office of the Police Inspector General. Presidencia de la República. Decreto No. 4912. December 26, 2011, Article 36.

<sup>235</sup> Answer provided by the State to the Questionnaire circulated by the IACHR.

<sup>236</sup> Presidencia de la República. Decreto No. 4912, December 26, 2011, Article 3, subparagraphs 16 and 18.

<sup>237</sup> Presidencia de la República. Decreto No. 4912, December 26, 2011, Article 3, subparagraph 17.

<sup>238</sup> Presidencia de la República. Decreto No. 4912, December 26, 2011, Article 9; Presidencia de la República. Decreto No. 1066, May 26, 2015, Article 2.4.1.2.9.

<sup>239</sup> Answer provided by the State to the Questionnaire circulated by the IACHR.

<sup>240</sup> Law 448 of 2011.

<sup>241</sup> Presidencia de la República. Decreto No. 4912, December 26, 2011, Article 2, subparagraph 8.

the rights of displaced women, given that internal displacement caused by the armed conflict has had a disproportionate impact on women, who were thus particularly exposed to various factors of vulnerability, and sexual violence in particular.<sup>242</sup> Further decisions then added the obligation to guarantee a differentiated approach the rights of children and adolescents (Ruling 251 of 2008),<sup>243</sup> indigenous peoples (Ruling 044 of 2009),<sup>244</sup> the Afro-descendant population (Ruling 005 of 2009),<sup>245</sup> and persons with disabilities (Ruling 006 of 2009)<sup>246</sup> who are part of the population subjected to forced displacement.<sup>247</sup> Two specialized protocols are currently in force and operating in Colombia, for women and for members of indigenous communities.<sup>248</sup> In 2013, due to an increase in threats and attacks against women human rights defenders, the Constitutional Court also established a presumption of extraordinary risk for women human rights defenders, and affirmed the State's obligation to guarantee that protective measures respond "adequately to the multidimensional ways gender can come into play – at the individual, familial, collective and community levels."<sup>249</sup>

165. With regard to the budget of the UNP, the Commission observes that, although there was a financial crisis within the institution in 2014, which raised concerns about the UNP's ability to maintain the protection schemes that were in place;<sup>250</sup> the UNP now has had a stable budget of approximately 440.000 million pesos in 2016 and 2017, which is equivalent to around 150 million US dollars<sup>251</sup>.
166. The Commission has consistently recognized the efforts of Colombia with regard to the development, consolidation, and improvement of its national protection program.<sup>252</sup> The Commission has previously lauded the State for its political and financial support for the program, as an illustration of its serious political will; its enforcement of substantive schemes of protection; the development of a differentiated approach to address the situation of risk faced by women as well as

<sup>242</sup> Corte Constitucional de Colombia. Auto No. 092/08, April 14, 2008.

<sup>243</sup> Corte Constitucional de Colombia. Auto No. 251/08, October 6, 2008.

<sup>244</sup> Corte Constitucional de Colombia. Auto No. 004/09, January 26, 2009.

<sup>245</sup> Corte Constitucional de Colombia. Auto No. 005/09, January 26, 2009.

<sup>246</sup> Corte Constitucional de Colombia. Auto No. 005/09, January 26, 2009.

<sup>247</sup> Corte Constitucional de Colombia. Auto No. 089/13, May 21, 2013.

<sup>248</sup> Answer provided by the State to the Questionnaire circulated by the IACHR.

<sup>249</sup> Corte Constitucional de Colombia. Auto No. 098/13, May 21, 2013.

<sup>250</sup> Caracol, *CIDH expresa preocupación por presupuesto de Unidad Nacional de Protección*, November 7, 2014; El Tiempo, *Se acabó la plata para proteger a personas amenazadas*, September 11, 2014; El Colombiano, *Elecciones agotaron presupuesto de la UNP*, September 25, 2014.

<sup>251</sup> Unidad Nacional de Protección, *Presupuesto 2017*, January 2, 2017; Unidad Nacional de Protección, *Presupuesto 2016*, January 4, 2016.

<sup>252</sup> IACHR, Annual Report 2016, Chapter 5: *Follow-up on Recommendations issued by the IACHR in its Fourth Report on the Situation of Human Rights in Colombia*, para. 7, 75-77, 85; IACHR, *Annual Report 2015*, Chapter 5: *Follow-up on Recommendations issued by the IACHR in its Fourth Report on the Situation of Human Rights in Colombia*, para. 14, 72-75, 80; IACHR, *Annual Report 2014*, Chapter 5: *Follow-up on Recommendations issued by the IACHR in its Fourth Report on the Situation of Human Rights in Colombia*, para. 8, 45-48; IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, *supra* note 8, para. 24-30, 79-80.

other persons and groups; the establishment of participative committees to evaluate risk and recommend measures; and the large number of beneficiaries who receive coverage by the program.<sup>253</sup> The Commission has also acknowledged the State's efforts in the continuous training of government officials on human rights matters, the implementation of collective protection measures, and the effectiveness of the protection measures once implemented.

In February 2017, the Commission visited the country to participate in a seminar on the protection of human rights defenders,<sup>254</sup> in which the State acknowledged the need to adopt a legal framework that goes beyond physical protection, and guarantees the protection of human rights defenders' ability to continue defending human rights. The State recognized that the end of the conflict has to bring about a change in culture, in which human rights defenders were to be perceived and treated as allies and partners in the building of peace and the consolidation of democracy. In this regard, the Commission considers highly significant that the Peace Agreement contains sections acknowledging the work of human rights defenders and their fundamental role in the construction of peace and the end of the conflict; establishes specific measures to guarantee the investigation, prosecution, and sanction of human rights violations; and creates mechanisms for the granting of individual and collective reparations for damages suffered.<sup>255</sup>

167. The Peace Agreement also provides for the establishment of a truth commission in charge of clarifying violations of human rights defenders' rights during the conflict, which is to be integrated by representatives of human rights defense organizations; the creation of a Unit for research on the fate and location of disappeared persons; and the constitution of a Unit in charge of investigating criminal organizations that resort to violence against defenders.<sup>256</sup> The Commission values these efforts from the State, as they are a direct acknowledgment of the need for a more global approach to protection, which rests not only on a reactive physical protection mechanism, but also includes strategies aimed at prevention, investigation, prosecution, and sanction of perpetrators; and at addressing the root causes of the problem of violence; all of which have been highlighted as priority concerns by experts and Colombian civil society alike.

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<sup>253</sup> IACHR, Annual Report 2016, Chapter 5: *Follow-up on Recommendations issued by the IACHR in its Fourth Report on the Situation of Human Rights in Colombia*, para. 7, 75-77, 85; IACHR, *Annual Report 2015*, Chapter 5: *Follow-up on Recommendations issued by the IACHR in its Fourth Report on the Situation of Human Rights in Colombia*, para. 14, 72-75, 80; IACHR, *Annual Report 2014*, Chapter 5: *Follow-up on Recommendations issued by the IACHR in its Fourth Report on the Situation of Human Rights in Colombia*, para. 8, 45-48; IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, *supra* note 8, para. 24-30, 79-80.

<sup>254</sup> IACHR, Press Release No.23/17, *IACHR analyzes progress and challenges in the protection of human rights defenders in Colombia*, March 6, 2017.

<sup>255</sup> Oficina del Alto Comisionado para la Paz, *Texto completo del Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, August 24, 2016.

<sup>256</sup> Oficina del Alto Comisionado para la Paz, *Texto completo del Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, August 24, 2016.

168. The Commission celebrates the major achievement that the signing of the Peace Agreement in Colombia represents, as it is an essential requirement for the exercise and observance of human rights. It also acknowledges the State's commitment to set in place major reforms in furtherance of its progression towards peace, and in compliance with the Peace Agreement. The Commission acknowledges the State's renewed and reinforced political will to move forward with this process. It is in this context that the Commission highlights some of the key challenges that must be confronted and overcome in order to bring the protection mechanism to full effectiveness.
169. Among these challenges, first and foremost, the Commission underlines that human rights defenders in the country continue to face increasing levels of risk to their lives, personal integrity, and to their ability to pursue freely their work.<sup>257</sup> In 2015, the United Nations Office of the High Commissioner for Human Rights (hereinafter "the UN OHCHR") had indicated that, the average number of homicides of defenders during the year had been the highest for twenty years, and that most of the cases remained in impunity.<sup>258</sup> According to the data of the *Somos Defensores* Program, in 2016, 80 human rights defenders were killed in the country and 49 others were victims of attempted murder, respectively a 22% and 29% increase in comparison to data from 2015; a particularly significant statistic given the general reduction in homicides and violence which occurred following the cease-fire between the government and the FARC-EP.<sup>259</sup> Also in 2016, the UN OHCHR publicly denounced the levels of impunity in Colombia noting that the Attorney General had only secured one conviction for all of the reported 39 threatening pamphlets, 20 attempted killings, and 151 individual and collective death threats.<sup>260</sup>
170. The Commission issued a press release highlighting the alarming number of murders of human rights defenders in the first month of 2017, despite the recent signing of the historic Peace Agreement.<sup>261</sup> Many sources have reported that attacks had increased as a result of the peace process, particularly against women human rights defenders, Afro-descendant and indigenous human rights defenders, defenders of land and land rights, as well as community and social leaders who were active participants in the peace process.<sup>262</sup> Participation in activism for peace has

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<sup>257</sup> IACHR, Press Release No. 21/16 - *IACHR Condemns Killings and Threats Directed against Human Rights Defenders in Colombia*, February 25, 2016; IACHR, Press Release No.160/16 - *IACHR Condemns the Increase in Killings of Human Rights Defenders in Colombia*, November 2, 2016; IACHR, Press Release No.11/17 - *IACHR Condemns Murders of Human Rights Defenders in the Region*, February 7, 2017.

<sup>258</sup> Peace Brigades International, *Annual Report 2016*, p. 15; UN OHCHR, Press Release, *En 2015, se superó el promedio de homicidios de Defensores registrado en los últimos 20 años*, November 19, 2015.

<sup>259</sup> Observatoria de Derechos Humanos y Derecho Internacional Humanitario, *Programa Somos Defensores, Contra las cuerdas*, Annual Report 2016.

<sup>260</sup> Annual Report of the UN OHCHR, *Situation of Human Rights in Colombia*, A/HRC/31/3/Add.2, March 15, 2016, p. 15.

<sup>261</sup> IACHR, Press release No.11/17, *IACHR Condemns Murders of Human Rights Defenders in the Region*, February 7, 2017.

<sup>262</sup> Observatorio de Derechos Humanos y Derecho Internacional Humanitario, *Programa Somos Defensores, ¿Este es el fin? Enero-junio 2016*, p. 40-45; Peace Brigades International, *Colombia - Quarterly Human Rights Update*,

generated persecution and threats,<sup>263</sup> to such an extent that civil society organizations have begun a campaign entitled “Peace shouldn’t cost us our lives [Que la paz no nos cueste la vida].”<sup>264</sup> Experts and human rights defenders reported to the IACHR the continuity of neo-paramilitary activity in their regions and territories; the persistent similarities in tactics, use, and design of threatening pamphlets, military clothing and weapons; and called on the State to acknowledge the presence of illegal armed groups that are the remnants of paramilitary organizations, and bring them to justice.<sup>265</sup>

171. The IACHR, through its precautionary measures mechanism, has also had direct experience with the Colombian State’s protection mechanism, which has allowed it to track some recurrent and structural problems. In this context, the Commission has observed the effective lack of gender and ethnic perspective in the analysis of risk and the implementation of measures.<sup>266</sup> In one case, despite that the threats, intimidations and attacks the applicant faced were increasingly sexual in nature; that she had previously been the victim of a rape; and that the most serious acts of violence committed against the applicant were based on her gender; a gender approach, including prevention strategies and comprehensive protective measures, was not applied.<sup>267</sup> In another, an Afrodescendant woman human rights defender was continuously threatened to death; yet her risk analysis always turned out as an ordinary risk.<sup>268</sup>
172. Civil society organizations and human rights defense organizations have also consistently shared concerns with the Commission related to the failure of the UNP to take into consideration the regional and geographic context in the evaluation of risk, as well as a failure to properly consider risk factors based on sex, gender, race, and ethnicity. For instance, information has been received with regard to the lack of implementation of the differentiated approach. Indeed, *Casa de la Mujer* reported to the Commission that the UNP was refusing to include the nuclear family group within her protection measures, and therefore did not allow the beneficiary’s family

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April-June 2016, August 2016; Annual Report of the UN OHCHR, *Situation of Human Rights in Colombia*, A/HRC/31/3/Add.2, March 15, 2016, p. 15.

<sup>263</sup> Annual Report of the UN OHCHR, *Situation of Human Rights in Colombia*, A/HRC/31/3/Add.2, March 15, 2016, p. 15.

<sup>264</sup> Observatorio de Derechos Humanos y Derecho Internacional Humanitario, *Programa Somos Defensores, Contra las cuerdas*, Annual Report 2016.

<sup>265</sup> Meeting with human rights defenders in Bogotá, Colombia, February 21, 2017; Intervention of NGOs at the “Taller de promoción y garantía de la labor de los defensores de derechos humanos en Colombia”, Bogotá, Colombia, February 22, 2017; IACHR, *Hearing on the investigation of Attacks on Human Rights Defenders in Colombia*, March 22, 2017. See also: IACHR, Press Release No.023/17, IACHR, *IACHR Examines Progress and Challenges in the Protection of Human Rights Defenders in Colombia*, March 6, 2017.

<sup>266</sup> IACHR, Resolution 63/2016, Precautionary Measures No. 658/16 (Matter of Erlendy Cuero Bravo and others, Colombia), December 6, 2016, para. 13, 15; IACHR, Resolution 18/2014, Precautionary Measures No. 218/14 (Matter of Y.C.G.M. and her immediate family, Colombia), June 20, 2014.

<sup>267</sup> IACHR, Resolution 18/2014, Precautionary Measures No. 218/14 (Matter of Y.C.G.M. and her immediate family, Colombia), June 20, 2014.

<sup>268</sup> IACHR, Resolution 63/2016, Precautionary Measures No. 658/16 (Matter of Erlendy Cuero Bravo and others, Colombia), December 6, 2016.

members to travel in the bulletproof vehicle with her.<sup>269</sup> During a hearing requested by the State during the 161<sup>o</sup> period of sessions of the Commission, civil society organizations alerted the Commission to a systematic failure to take into account the protection needs of Afro-Colombian leaders and LGBTI rights defenders; the lack of consultation with indigenous and Afro-descendant leaders to tailor their protection schemes to their particular realities; and the inadequacy of the measures finally implemented.<sup>270</sup> Indeed, civil society organizations reported in this instance that Afro-Colombian communities had seen their leaders assassinated after a request for protection had been denied on the basis of a characterization of risk as ordinary.

173. In this respect, the *Casa de la Mujer*, an organization which has supported many beneficiaries in their request for precautionary measures before the IACHR, in its response to the Commission's questionnaire, alleged that the risk assessment undertaken by the UNP did not properly appreciate the presumption of extraordinary risk for women human rights defenders ordered by the Constitutional Court.<sup>271</sup> In this respect, the IACHR has also received information from the Ombudsperson's office of Colombia (of its Spanish name, "*Defensoría del pueblo*") which observed that the public officials in charge of the risk analysis were generally unaware of the presumption of constitutional risk for vulnerable populations, the good faith principle, or the criteria of well-founded fear established by the Constitutional Court and failed to apply them in their determinations.<sup>272</sup>
174. Another issue of concern to the Commission is the allegation by civil society organizations of State officials' biases with regard to human rights defenders, often minimizing the seriousness and urgency of the problems, at times blaming them for their situation of risk, and the attribution of violence to personal conflicts rather than to human rights defense work.
175. In terms of the implementation of measures, the Commission has frequently observed a lack of adequacy with regard to the enforcement of the substantive measures of protection granted, exemplified by the granting of bullet-proof vehicles that were broken-down, bullet-proof vehicles with no allowance to pay for gas, or bullet-proof vests that do not fit the beneficiaries, among other examples.<sup>273</sup> It has

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<sup>269</sup> Meeting with human rights defenders in Bogotá, Colombia, February 21, 2017; Intervention of NGOs at the "Taller de promoción y garantía de la labor de los defensores de derechos humanos en Colombia", Bogotá, Colombia, February 22, 2017; IACHR, *Hearing on the investigation of Attacks on Human Rights Defenders in Colombia*, March 22, 2017.

<sup>270</sup> IACHR, *Hearing on the investigation of Attacks on Human Rights Defenders in Colombia*, 161 period of sessions, March 22, 2017.

<sup>271</sup> Meeting with human rights defenders in Bogotá, Colombia, February 21, 2017; Intervention of NGOs at the "Taller de promoción y garantía de la labor de los defensores de derechos humanos en Colombia", Bogotá, Colombia, February 22, 2017; IACHR, *Hearing on the investigation of Attacks on Human Rights Defenders in Colombia*, 161 period of sessions, March 22, 2017.

<sup>272</sup> Defensoría del Pueblo, *Aportes de la Defensoría del Pueblo de Colombia con respecto al Seguimiento de las recomendaciones del informe Verdad, Justicia y Reparación: Cuarto informe sobre la situación de derechos humanos en Colombia*, Énfasis 2017, p. 5.

<sup>273</sup> IACHR, *Resolution 5/2017*, Precautionary Measures No. 522/14 (Matter of Alberto Yepes Palacia and his daughter, Colombia), February 10, 2017; IACHR, *Resolution 31/2014*, Precautionary Measures No. 336-14,

also taken notice of unjustified delays that arise at different stages throughout the process: during risk analyses, before the implementation of the protection measures, or before the increase of protection schemes in situations of emergency.<sup>274</sup>

176. In this regard, well-informed sources such as the Ombudsperson's office of Colombia have alerted the Commission to persisting delays between the submission of a request for protection and the implementation of the measure granted; a process which can take up to six months instead of the 30 days provided for by law.<sup>275</sup> During the expert meeting held in Washington DC on April 1, 2016, experts informed the Commission of the lack of flexibility in the implemented measures; the need for better participation and consultation with victims in the definition of protection schemes; the need for improvement of communication and cooperation between different entities in charge of protection, not just in Bogotá but also with local, community and department institutions; as well as possible corruption in the delivery of the material resources of protection to beneficiaries.<sup>276</sup>
177. Again through its precautionary measures mechanism, the Commission has noted the lack of justification by the UNP of the decision to undertake new risk evaluations for beneficiaries of the protection system, and the lack of justification when levels of risk are changed.<sup>277</sup> Experts also reported to the Commission that protection measures had been lifted without having achieved or attempted to verify the elimination or mitigation of risk; a problem which affected and put in danger several community and social leaders who were participating in the peace process.<sup>278</sup>
178. The Commission has received claims from human rights defense organizations and families of victims' organizations<sup>279</sup> regarding delays in the implementation of the Peace Agreement and the various Units and Commissions it planned to set in place.<sup>280</sup> The Commission has been informed of postponements and delays in setting up the Unit for the Search for Disappeared persons, and the Guarantees Unit. The State acknowledged that many of these participative spaces, commissions and

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(Matter of Gener Jonathan Echeverry Ceballos y familia), October 21 2014; I/A Court of H.R., *Matter of Mery Naranjo*, Provisional Measures Regarding Colombia. Order of the Inter-American Court of Human Rights of August 22, 2017, para. 52.

<sup>274</sup> IACHR, Information received by the protection section in the follow-up on measures 658-16 and 140-14.

<sup>275</sup> Intervention of Ombudsperson's office (Defensoría del Pueblo) at the "Taller de promoción y garantía de la labor de los defensores de derechos humanos en Colombia", Bogotá, Colombia, February 22, 2017.

<sup>276</sup> Expert meeting held in Washington DC on April 1, 2016.

<sup>277</sup> IACHR, *Resolution 18/2014*, Precautionary Measures No. 218/14 (Matter of Y.C.G.M. and her immediate family, Colombia), June 20, 2014, para. 3 iv) and vii); IACHR, *Resolution 5/2017*, Precautionary Measures No. 522/14 (Matter of Alberto Yepes Palacia and his daughter, Colombia), February 10, 2017, para. 23.

<sup>278</sup> Expert meeting held in Washington DC on April 1, 2016.

<sup>279</sup> Meeting with civil society organizations, Bogotá, Colombia, February 21, 2017.

<sup>280</sup> Meeting with civil society organizations, Bogotá, Colombia, February 21, 2017; Intervention of NGOs at the "Taller de promoción y garantía de la labor de los defensores de derechos humanos en Colombia", Bogotá, Colombia, February 22, 2017; IACHR, *Hearing on the investigation of Attacks on Human Rights Defenders in Colombia*, 161 period of sessions, March 22, 2017; IACHR, *Guarantees of Non-Repitition in the Peace Accord in Colombia*, 161 period of sessions, March 21, 2017.

units were just barely beginning to be set in place, but affirmed that the Peace Agreement that provided for the creation of these spaces had been made into law, which would produce important required results.<sup>281</sup>

179. The Commission recognizes the State of Colombia’s sustained and serious efforts to afford better protection for human rights defenders. The Commission underscores however the importance of timely implementation of the measures contained in the peace agreement, and urges the State to fully consider and respond to the concerns voiced by civil society organizations. These are key steps to build a more adequate and effective protection mechanism at the national level.

## b) Mexico

180. Mexico became the second country in the hemisphere to adopt a specialized protection mechanism for human rights defenders and journalists with the passing of the “Law for the Protection of Human Rights Defenders and Journalists” and its Rules.<sup>282</sup> The mechanism was constituted as follow-up to the recommendations of the IACHR and several UN Rapporteurs. In doing so, the State sought to improve coordination between federal and state governments in the enforcement of protection measures on behalf of human rights defenders and journalists. The State reported to the IACHR in the framework of this initiative that it has reached agreements with 32 states of the Republic, including the newly created State of Mexico City,<sup>283</sup> to provide collaboration and coordination with the protective measures.<sup>284</sup>
181. As the Commission has detailed in previous reports, the main structure of the mechanism is composed of three institutions operating under the Ministry of Interior: a *Government Board*, a *Consultative Council*, and a *National Executive Coordination Group*. Under Mexican law, the *Government Board* is the most senior level of the Mechanism and the main body responsible for adopting decisions to grant preventive and protective measures. It is made up of four representatives of the executive branch (one from each of the following entities: Ministry of Interior, Office of the Attorney General of the Republic, Secretariat for Public Security, and Secretariat for Foreign Relations), a representative of the National Human Rights Commission, and four representatives of the Advisory Board, two of them independent experts on the situation of human rights defenders, and two of them

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<sup>281</sup> State interventions at the “Taller de promoción y garantía de la labor de los defensores de derechos humanos en Colombia”, Bogotá, Colombia, February 22, 2017.

<sup>282</sup> United Mexican States. Diario Oficial de la Federación, “*Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*”, June 25, 2012, and United Mexican States. Presidency, Official Gazette of the Federation, “*Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*”, November 30, 2012.

<sup>283</sup> Answer of the Commission of Human Rights of the Federal District/Ciudad de Mexico to the Questionnaire circulated by the IACHR.

<sup>284</sup> IACHR, Public Hearing, *Public policy on human rights and good practices in Mexico*, March 27, 2014.

experts on the exercise of freedom of expression and journalism.<sup>285</sup> Representatives from Congress, the judicial branch, the states, and the Office of the United Nations High Commissioner for Human Rights in Mexico may participate in the *Government Board* sessions with voice, but with no voting rights.<sup>286</sup> The petitioners whose case is under consideration are also called to participate in the sessions. The main role of the *Government Board* is to evaluate, deliberate, and rule on the granting and suspension of prevention and protection measures based on the information provided by the auxiliary units of the National Executive Coordinator.<sup>287</sup> Pursuant to the law, the resolutions of the *Government Board* are binding for the federal authorities whose actions are necessary to comply with the measures adopted,<sup>288</sup> but not for the authorities of the individual states. To this end, the law establishes that the federal government and federative entities may sign agreements concerning the implementation of such measures.<sup>289</sup>

182. The *National Executive Coordinator* is the body responsible for coordinating the operations of the Mechanism with federal entities, and autonomous agencies. The body is also made up of three auxiliary technical coordination units. The first is the *Case Receipt and Rapid Reaction Unit*, which is responsible for receiving requests to be included in the Mechanism, analyzing and defining which cases will be addressed through an extraordinary proceeding, and the enforcement of urgent protective measures. The second is the *Risk Assessment Unit*, which is responsible for drawing up the risk assessment studies; recommending the prevention or protection measures which will be adopted in each case; following up periodically on the implementation of the measures; and issuing recommendations with regard to their continuation, adequacy, or termination. Finally, the third is the *Prevention, Follow-up and Analysis Unit*, which is responsible for proposing preventative measures, monitoring attacks nationwide in order to collect the raw information and place it in a database; identifying patterns of attacks and preparing risk maps; and evaluating the effectiveness of the preventive, protective, and urgent measures implemented.<sup>290</sup>
183. The final body that is part of the Mechanism for Protection is the *Advisory Board*, a consultative body of the Government Board, made up of members of civil society. The Board is composed of nine advisors, including experts in the defense of human rights and the exercise of freedom of expression and journalism, four of whom are elected to participate in the Government Council. The *Advisory Board* is responsible for addressing consultations and formulating opinions requested by the Government Council on the programs and activities carried out by the National Executive Coordinator; submitting complaints before the Government Council that have been brought by petitioners or beneficiaries with regard to the implementation

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<sup>285</sup> United Mexican States. Diario Oficial de la Federación, “Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas”, June 25, 2012, Articles 5 and 13.

<sup>286</sup> *Ibidem*, Article 6.

<sup>287</sup> *Ibidem*, Article 8.

<sup>288</sup> *Ibidem*, Article 4.

<sup>289</sup> *Ibidem*, Articles 46, 47.

<sup>290</sup> *Ibidem*, Articles 17-23.

of measures; and commissioning the independent Risk Assessment Studies requested by the Government Council to resolve disputes.<sup>291</sup>

184. The financing of the national protection mechanism rests on federal budget contributions, as well as a Fund whose resources – dedicated exclusively to the enforcement and operation of measures – is made up of, among other sources, contributions from the federal government, funds from the annual federal budget, and donations from individuals and corporations. In this regard, the State informed the IACHR that the mechanism has significant budget appropriation and technical assistance from international institutions specializing in freedom of expression.<sup>292</sup>
185. To access the Mechanism, the potential beneficiary must be a human rights defender or a journalist, or his or her relative; must have suffered an attack on his or her physical, psychological, moral or financial integrity; and must not be under the protection of an arrangement or program set up by another State mechanism, except in cases in which the other mechanism agrees with the transfer of the protection responsibilities to the federal mechanism. The law also establishes that a gender perspective must always be taken into account during the risk analysis, and in the implementation of the measures, as well as other personal, cultural, and sociopolitical characteristics.<sup>293</sup>
186. A request for measures is processed by the *Case Receipt and Rapid Reaction Unit*, which verifies that the application meets the requirements established by law and determines the type of proceeding to be adopted. The law allows for both “ordinary” and “extraordinary” procedures for assigning the measures of protection requested. When the petitioner declares that his or her life or physical integrity is in imminent danger, the extraordinary procedure applies, and provides that urgent protective measures must be approved no later than three hours after a request is received, and enforced within the following nine hours.<sup>294</sup> Simultaneously, the *Case Receipt Unit* submits the case to the *Risk Assessment Unit* to begin the ordinary proceeding. Urgent protective measures remain in force while the ordinary proceeding moves forward.<sup>295</sup> In cases in which there is no imminent risk of physical danger or death, the ordinary proceeding applies. In this case, the *Risk Assessment Unit* undertakes an analysis to determine the level of risk, the beneficiaries of the measures, and define the protective measures within 10 days of the submission of the request.<sup>296</sup> The evaluation is then brought to the *Government Council*, which ultimately chooses the

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<sup>291</sup> *Ibidem*, Articles 9-16.

<sup>292</sup> IACHR, Public Hearing, *Public policy on human rights and good practices in Mexico*, 150 Period of Sessions, March 27, 2014.

<sup>293</sup> United Mexican States. Presidency, Official Gazette of the Federation, “*Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*”, November 30, 2012, Article 2, 4, 19.

<sup>294</sup> United Mexican States. Diario Oficial de la Federación, “*Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*”, June 25, 2012, Article 26.

<sup>295</sup> *Ibidem*, Article 26.

<sup>296</sup> *Ibidem*, Article 27.

applicable prevention and protection measures which must be enforced by the *National Executive Coordinator* within a time period of no more than 30 days.<sup>297</sup>

187. Pursuant to the law, urgent protection measures can include evacuation, temporary relocation, specialized bodyguards, and the protection of the property where the beneficiary is located.<sup>298</sup> Ordinary prevention measures can include instructions, manuals, self-defense courses, and the accompaniment of observers. Ordinary protection measures may include the provision of communications devices, security cameras, locks, etc. in the home or workplace of the individual, bulletproof vests, metal detectors, and armored cars.<sup>299</sup> The Risk Assessment Unit is responsible for the periodic evaluation of the measures adopted, which can be increased or decreased by the Government Council based on these reviews.<sup>300</sup> The Law explicitly provides that the measures granted cannot “restrict the activities of the beneficiaries, or be involved in surveillance or undesired intrusions in their professional or personal lives,” and that these measures must be agreed to by petitioners.<sup>301</sup> Petitioners may in fact present a note of dissatisfaction to the Executive Secretariat of the Government Board regarding the denial of access to the extraordinary procedure; the insufficient or unsatisfactory fulfillment of measures; or the rejection of the Government Board’s decisions by the authorities in charge of implementing the measures.<sup>302</sup>
188. The Inter-American Commission considers that the “Law for the Protection of Human Rights Defenders and Journalists,” its rules, protocols, as well as the protective procedures implemented by the State, can play an important role in responding to the serious situation of violence faced by human rights defenders and journalists in México. Indeed, as of January 2017, the mechanism had brought protection to 386 human rights defenders and 260 journalists.<sup>303</sup> The Commission acknowledges the efforts of the State to create a strong legal framework, which provides for the inclusion of a gender perspective in the risk analysis and implementation process,<sup>304</sup> the development of a methodology for the inclusion of this collective and an approach to risk analysis that takes gender into account,<sup>305</sup> as

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<sup>297</sup> *Ibidem*, Article 29.

<sup>298</sup> *Ibidem*, Article 32.

<sup>299</sup> *Ibidem*, Article 33.

<sup>300</sup> *Ibidem*, Article 21, III and 8.

<sup>301</sup> *Ibidem*, Articles 30, 31.

<sup>302</sup> *Ibidem*, Article 55, 56; United Mexican States. Presidency, Official Gazette of the Federation, “*Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*”, November 30, 2012, Article 108.

<sup>303</sup> Un Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, *End of Mission Statement - Mexico*, January 24, 2017, p. 13.

<sup>304</sup> Reponse of Mexico’s Foreign Relations Office to the Questionnaire circulated by the IACHR; Subsecretaria de Derechos Humanos, Unidad para la Defensa de los Derechos Humanos. [Informe de actividades, Ejercicio 2015. Mecanismo para la Protección de Derechos Humanos de Personas Defensoras y Periodistas](#), p. 55.

<sup>305</sup> Reponse of Mexico’s Foreign Relations Office to the Questionnaire circulated by the IACHR; Subsecretaria de Derechos Humanos, Unidad para la Defensa de los Derechos Humanos, [Informe de actividades, Ejercicio 2015. Mecanismo para la Protección de Derechos Humanos de Personas Defensoras y Periodistas](#), p. 55.

well as the participation of human rights defenders and journalists in the evaluation of their level of risk and in the determination of protection measures.<sup>306</sup>

189. The State monitors attacks nationwide and integrates the information collected on violence and intimidation of defenders and journalists in a database, which allows the identification of patterns, the development of risk maps, and the evaluation of the effectiveness of the measures enforced<sup>307</sup> The mapping of patterns and risk areas can also play a useful role in addressing and resolving more structural situations of risk. In addition, the Commission views positively the State's efforts to benefit from the expertise of the organization Freedom House, which involved training of officials, on-site visits, and collaboration with the analysis of the protection units; all collaboration undertaken to improve the methodology and internal processes of the national mechanism.<sup>308</sup> The Commission also highlights the efforts the State has adopted to develop specialized investigation protocols and a special prosecutor's office for crimes committed against freedom of expression, against journalists, and human rights defenders.<sup>309</sup> The Commission also notes the most recent efforts the State adopted to amend the *General Law for Victims* [Ley General de Víctimas] and address the shortcomings identified by victims.<sup>310</sup>
190. Despite these noteworthy steps, the Commission notes there remain important challenges to bridging a solution to the problem of insecurity for those who defend human rights in Mexico. The Commission has had direct experience with the national protection system and the Attorney General's office in charge of investigations through its precautionary measures mechanism and through its monitoring of the investigation of the disappearance of 43 students from the "Raúl Isidro Burgos" teacher-training school in Ayotzinapa,<sup>311</sup> and has drawn conclusions on some deficiencies and areas which required strengthening. In addition, civil society organizations, independent experts, as well as international organizations,

<sup>306</sup> United Mexican States. Diario Oficial de la Federación, "Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas", June 25, 2012.

<sup>307</sup> IACHR, *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*, OEA/Ser.L./V/II CIDH/RELE/INF.12/13.

<sup>308</sup> Response to the Questionnaire circulated by the IACHR from Mexico's Foreign Relations Office; Response to the Questionnaire circulated by the IACHR from the Consultative Council for the Protection of Human Rights Defenders and Journalists (Mexico); Subsecretaría de Derechos Humanos, Unidad para la Defensa de los Derechos Humanos, *Informe de actividades, Ejercicio 2015. Mecanismo para la Protección de Derechos Humanos de Personas Defensoras y Periodistas*, p. 55; IACHR, *Hearing on the General Situation of Human Rights in Mexico*, 157 Period of Sessions, April 7, 2016.

<sup>309</sup> Malgorzata Polanska, "Protocolo de Atención a Periodistas de la Fiscalía Especial para la Atención de Delitos Cometidos contra la libertad de Expresión" in *Prevención del riesgo y Protocolo para el ejercicio de la libertad de expresión en México Colectivo de Análisis de la Seguridad con Democracia, A.C.* and Freedom House, 2015.

<sup>310</sup> UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, *End of Mission Statement - Mexico*, January 24, 2017, p. 13.

<sup>311</sup> IACHR, *Press Releases*: No.145/17, *IACHR Expresses Solidarity with Ayotzinapa Families and Urges Mexico to Avoid Impunity*. September 27, 2017; No.130/17, *Follow-Up Mechanism to Ayotzinapa Case Makes Third Visit to Mexico*. August 30, 2017; No. 49/17, *Follow-up Mechanism to Ayotzinapa Case Makes Second Visit to Mexico*, April 21, 2017.

have all informed the Commission of an environment nationwide of great risk and violence for defenders.

191. With regards to violence and impunity, the UN Special Rapporteur on the Situation of Human Rights Defenders, in his January 24, 2017 end of mission report, expressed his concern over the levels of violence in the country that remained alarmingly high; the 98% impunity rate; as well as the consistent criminalization, intimidation, and defamation of human rights defenders.<sup>312</sup> The UN Special Rapporteur's Report also highlighted that 38 women human rights defenders and journalists were assassinated in Mexico between 2010 and 2016, and lamented the high number of women defenders who continued to experience discrimination from State agents and difficulty in requesting protection measures.<sup>313</sup> The Special Rapporteur also brought attention to the fact that the most criminalized and discriminated groups of human rights defenders were those who defend the rights of indigenous peoples and communities to their lands, water, and a healthy environment; those who advocate for the rights of migrants in Mexico's particularly complicated geopolitical context; those who defend LGBTI rights; those who champion economic, social and cultural rights, such as the right to education; as well as those who fight for the rights of disappeared persons and their families.<sup>314</sup>
192. These observations advanced by the UN Special Rapporteur echo many of the inputs that the Commission has received from civil society regarding the need to include a more integral approach to protection, which extends beyond the "hard protection schemes" that uniquely focus on physical protection. There is a need for an approach which extends to prevention and the eradication of the root causes of the violence.<sup>315</sup> Indeed, civil society organizations have consistently brought the issue of impunity to the attention of the IACHR, and have called for the investigation, prosecution, and sanction of violence against defenders.<sup>316</sup> The Commission receives positively the State's acknowledgement, in its answer to the questionnaire, of its need to continue improving its development of long term public policies of prevention and its effective investigation of crimes committed against human rights defenders.<sup>317</sup>
193. The Commission additionally notes that various civil society organizations have informed the Commission of the persistence of stigmatization and defamation against the work of defenders by high ranking State officials in Mexico, and in the media.<sup>318</sup> The organizations have continuously demanded measures

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<sup>312</sup> UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, *End of Mission Statement - Mexico*, January 24, 2017.

<sup>313</sup> *Ibidem*, p. 10.

<sup>314</sup> *Idem*.

<sup>315</sup> JASS, CEJIL, PI, *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*, 2016, p. 35.

<sup>316</sup> WOLA and PBI, Report, *El Mecanismo de protección para personas defensoras de derechos humanos y periodistas en México, Los avances y continuos desafíos*, Mayo 2016.

<sup>317</sup> Response to the Questionnaire circulated by the IACHR from Mexico's Foreign Relations Office.

<sup>318</sup> United Nations Office of the High Commissioner for Human Rights, Press release, *Expertos de la ONU piden a México contrarrestar la campaña de desprestigio y respaldar a lo defensores de derechos humanos*, April 6,

acknowledging the legitimacy and importance of the work they undertake, as well as the legal recognition of the right to defend human rights within the national framework.<sup>319</sup> In this regard, national organizations that follow the work of the mechanism have indicated to the Commission that one of the components that impacts the quality of enforcement is the lack of interest in a “proactive dissemination strategy.”<sup>320</sup> Organizations have argued that a direct result of this lack of dissemination is that the actual number of acts of violence, threats, and harassment towards human rights defenders, journalists, and related organizations is much higher than the number of cases received by the mechanism.<sup>321</sup> The importance of disseminating information regarding the existence and access to the protection system is essential, and ties into the State obligation to raise awareness on the importance and legitimacy of the work of human rights defenders.

194. The Commission has also received information that raises concern with regards to the lack of financial stability and sustainability of the protection mechanism.<sup>322</sup> Despite the State having a budget of nearly four million dollars for this program for 2015, the Consultative Council of the protection mechanism did acknowledge the lack of budget at the beginning and end of every year.<sup>323</sup> The Commission has also received information with regard to the insufficiency and instability of personnel, as well as their lack of adequate training.<sup>324</sup> Indeed, the Commission has received information regarding the lack of technical understanding of public officials in charge of basic human rights principles and of the numerous risks that human rights defenders and journalists face.<sup>325</sup> Those in charge of risk analysis are often insufficiently trained on the particularities of the situation faced by human rights

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2016; IACHR, Press Release No.044/16, *IACHR Categorically Rejects Smear Campaign in Mexico against Group of Experts and Executive Secretary*, March 29, 2016.

<sup>319</sup> JASS, CEJIL, PI, *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*, 2016, p. 35.

<sup>320</sup> Espacio OCS, “*Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas*”, July 28, 2015, p. 40.

<sup>321</sup> Espacio OCS, “*Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas*”, July 28, 2015, p. 70.

<sup>322</sup> UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, *End of Mission Statement - Mexico*, January 24, 2017, p. 14.

<sup>323</sup> Response to the Questionnaire circulated by the IACHR from Mexico’s Foreign Relations Office.

<sup>324</sup> In its response to the Questionnaire circulated by the IACHR, the Consultative Council for the Protection of Human Rights Defenders and Journalists (Mexico) acknowledged that there was an insufficiency of personnel, and a need to strengthen the capacities, abilities and the knowledge of those employees in charge of the risk analysis. See also: WOLA and PBI, Report, *El Mecanismo de protección para personas defensoras de derechos humanos y periodistas en México, Los avances y continuos desafíos*, Mayo 2016.

<sup>325</sup> UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, *End of Mission Statement - Mexico*, January 24, 2017, p. 15; JASS, CEJIL, PI, *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*, 2016, p. 36; Peace Brigades International, Front Line Defender, Latin American Working Group, Washington Office on Latin America, press release: *Concerns about Protection of Human Rights Defenders and Journalists in Mexico*, April 3, 2014.

defenders, and on the differentiated needs of particular defenders such as women.<sup>326</sup>

195. The Commission has also received information indicating that of the 389 protection requests received by the State in favor of human rights defenders, in 38% of the cases, the possible aggressors were public officials.<sup>327</sup> The Commission deems it essential that the State properly investigate, prosecute, and sanction public officials found to be involved in crimes against human rights defenders. The State must also implement training programs for all public officials who have responsibilities under the national protection mechanism so they can properly understand and respond to the situation of human rights defenders and the risks they face.
196. Through its precautionary measures mechanism and observations to the Court in cases of provisional measures, the Commission has observed with concern the delays in risk assessment by the protection mechanism, the lack of communication of the risk analysis to the beneficiary, the failure to take into consideration context as well as a gender perspective during the risk analysis, and the lack of adequacy of the protection measures as it relates to the specific needs and realities of the persons at risk. Although the Commission has lauded actions taken to advance investigations, and the good will of state agents in providing emergency phone numbers and helping with the receipt and filing of complaints; it has underlined that these measures are not sufficient to address the specific situation of risk of human rights defenders that were being harassed and threatened to death.<sup>328</sup> In some cases, it underlined that the surveillance rounds undertaken by the police were not undertaken at the frequency that was agreed upon, nor did they ever enter the offices of the organization that was receiving threats.<sup>329</sup>
197. The Commission has also been informed by civil society of the following problems in the functioning of the mechanism: i) the early warning systems have yet to produce results;<sup>330</sup> ii) a gender perspective is not fully integrated in the risk analysis

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<sup>326</sup> In its response to the Questionnaire circulated by the IACHR, the Consultative Council for the Protection of Human Rights Defenders and Journalists (Mexico) acknowledged the need to strengthen the capacities, abilities and the knowledge of those employees in charge of the risk analysis; Un Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, *End of Mission Statement - Mexico*, January 24, 2017, p. 15; JASS, CEJIL, PI, *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*, 2016, p. 36.

<sup>327</sup> WOLA and PBI, Report, *El Mecanismo de protección para personas defensoras de derechos humanis y periodistas en México, Los avances y continuos desafíos*, Mayo 2016.

<sup>328</sup> IACHR, [Resolution 5/2015](#), Precautionary Measures No. 13/15 (Matter of Norma Mesino Mesino and others, Mexico), February 25, 2015, para. 3 E). See also: I/A Court of H.R., *Matter of Castro Rodríguez*, Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 13, 2013, para. 15; I/A Court of H.R., *Matter of Castro Rodríguez*, Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of June 23, 2015, para. 15-18.

<sup>329</sup> I/A Court of H.R., *Matter of Castro Rodríguez*, Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of June 23, 2015, paras. 15-18.

<sup>330</sup> UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, *End of Mission Statement - Mexico*, January 24, 2017, p. 14.

and determination of protection measures;<sup>331</sup> iii) there is a need for a multicultural and collective approach to risk assessments and to protection in cases of indigenous communities;<sup>332</sup> iv) there is a lack of coordination among the different institutions in charge of supporting the granting of protection measures, their follow up, and the ensuing investigations;<sup>333</sup> iv) challenges on more specific data on the number of cases received, length of the procedures, as well as information on the main reasons for deciding not to process or to reject some cases;<sup>334</sup> v) difficulties in accessing the program without proper legal support.<sup>335</sup> These are just a number of issues that are causing deep mistrust in civil society and the persons affected by this program.<sup>336</sup>

198. The Commission recognizes the State's serious efforts to establish an efficient protection mechanism, and salutes the achievements it has made over the past years. The Commission urges the State of Mexico to adopt without delay all necessary measures to protect the life and integrity of all human rights defenders in the country, and to cease all stigmatization and criminalization of human rights defenders. Additionally, the Commission calls upon the State to implement the recommendations offered by civil society organizations with regard to the risk analysis, design, and implementation of protection measures.

### c) Brazil

199. The National Program for the Protection of Human Rights Defenders (or "PPDDH" in Portuguese) was officially launched in 2004 by the Executive Branch of the State of Brazil, to be implemented by the Human Rights Secretariat. Later on, Decree No.6.044 of 2007 instituted the National Human Rights Defender Protection Policy in order to establish "principles and directives for the protection and aid of physical or legal persons, groups, institutions, organizations, or social movements that promote, protect, or defend Human Rights and who, as a result of their actions or activities, face a situation of risk or vulnerability."<sup>337</sup> The Decree provided the

<sup>331</sup> Response to the Questionnaire circulated by the IACHR by the Consultative Council for the Protection of Human Rights Defenders and Journalists (Mexico); UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, *End of Mission Statement - Mexico*, January 24, 2017, p. 14; JASS, CEJIL, PI, *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*, 2016, p. 36; IISHR, Press release: *Mexico: Strengthen mechanism to protect women human rights defenders*, March 10, 2015.

<sup>332</sup> UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, *End of Mission Statement - Mexico*, January 24, 2017, p. 14.

<sup>333</sup> Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, *End of Mission Statement - Mexico*, January 24, 2017, p. 14; Peace Brigades International, *Observaciones "¿Qué hace falta para la cabal implementación del Mecanismo?"*, August 18, 2015.

<sup>334</sup> Espacio OCS, "*Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas*", July 28, 2015, p. 41.

<sup>335</sup> WOLA and PBI, Report, *El Mecanismo de protección para personas defensoras de derechos humanos y periodistas en México, Los avances y continuos desafíos*, May 2016.

<sup>336</sup> Espacio OCS, "*Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas*", July 28, 2015, p. 71.

<sup>337</sup> State of Brazil. *Decreto 6044*. February 12, 2007, Article 1.

Human Rights Secretariat 90 days to prepare a National Plan for the Protection of Human Rights Defenders, although this timeline was not complied with. In fact, since 2009, the National Congress has been analyzing a bill that would establish a formal legal basis for the Program for the Protection of Human Rights Defenders. The bill has been ready for a vote in the Chamber of Deputies since it was approved in committee in October 2011, but has been abandoned by the government, despite reiterated calls from civil society for the adoption of a plan.<sup>338</sup> To date, the National Plan for the Protection of Human Rights Defenders is still pending adoption, and the PPDDH continues operating without a formal legal framework.

200. At the federal level, the PPDDH is in the hands of a General Coordination Committee, associated with the Human Rights Secretariat and composed of members of civil society and representatives of the federal executive, legislative, and judicial branches. Similarly, States that have signed agreements to participate in the program have State Coordination Committees. The National and State Coordination Committees are deliberative bodies and have the authority to respond to requests for protection and determine which measures should be adopted and enforced. The National Committee is in charge of protection requests that come from those states that do not have their own coordination committees. The federal program and participating states can also have federal and state technical teams for evaluating requests for protection and the level of risk faced by applicants and their families, as well as periodically monitoring the cases.
201. In the absence of a National Plan, the Decree grants the federal government and the states the option of adopting urgent protective measures - *ex officio* or upon request - that are “immediate, provisional, precautionary and investigative,” in order to guarantee the “physical, psychological and financial integrity” of human rights defenders at risk.<sup>339</sup> Likewise, the Decree authorizes the federal government’s human rights and public safety bodies to sign agreements with the states and the federal district for the implementation of the protective measures.<sup>340</sup> Civil society organizations reported that after ten years “the program had reached implementation in 9 federal states, but for different reasons no longer was applied in the state of Pará, Rio de Janeiro and Rio Grande do Sul, in addition to having been interrupted multiple times in various States.”<sup>341</sup> The information received indicates that the program has only been formally established in six States: Pernambuco,

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<sup>338</sup> ISHR and Terra de Direitos, *A situação dos defensores e defensoras de direitos humanos, Submissão ao Relator Especial da ONU sobre os defensores e defensoras de direitos humanos*, March 2016, p. 4.

<sup>339</sup> State of Brazil. Decreto 6044. February 12, 2007. Article 3.

<sup>340</sup> State of Brazil. Decreto 6044. February 12, 2007. Article 3.

<sup>341</sup> IACHR, Hearing, 157<sup>th</sup> Period of Sessions, *National Protection System for Defenders and Justice Operators in the Americas*, April 8, 2016; Sur Revista Internacional de Derechos Humanos, *Un análisis del contexto latinoamericano: Brasil, Colombia y México*, July 2016, Sur 23, v.313, No.23, 175-184, p. 177 [Our translation]; ISHR and Terra de Direitos, *A situação dos defensores e defensoras de direitos humanos, Submissão ao Relator Especial da ONU sobre os defensores e defensoras de direitos humanos*, March 2016, p. 4.

Minas Gerais, Espírito Santo, Ceará, Maranhão, and Bahía, yet those in Maranhão and Bahía were still not operative.<sup>342</sup>

202. In order to access the program, at-risk human rights defenders or any other agency that is aware of the situation of risk must send the request for protection to the State Coordinator or the General Coordinator (when the state in question is not part of the program). The request is evaluated by the corresponding state or federal protection program. The request for protection must demonstrate the willingness of the potential beneficiary to access the program, the individual's actions for the defense of human rights, and the causal nexus between the risk and the person's activity as a human rights defender.
203. According to the SDH, the seriousness of the threat to the defender can be characterized as "any threatening conduct whose purpose is to prevent the continuation of the individual's activities for the promotion and defense of human rights." This conduct can be manifested through attacks on the individual's "physical, psychological, moral or financial integrity, or that are discriminatory in nature," as well as through such conduct directed at the applicant's family members or close associates. Following the risk assessment carried out by the technical teams, the state or general deliberative coordination bodies determine which measures must be adopted in a specific case, with the general objective of guaranteeing protection in order for human rights defenders to continue working where they are located.
204. The protection measures provided under the program include periodic visits to the beneficiaries' workplaces, temporary relocation, and police protection. The program adopts a holistic focus that seeks to deactivate the underlying causes of the insecurity and places emphasis on the coordination of protective actions with the measures that must be adopted in other State areas, such as the criminal justice system and land registry authorities. The measures are periodically evaluated by the technical teams and can be lifted should the beneficiaries fail to comply with the program's rules, at the request of the beneficiaries, or upon the elimination of the threat or risk.
205. On April 27, 2016, Decree No.8.724 was signed, creating the Deliberative Council ("Conselho Deliberativo") of the Program for the Protection of Human Rights Defenders, under the Special Secretariat of Human Rights of the former Ministry of Women, Racial Equality, Youth and Human Rights. The State indicated that the Decree had the objective of strengthening the protection mechanism, given that the bill aimed at establishing a formal legal basis for the Human Rights Defenders Protection Program is stalled at the National Congress.<sup>343</sup> The Deliberative Council

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<sup>342</sup> Sur Revista Internacional de Derechos Humanos, *Un análisis del contexto latino-americano: Brasil, Colombia y México*, July 2016, Sur 23, v.313, No.23, 175-184, p. 177 [Our translation]; IACHR, Hearing, 157<sup>th</sup> Period of Sessions, *National Protection System for Defenders and Justice Operators in the Americas*, April 8, 2016.

<sup>343</sup> Secretaria Especial de Direitos Humanos, Ministério da Justiça e Cidadania, *Decreto reestrutura ações de proteção aos defensores dos direitos humanos*, Abril 2016 (page consulted on April 1, 2017); Estado de Brasil. *Decreto 8.724*. April 27, 2016.

is in charge of coordinating the protection mechanism at the federal level and defining cooperation strategies with the other State mechanisms (States, Federal District, Municipalities), and is composed of two representatives of the Special Secretariat of Human Rights of the former Ministry of Women, Racial Equality, Youth and Human Rights, and one representative from the National Secretariat of Public Security of the Justice Ministry.<sup>344</sup>

206. However, civil society has reported that the Decree fails to address the systemic problems at the root of the violence,<sup>345</sup> and rolls back on some major strengths of the prior program, created through the 2007 Decree No.6.044.<sup>346</sup> For example, the IACHR was informed that the new decree excludes collective measures of protection for groups, institutions, or communities exercising human rights activities; guarantees protection only to “threatened persons” and no longer references those defenders “in a situation of risk or vulnerability;” as well as excludes civil society and public institutions from participation in Coordination bodies and the Deliberative Council of the program, bodies in which they had participated since 2007.<sup>347</sup>
207. These concerns are added to the previously mentioned challenges facing the program. Indeed, in addition to its lack of a solid legal and institutional framework, civil society organizations have identified weaknesses such as the frequent rotation of high-level staff, its insufficient human resources and limited budget, which were partially responsible for institutional fragility; the lack of a consolidated and unified methodology among states for the assessment of risk, and the lack of flexibility of the assessment; and the lack of fora in which dialogue could be undertaken between State representatives and human rights defenders.<sup>348</sup> The Commission also has received information highlighting the absence of collective measures of protection; the need for interventions that take into consideration the particular realities of members of the LGBTI community; and the failure to include a gender and ethnic perspective in the determination and implementation of protection measures.<sup>349</sup> Civil society organizations have denounced the high levels of impunity in the country, and the lack of an effective response to violence against human rights defenders; many of these situations involving State officials and agents among the

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<sup>344</sup> State of Brazil. *Decreto 8.724*. April 27, 2016, Article 3(2).

<sup>345</sup> UNOHCHR, *Universal Periodic Review Third Cycle – Brazil, Summary of Stakeholder’s information*, A/HRC/WG.6/27/BRA/3, February 24, 2017, para. 41.

<sup>346</sup> Sur Revista Internacional de Derechos Humanos, *Un análisis del contexto latino-americano: Brasil, Colombia y México*, July 2016, Sur 23, v.313, No.23, 175-184, p. 180.

<sup>347</sup> *Idem*.

<sup>348</sup> Sur Revista Internacional de Derechos Humanos, *Un análisis del contexto latino-americano: Brasil, Colombia y México*, July 2016, Sur 23, v.313, No.23, 175-184, p. 180; UNOHCHR, Working Group on the Universal Periodic Review, *Summary of other stakeholders’ submissions on Brazil*, 24 February 2017, A/HRC/WG.6/27/BRA/2, para. 36. See also UNOHCHR, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Brazil*, A/HRC/32/45/Add.1, par.50; ISHR and Terra de Direitos, *A situação dos defensores e defensoras de direitos humanos, Submissão ao Relator Especial da ONU sobre os defensores e defensoras de direitos humanos*, Marzo 2016, p. 4.

<sup>349</sup> *Idem*.

- suspects.<sup>350</sup> Another measure of concern to different human rights defender organizations is the approval of the Anti-terrorist Law 13.260, which has been used to criminalize the work of land rights defenders in the country.<sup>351</sup>
208. In May 2016, the newly-elected government decided to abolish the Ministry of Women, Racial Equality, Youth and Human Rights in charge of the Deliberative Council, transferring its competences to the Ministry of Justice and Citizenship, which has lead civil society to denounce the weakening of the institutional framework for protection of human rights and to express great concern as to the future of the protection program.<sup>352</sup> In addition, civil society organizations have reported that the political and financial crisis that affected the country has resulted in measures suspending the realization of various activities and suspension of spending under the responsibility of the Justice and Citizenship Ministry, which has affected the execution of the Protection Program.<sup>353</sup>
209. Information received by the IACHR indicates that occurrences of violence against human rights defenders in Brazil continue to soar. A matter of particular concern to the Commission is the drastic increase of all forms of violence related to possession and ownership of land. In fact, the Commission has received information of great concern with respect to Brazil's levels of murders of indigenous, environmental and land defenders, indicating that between 2002 and 2013, the number of defenders from these groups who had been murdered had more than tripled.<sup>354</sup> This shocking increase remains steadfast. In this respect, the Commission has received information corroborating that in 2016 the country registered its highest number of murders of land defenders since 2003, reaching an average of five murders of peasants or land defenders per month.
210. The Commission has also received information with regard to the relationship between the increase in the vulnerability of indigenous communities, peasants, and land defenders, and the extraction, exploitation and development policies that are currently at the forefront of the development model in the country; the failure to demarcate indigenous lands; and the struggle for land reform.<sup>355</sup> On these issues,

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<sup>350</sup> Article 19, PROTESTE, Imaflora, and FITERT, *Joint submission to the Universal Periodic Review of the Federative Republic of Brazil*, For consideration on the 27<sup>th</sup> Session of the UPR Working Group of the Human Rights Council, October 5, 2016, para. 29-31, 36.

<sup>351</sup> *Política, Justiça mantém sem-terra presos com base na lei antiterrorismo*, August 3, 2016.

<sup>352</sup> ISHR and Terra de Direitos, *A situação dos defensores e defensoras de direitos humanos, Submissão ao Relator Especial da ONU sobre os defensores e defensoras de direitos humanos*, March 2016; Frontline Defenders, *Brazil - Human rights defender Nilce de Souza Maqalhães's body found by the dam of Usina Hidrelétrica in Jirau*, June 27, 2016.

<sup>353</sup> Article 19, PROTESTE, Imaflora, and FITERT, *Joint submission to the Universal Periodic Review of the Federative Republic of Brazil*, For consideration on the 27<sup>th</sup> Session of the UPR Working Group of the Human Rights Council, October 5, 2016, para. 28; PONTE, "É un ato dictatorial", *afirma defensor de Direitos humanos sobre desizão do ministro da Justiça*, June 18, 2016.

<sup>354</sup> ISHR and Terra de Direitos, *A situação dos defensores e defensoras de direitos humanos, Submissão ao Relator Especial da ONU sobre os defensores e defensoras de direitos humanos*, March 2016, p. 2.

<sup>355</sup> *Idem*; See also: Article 19, PROTESTE, Imaflora, and FITERT, *Joint submission to the Universal Periodic Review of the Federative Republic of Brazil*, For consideration on the 27<sup>th</sup> Session of the UPR Working Group of the

the IACHR has issued several press releases over the course of the year, forcefully condemning the murders of human rights defenders in Brazil as well as the growing and generalized situation of harassment, intimidation, and threats against defenders, particularly those who defend the rights related to land, to labor, and of indigenous peoples.<sup>356</sup> The Commission has also expressed its concern over the increase in rural violence in Brazil related to land disputes;<sup>357</sup> and condemned as deeply troubling the murder of leader Clodioidi Aquileu Rodrigues de Souza, and the high incidence of acts of violence against Guarani-Kaiowá indigenous communities in the State of Mato Grosso do Sul.<sup>358</sup> The Commission has also expressed its concern with the failures in the protection of human rights defenders in Brazil, in collaboration with the Office of the United Nations High Commissioner for Human Rights.<sup>359</sup>

211. The Commission encourages the State of Brazil to dedicate urgent and strengthened attention to the further development and improved implementation of a national protection program, supported by a strong legal framework and inter-agency coordination mechanisms, to protect human rights defenders from threats to their life and physical integrity. The Commission also underscores the importance of adopting steps to address the structural causes leading to conflicts and violence connected to land reform and human rights defense work around these issues. The Commission underlines that it is crucial for the State to resume its prior practice of enforcing collective protection measures, and to implement the necessary protocols to guarantee that a gender and ethno-racial perspective is included in the determination, design, and enforcement of protection measures.

#### **d) Guatemala**

212. In 2004, by Executive Decree 11-2004,<sup>360</sup> the State of Guatemala established a Coordinating Unit for Protection of Human Rights Defenders, Judicial Administrators and Officers, Journalists and other Media Workers, entrusted with the effective implementation of protection measures granted by the inter-American or universal systems. In 2008, by Ministerial Decree No. 103-2008, the State created the Unit for the Analysis of Attacks against Human Rights Defenders, to analyze patterns of violence against human rights defenders, issue recommendations, and

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Human Rights Council, October 5, 2016, para. 35; Terra de Direitos, *Posicionamento sobre o decreto que ameaça demarcações de terras indígenas*, December 16, 2016.

<sup>356</sup> IACHR, Press Release No. 54/16, *IACHR Condemns Killings of Human Rights Defenders in Brazil*, April 27, 2016.

<sup>357</sup> IACHR, Press Release No. 57/17, *IACHR Expresses Concern over Increase in Rural Violence in Brazil*, May 1, 2017.

<sup>358</sup> IACHR, Press Release No. 089/16, *IACHR condemns murder of Guarani-Kaiowá indigenous leader in Brazil*, June 27, 2016.

<sup>359</sup> IACHR, Press Release No. 39/17, *ONU Direitos Humanos e CIDH manifestam preocupação com a proteção de defensores de direitos humanos no Brasil*, March 27, 2017.

<sup>360</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEAF.9.2.1 No. 463-2013. April 22, 2013, which transmits the communication from the Presidential Commission for Human Rights (COPREDEH), March 4, 2013.

elaborate technical criteria with the objective of minimizing the risk to which human rights defenders are exposed. However, it was not until 2012 that the State of Guatemala expressed its intention to adopt a protection mechanism, while reporting to the Universal Periodic Review before the United Nations Human Rights Council.<sup>361</sup> Additionally, in 2014, the Inter-American Court of Human Rights rendered its decision in the case of *Human Rights Defender et al. v. Guatemala*, in which it called on the State to develop and implement, within a reasonable time, a public policy for the protection of human rights defenders, including measures of a legislative, institutional, judicial or administrative nature, aimed at reducing the risks faced by human rights defenders.<sup>362</sup> The Court recommended “the creation of a risk analysis model to adequately determine the risk and the protection needs of each defender or group;” “the design of protection plans in response to specific risks faced by each defender and to the nature of his/her work;” “the promotion of a culture of legitimization and protection of the work of human rights defenders, and the provision of sufficient human and financial resources to respond to the real needs for protection of human rights defenders,” among others.<sup>363</sup>

213. The State has reported to the IACHR that it has established a Specialized Prosecution Unit to investigate crimes against human rights defenders, as well as a Unit for Analysis of Attacks against Human Rights Defenders, which also serves as a space to develop recommendations and to prevent attacks against human rights defenders.<sup>364</sup> It also informed the IACHR about its efforts to establish a broader public policy for human rights defenders, and its commitment to abstaining from making any declaration or affirmation that would stigmatize their work, and consequently place their lives at risk.<sup>365</sup> Further, it reminded the Commission of the existence, since its approval in 2014, of a Protocol on Implementation of Immediate and Preventive Security Measures in favor of human rights defenders, operated by the National Civil Police.<sup>366</sup> The State of Guatemala also underscored Decree 44-2012 through which it created the Institutional Security Division of the Judicial Branch, an organ responsible for the protection of judges and magistrates.<sup>367</sup>
214. In terms of the procedure to request protection, a human rights defender must report verbally or in writing his or her situation of risk to the Unit for Analysis of Attacks on Human Rights Defenders, the Office of the Public Prosecutor/Attorney General, or the Human Rights Ombudsperson’s Office. These institutions will transmit the request for protection to the National Civil Police, in charge of analyzing the situation of risk and of the implementation of the security schemes. A risk

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<sup>361</sup> UNOHCHR. *Examen Periódico Universal 2012: Guatemala*.

<sup>362</sup> I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*, Preliminary objections, Merits, Reparations and Costs, Judgement of August 28, 2014. Series C No.283, para. 262.

<sup>363</sup> *Ibidem*, para. 263.

<sup>364</sup> Republic of Guatemala, *First Report of the State of Guatemala on Compliance with the Recommendations of the Country Report of the IACHR: Diversity, Inequality and Exclusion (2015)*, received on October 10, 2016.

<sup>365</sup> *Idem*.

<sup>366</sup> *Idem*.

<sup>367</sup> Republic of Guatemala, COPREDEH, *Report of the State of Guatemala to the IACHR in response to the questionnaire on National Protection Mechanisms for Human Rights Defenders*, received on August 17, 2016.

analysis can take up to 15-20 days, unless the situation is urgent, in which case the measures may be implemented prior to completing the risk analysis.<sup>368</sup> Protection can be granted through the following security schemes: i) personal security through bodyguards provided by the National Civil Police; ii) Fixed-location security, through the assignment of police agents to protect a house, office building or another place designated by the beneficiary; and iii) perimeter security, or police controls at designated locations and times.<sup>369</sup> In the case of judges and magistrates, the request for protection can be filed with the Presidency of the Judicial Branch, which will transfer it to the Institutional Security Division, in charge of the risk analysis and the implementation of measures. In addition to measures of personal security and fixed-location security, the State's Institutional Security Division also provides bulletproof vests and vehicles.<sup>370</sup>

215. Risk analyses are based on three categories: low, medium, and high. According to the State, "low" refers to the risk levels to which all persons are exposed to equally, and is a category that does not require the enforcement of protection schemes.<sup>371</sup> The categories "medium" and "high," however, will be afforded protection measures. "Medium" refers to the increased risk to which persons are exposed in the exercise of political, public, social, humanitarian, or union-leadership functions, or in public office. It refers to risk which is specific, individualized, concrete, based on facts and not presumptions, present, clear, discernible, and serious.<sup>372</sup> "High" refers to a risk that threatens fundamental rights such as those pertaining to life, personal integrity, liberty or security, along with the features inherent in the other two categories.<sup>373</sup>
216. In addition to its first steps to set in place a mechanism, the State informed the IACHR of its efforts to strengthen the Analysis of Attacks Unit. The State underlined having included new players at the discussion table, including the Human Rights Ombudsperson, the Department of Crimes against Life and Personal Integrity of the National Civil Police, and the Association of Penal law and Criminology of Guatemala. It also reported having completed 36 meetings, in which numerous civil society organizations had participated. The State, however, acknowledged that one of its major challenges was the lack of sufficient financial resources to ensure protection that is efficient and effective.<sup>374</sup>
217. Notwithstanding these important efforts on behalf of the State, civil society organizations have informed the IACHR that the Unit was not fulfilling its

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<sup>368</sup> Republic of Guatemala, COPREDEH, *Report of the State of Guatemala to the IACHR in response to the questionnaire on National Protection Mechanisms for Human Rights Defenders*, received on August 17, 2016.

<sup>369</sup> *Idem.*

<sup>370</sup> *Idem.*

<sup>371</sup> *Idem.*

<sup>372</sup> *Idem.*

<sup>373</sup> *Idem.*

<sup>374</sup> *Idem.*

mandate.<sup>375</sup> The UDEFEGUA<sup>376</sup> reported to the IACHR that the Unit for the Analysis of Attacks against Human Rights Defenders in Guatemala's four-year mandate expired in 2016. Although the representative of the Ministry of the Interior has mentioned that efforts are being made to adopt a new decree to support the Unit's work, UDEFEGUA informed the Commission that this had not yet materialized. Owing to the lack of valid regulations governing its operations, the Unit lacks a budget and personnel. Additionally, the United Nations High Commissioner for Human Rights has emphasized that the Unit for the Analysis of Attacks alone cannot replace the functions of a protection mechanism that can produce a comprehensive risk and context analysis leading to the adoption or lifting of a security measure.<sup>377</sup>

218. During 2016, the IACHR has been informed of a number of measures adopted by the State — in particular, the Presidential Human Rights Coordinating Commission [*Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos*] (hereinafter “the COPREDEH”) — to address the process of designing a public policy on protection of human rights defenders. The steps taken include two meetings with representatives of civil society and the UN OHCHR, as well as the inauguration of the proceedings for the development of the public policy, on September 13, 2016. At the time of preparation of the present report, government authorities are moving forward with activities aimed at determining the methodology of civil society consultations. Despite the progress reported, civil society members have voiced concerns over the absence of appropriate spaces to voice their concerns.<sup>378</sup>
219. In regard to the enforcement of protection measures through the precautionary measures mechanism, the Commission reported in its 2016 Annual Report the State's willingness in certain cases to implement a series of protection measures that include assigning bodyguards, assistance with transportation by providing special vehicles, police patrols at the offices and residences of protected individuals, and police escorts, among others. In spite of those measures, the IACHR has received information regarding continued shortcomings in protection measures actually implemented, including: (i) constant rotation of protection personnel, which creates mistrust in beneficiaries of the protection program who are not familiar with their backgrounds, as well as creating concern over the handling of information on the routines of protected individuals;<sup>379</sup> (ii) failure to cover food and other costs for

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<sup>375</sup> UDEFEGUA, *Exprésate con otro rollo, sin odio*, Informe sobre situación de Defensoras y Defensores de Derechos Humanos, Informe Semestral 2016.

<sup>376</sup> The UDEFEGUA, or Unit for Protection of Human Rights Defenders in Guatemala [*Unidad de Protección a Defensoras y Defensores de Derechos Humanos, Guatemala* in its Spanish name], is a human rights observatory that works at the promotion and protection of the rights of defenders in Guatemala and Central America.

<sup>377</sup> OHCHR-Guatemala. Informe sobre las actividades de su oficina en Guatemala, year 2012, January 7, 2013, para. 54.

<sup>378</sup> UDEFEGUA, Report on Implementation of Recommendations in the 2015 Country Report: Situation of Human Rights in Guatemala, September 14, 2016; CEJIL, Observations on the Report on the Situation of Human Rights in Guatemala, October 14, 2016.

<sup>379</sup> Report presented by CEJIL on July 14, 2016, in the framework of the application for precautionary measures (PM-125-13) for Judge Jazmín Barrios regarding Guatemala.

PNC escorts, which has an impact on their performance;<sup>380</sup> (iii) lack of follow-up on meetings to agree on measures;<sup>381</sup> (iv) unwarranted delays in implementing protection measures such as assigning armor-plated cars and strengthening residential protection,<sup>382</sup> among other issues. One of the chief concerns raised by civil society organizations has to do with the total or partial dismantling of protection arrangements absent prior consultation with and consent of beneficiaries of the protection program and of precautionary measures.

220. The IACHR also notes with concern the scarce information received regarding the steps adopted by the competent authorities to strengthen investigative capacity as a prevention measure, especially considering that the impunity levels for certain crimes in Guatemala are reported to reach 95%.<sup>383</sup> The Commission reiterates that the failure to investigate facts fueling risk generates a climate of impunity, which promotes the repetition of violence that undermines the work of human rights defenders and journalists.
221. In its 2016 Annual Report, the Inter-American Commission took note of certain efforts made by the State, which it affirmed were consistent with the recommendations issued in its 2015 Country Report and with the judgment of the Inter-American Court in the case of *Human Rights Defender et al. v. Guatemala*.<sup>384</sup> The Commission also acknowledges that the national protection mechanism is in the initial stages of development and enforcement. Nevertheless, and without prejudice to the foregoing, the Commission has been informed over the course of 2016 of the persistence of elevated numbers of threats, harassment, smear campaigns and violence, which increasingly jeopardize the right to life and physical integrity of human rights defenders in Guatemala.<sup>385</sup> According to the UDEFEGUA, 10 human rights defenders were murdered in the first six months of 2016, compared with 12 cases documented for the whole of 2015.<sup>386</sup> The Office of the United Nations High

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<sup>380</sup> *Idem*.

<sup>381</sup> Report presented by CEJIL on March 8, 2016, in the framework of the application for precautionary measures (PM-433-14) for Claudia Escobar regarding Guatemala.

<sup>382</sup> Report presented by the Human Rights Ombudsperson of Guatemala on June 20 and 23, 2016, respectively, in the framework of the application for precautionary measures (PM-366-13) for Miguel Ángel Gálvez and family regarding Guatemala.

<sup>383</sup> *Comisión Internacional contra la Impunidad en Guatemala (CICIG), Report*, Impunity calculated on complaints for sexual crimes, corruption, violence against women and violent deaths. [Last visited in November 2016].

<sup>384</sup> I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*, Preliminary objections, Merits, Reparations and Costs, Judgement of August 28, 2014. Series C No.283, para. 263.

<sup>385</sup> Office of the United Nations High Commissioner for Human Rights in Guatemala, Press release, *OHCHR repudiates recent murders of human rights defenders* (Only in Spanish), June 21, 2016; Unit for the Protection of Human Rights Defenders in Guatemala (*Unidad de Protección a Defensoras y Defensores de Derechos Humanos-Guatemala* – UDEFEGUA), *Exprésate con otro rollo, sin odio, Informe sobre situación de Defensoras y Defensores de Derechos Humanos*, Informe Semestral 2016; Interreligious task force on Central America, Letter to President Morales and Attorney General Aldana, September 25, 2016.

<sup>386</sup> UDEFEGUA, Report on the Situation of Human Rights Defenders, First Semester 2016 (*Informe sobre situación de Defensoras y Defensores de Derechos Humanos, Primer Semestre 2016*), p. 6. The following human rights defenders were killed: a. Walter Méndez Barrios, member of *Frente Petenero contra las Represas*, murdered on March 15, 2016; b. Benedicto de Jesús Gutiérrez Rosa, *Instituto Nacional de Bosques*, murdered on April 13, 2016; c. Juan Mateo Pop Cholóm, member of *Instituto Nacional de Bosques*, murdered on April 13, 2016;

Commissioner for Human Rights in Guatemala also repudiated those killings in the country.<sup>387</sup>

222. In light of these considerations, the Commission urges the State of Guatemala to advance in the development and enforcement of an effective protection mechanism, and to implement its activities in a timely manner. This mechanism should be supported by a firm legal framework; the inclusion of qualified, specialized and permanent personnel; adequate and autonomous funding; and an efficient coordination structure. The Commission also underscores the importance of civil society involvement in every step of the proceedings and consultations.

### e) Honduras

223. In April 15, 2015, the Congress of Honduras approved unanimously, in its third and final reading, the “Law on Protection for Human Rights Defenders, Journalists, Social Communicators and Justice Operators.”<sup>388</sup> The IACHR as well as the United Nations have welcomed the creation and approval of the law on multiple occasions.<sup>389</sup> Article 2 of this law codifies its status as a Public Order Law (“Ley de Orden Público”), of social interest and general observance, giving it precedence over other domestic legislation, and recognizes the importance of both prevention and protection measures for human rights defenders in the country.<sup>390</sup>
224. The approved text of the law creates the national protection system for human rights defenders, within the framework of the Public Policy and National Plan for Human Rights of Honduras, and is comprised of: i) the Ministers of Human Rights, Justice, Interior and Decentralization; ii) the National Council for the Protection of Human Rights Defenders; iii) the General Directorate for the Protection System, iv)

d. Héctor Joel Saquil Choc, member of *Instituto Nacional de Bosques*, murder on April 13, 2016; e. Diego Salomón Esteban Gaspar, member of *Radio Sembrador*, murdered on April 30, 2016; f. Blanca Estela Asturias, community leader, murdered on May 13, 2016; g. Víctor Hugo Valdés Cardona, *Productora Chiquimula Visión*, murdered on June 7, 2016; h. Daniel Choc Pop, member of *CCDA Verapaz*, murdered on June 9, 2016; i. Brenda Marleni Estrada Tambito, legal counsel of UNSITRAGUA, murdered on June 19, 2016; j. Álvaro Alfredo Aceytuno López, *Radio Ilusión*, murdered on June 25, 2016. UDEFEGUA, Report on Implementation of Recommendations in the 2015 Country Report: Situation of Human Rights in Guatemala.

<sup>387</sup> OHCHR, OHCHR repudiates recent murders of human rights defenders (*OACNUDH rechaza recientes asesinatos de defensoras y defensores de derechos humanos*), June 21, 2016.

<sup>388</sup> Congreso Nacional de Honduras. Decreto No.34-2015. *Ley de Protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia* (Spanish only), 15 de abril de 2015.

<sup>389</sup> Joint press release of the United Nations and the IACHR, *Honduras, uno de los países más peligrosos para los defensores de derechos humanos – advierten expertos*, August 19, 2016 [Our translation]; IACHR, *Situation of Human Rights in Honduras*, OEA/Ser.L/V/II., Doc.42/15, December 31, 2015, para. 379; IACHR, Annual Report 2016, Follow-up on Recommendations issued by the IACHR in its Report on the Situation of Human Rights in Honduras, para. 43.

<sup>390</sup> Congreso Nacional de Honduras. Decreto No.34-2015. *Ley de Protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia* (Spanish only), 15 de abril de 2015, Article 2, 6-11, 14, 18, and considerations.

the Technical Committee of the Protection Mechanism; and v) the Security Ministry's Human Rights Department.<sup>391</sup>

225. The Law creates the *National Council for the Protection of Human Rights Defenders*,<sup>392</sup> which is the consultative and advisory body of the system whose powers are reflected in Article 24 of the Law. This Council is composed of a representative of the UN OHCHR in Honduras as an observing party, as well as public officials, civil society representatives, lawyers, prosecutors, judges, journalists and press associations. Additionally, the law creates a *General Directorate of the Protection Mechanisms*, which will be part of the structure of the Secretariat of Human Rights, Justice, Interior and Decentralization, constituting the executive body of the National System of Protection for Human Rights Defenders.<sup>393</sup> Its functions are to receive all requests for protection and to address them; to develop operating protocols required for the effective enforcement of the law; and to follow-up on a regular basis on provisional measures from the Inter-American Court of Human Rights, precautionary measures from Inter-American Commission on Human Rights, and the corresponding security measures adopted by local courts. The Law also provides for the creation of a *Technical Committee of the Protection Mechanism*, responsible for conducting the risk analysis, deliberation, and decision on requests for protection submitted to the Directorate General.<sup>394</sup>
226. The law establishes a list of measures that can be adopted by the State as means of prevention and protection for beneficiaries of the mechanism. It provides for “preventive measures” aimed at reducing risk factors, “reactive measures” to protect the right to life, personal integrity, personal liberty and security, “urgent protection measures” meant to protect the previously enumerated rights and liberties in an urgent manner, “psychosocial measures” aimed at confronting psychological and social impacts of violence on human rights defenders, their families, and the organizations in which they operate; as well as “measures aimed at addressing impunity” such as those guaranteeing the effectiveness of the investigation, prosecution, and sanction of those responsible for attacks against subjects of protection pursuant to the law.<sup>395</sup> The law also provides for a timeframe for implementation of measures, which must take place within 48 hours of the reception of the granting resolution.<sup>396</sup>
227. In addition, the Commission was informed by the State that on June 6, 2016, the Regulation detailing the measures to ensure the effective implementation of the

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<sup>391</sup> *Ibidem*, Article 19.

<sup>392</sup> Congreso Nacional de Honduras. Decreto No.34-2015. *Ley de Protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia* (Spanish only), 15 de abril de 2015, Article 20.

<sup>393</sup> *Ibidem*, Article 28.

<sup>394</sup> *Ibidem*, Article 31.

<sup>395</sup> *Ibidem*, Article 5, subsection 11-15.

<sup>396</sup> *Ibidem*, Article 48.

National Protection Program was approved.<sup>397</sup> The State informed the Commission that the adoption of this Regulation took into consideration recommendations from international organizations such as the IACHR, and included civil society participation.<sup>398</sup> The State has also informed the Commission that it continues developing protocols and procedures for the functioning of the auxiliary unit, as well as protection mechanism manuals and guidelines. It affirmed that at the present time, it had already established a Transfer Protocol for protection measures granted by the inter-American system; guidelines for the Reception and Immediate Reaction Unit, for the Implementation and Follow-up Unit, and for the Risk Analysis Unit; and a Methodology for the Evaluation of Individual and Collective Risk.<sup>399</sup> Pursuant to recent information received from the State, Congress had ensured sustainability of the program through the allocation of a 10 million *lempiras* budget for the enforcement of the law, and the authorization of an additional 10 million *lempiras* for the Special Protection Fund, to guarantee the effectiveness of protection measures.<sup>400</sup>

228. The Commission acknowledges that the Honduran National Protection Mechanism, which was created in 2015, is in the initial stages of development and enforcement. However, after the successive string of murders of high profile human rights defenders who were beneficiaries of precautionary measures of the Inter-American Commission over the course of 2016, such as those of Berta Cáceres,<sup>401</sup> Kevin Ferrera,<sup>402</sup> Nelson Noé García,<sup>403</sup> José Ángel Flores, and Silmer Dionisio George,<sup>404</sup> the Commission must conclude that the mechanism has proven insufficient to guarantee the rights to life and personal integrity of its beneficiaries.
229. In its Annual Report for 2016, the Commission highlighted the levels of mistrust that human rights defenders have with respect to the legitimacy, effectiveness, and functionality of the protection mechanism, fueled by the murders which took place throughout the year; killings which were repudiated globally.<sup>405</sup> In addition, it

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<sup>397</sup> Secretaria de Derechos Humanos, Justicia, Gobernación y Descentralización de Honduras, Acuerdo Ejecutivo No.59-2016, *Reglamento General de la Ley de Protección para las y los defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia* (Spanish only), August 20, 2016.

<sup>398</sup> State of Honduras, “Informe sobre el estado de cumplimiento de las recomendaciones contenidas en el informe de la Situación de Derechos Humanos en Honduras”, August 17, 2016, para. 12.

<sup>399</sup> IACHR, Annual Report 2016, Chapter 5: Follow-up on Recommendations issued by the IACHR in its Report on the Situation of Human Rights in Honduras, para. 48.

<sup>400</sup> State of Honduras, “Informe sobre el estado de cumplimiento de las recomendaciones contenidas en el informe de la Situación de Derechos Humanos en Honduras”, August 17, 2016, para. 12, 13.

<sup>401</sup> IACHR, Press Release No.024/16, *IACHR Condemns the Killing of Berta Cáceres in Honduras*, March 4, 2016.

<sup>402</sup> Joint press release of the United Nations and the IACHR, *Honduras, uno de los países más peligrosos para los defensores de derechos humanos – advierten expertos*, August 19, 2016 [Our translation].

<sup>403</sup> IACHR, Press Release No.039/16, *IACHR Deplores Killing of Nelson Noé García in Honduras*, March 21, 2016.

<sup>404</sup> IACHR, Press Release No.161/16, *IACHR Repudiates the Killing of José Ángel Flores and Silmer Dionisio George in Honduras*, November 3, 2016.

<sup>405</sup> IACHR, Annual Report 2016, Follow-up on Recommendations issued by the IACHR in its Report on the Situation of Human Rights in Honduras, para. 45; Notas de prensa e informes: Periódico Paso del Animal Grande, “32 periodistas y 6 defensores de derechos humanos se han acogido al mecanismo de protección según informe”, 27 de julio de 2016; La Prensa, “Crímenes sin castigo en Honduras”, 2 de abril de 2016; Amnistía Internacional, “Honduras/Guatemala: Ataques en aumento en los países más mortíferos del mundo para los activistas”

underlined how various civil society organizations had expressed their frustration at the lack of State compliance with agreements adopted to safeguard the life and integrity of human rights defenders.<sup>406</sup> The Commission was also informed of coordination problems experienced by the Technical Committee, in part due to the following factors, among others: i) insufficient training of personnel in general and their quick turnover; ii) serious shortcomings in the implementation of material protection measures, for example, poor quality cameras paid for by the beneficiaries themselves and lack of consistency in patrols; iii) lack of access to information on how to present a request for protection; and iv) lack of training of personnel in charge of implementing the measures. The Commission also received information on the failure of the protection mechanism to include a gender perspective in the design and enforcement of protection schemes.<sup>407</sup>

230. In addition, the Commission was informed by civil society in the context of hearings that took place during its 159 and 161 periods of sessions on some of the specific challenges that persist. In December 2016, the Commission was informed of the following deficiencies: i) the lack of inclusion of civil society in the different instances of the mechanism, in particular in the Technical Committee; ii) the failure to modify, as provided for in the Regulation, the legal provision that allows for decisions of the technical committee to be overturned by the General Directorate; iii) the excessive influence of the Defense Secretary in the National Protection Council, which is the instance in charge of the decision to grant protection measures; iv) the failure to implement an information management system; and v) the lack of transparency and reticence of the mechanism to share information of any kind with civil society, whether related to its hiring processes, the number of meetings held and measures granted, to the status of investigations, or to its budget and spending.<sup>408</sup>
231. The State of Honduras requested a hearing during the IACHR's 161<sup>o</sup> period of sessions, in which public officials informed the Commission on the steps it had adopted to comply with the order of the Inter-American Court in the matter of *Antonio Luna López v. Honduras*,<sup>409</sup> as well as the recommendations of the Universal Periodic Review, and Resolution 13/13 of the United Nations Human Rights Council, in the implementation of its public policy of protection. In this regard, the State highlighted the following efforts: i) to increase participation of human rights defenders, civil society organizations, and experts in the elaboration of the regulations, protocols and manuals it was setting in place; ii) the inclusion of immediate reaction measures; iii) the creation of a new risk analysis model which

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*ambientales*", de 1 de septiembre de 2016, Global Witness, *Honduras: the Deadliest Place to Defend the Planet*, January 2017; among others.

<sup>406</sup> IACHR, Annual Report 2016, Chapter 5: Follow-up on Recommendations issued by the IACHR in its Report on the Situation of Human Rights in Honduras, para. 53.

<sup>407</sup> JASS, CEJIL, PI, *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*, 2016, pp. 37-40.

<sup>408</sup> IACHR, Hearing, 159 period of sessions, *Honduras: National Protection Mechanism for Human Rights Defenders*, December 1, 2016.

<sup>409</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*, Merits, Reparations and Costs, Judgment of October 10, 2013. Series C No.269.

- adequately determines levels of risk according to the necessities of each defender or group; iv) the development of an information management system; as well as v) the design of protection plans that respond to the particular risk of each defender and the characteristics of their field of work.<sup>410</sup>
232. For their part, civil society organizations informed the Commission of the mechanism's exclusive focus on physical protection measures, and insisted on its failure and lack of political will to address the root causes of violence, such as stigmatization, criminalization, and impunity.<sup>411</sup> They affirmed that the legal framework was strong, but that the current implementation status of confirmed that it does not constitute an integral policy of protection.<sup>412</sup> The participating organizations also insisted on serious inconsistencies in the State's public discourse, approving laws and press releases that recognize the important work of human rights defenders, while certain high officials of the State pursue a discourse of stigmatization.<sup>413</sup> The organizations also reported shortcomings with regard to the State's obligation to investigate, noting i) the failure to implement the specialized protocol for the investigation of offenses perpetrated against human rights defenders, an undertaking of the State following the case of Carlos Escaleras; ii) the absence of a representative of the Public Prosecutor's office in working meetings and hearings before the Commission, demonstrating a lack of political will to take positive steps in this area; iii) the failure of the Attorney General to attend National Protection Council meetings, although the law requires his presence; iv) the lack of participation of the Public Prosecutor's office in the Technical Committee meetings; as well as v) the absence of a protocol to protect and investigate crimes against justice operators.<sup>414</sup>
233. The UN Office of the High Commissioner for Human Rights in Honduras has identified similar challenges with the national protection mechanism, calling on the State to continue developing a comprehensive policy to protect human rights defenders, in particular women human rights defenders, with the following goals in perspective: i) to create a safe and enabling environment for defenders through the public recognition of the importance of the work defenders undertake; ii) for the Attorney General and the National Police to adopt serious efforts to improve the investigation and prosecution of crimes against human rights defenders; as well as iii) to create spaces for dialogue between human rights defenders and government authorities to voice their concerns and views concerning the enforcement of the policy.<sup>415</sup>
234. The Commission therefore encourages the State of Honduras to act with urgency and due diligence to improve its legislation, policies, and mechanisms adopted to safeguard the life, integrity, and work of human rights defenders. The Commission

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<sup>410</sup> IACHR, Hearing, 161 Period of Sessions, *Honduras: Protection for Human Rights Defenders*, March 17, 2017.

<sup>411</sup> *Idem*.

<sup>412</sup> *Idem*.

<sup>413</sup> *Idem*.

<sup>414</sup> *Idem*.

<sup>415</sup> UNOHCHR, Annual Report of the United Nations High Commissioner for Human Rights on the situation of Human Rights in Honduras, A/HRC/34/3/Add.2, February 9, 2017, pp. 8-9,16.

also urges the State to dedicate its best efforts to achieve, with the participation of civil society, the full and effective functioning of its protection mechanism, and the development of an integral policy of protection which guarantees that human rights defenders can continue advocating for human rights in their country without fear of reprisals.

#### **f) Alternative Measures Adopted by States to Address the Situation of Human Rights Defenders**

235. Various States informed the Commission of measures adopted to protect human rights defenders apart from or without being based on national protection mechanisms. Most of these have been enforced in the context of the justice system and the police force. The States provided information on these measures in the responses to the questionnaire, as discussed below.
236. For example, Antigua and Barbuda indicated that it has a standard protection scheme for all the citizens in its country, including human rights defenders. Defenders at risk can file complaints within the criminal justice system, and the measures can be enforced by the Police Force of Antigua and Barbuda and the Director of Public Prosecution. In the same line, the State of Jamaica reported that it has a procedure for the protection of human rights defenders and justice operators, which is enforced by the Jamaican police force known as the Constabulary Force (JCF).
237. With respect to the State of Belize, the Ombudsperson's office informed the Commission regarding the inexistence of a specific mechanism to protect human rights defenders. However, in 1999, the State set in place a "Justice Protection Programme" designed to offer protection to witnesses, jurors, judicial operators, and judges who allege to be in a situation of risk. Domestic legislation provides for a specific program for the protection of judges by the Police Department. Regarding human rights defenders outside the context of the judiciary, domestic legislation establishes the possibility for them to hire security officer or private armed security.<sup>416</sup>
238. For its part, Argentina indicated that there are general judicial mechanisms available for the protection of fundamental rights, that human rights defenders can pursue directly. The State of Bolivia reported that, within the framework of Law 260 of 2012, there is a protection mechanism designed to protect the activities carried out by justice operators. Similarly, Law 458 of 2013 protects plaintiffs and witnesses of crimes, which could include human rights defenders. Regarding Chile, the State indicated that like all the citizens in the country, human rights defenders have access to the judicial or police authorities to file requests for protection of their rights.
239. The State of Panama indicated that there is no difference between the protection available to victims and witnesses of crimes, and to human rights defenders. In

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<sup>416</sup> Answer to the Questionnaire circulated by the IACHR provided by the State of Belize.

particular, the State reported that defenders can request protection when they are at risk from the criminal justice system or can resort to the use of a legal request for protection of constitutional rights (*Amparo de garantías*) before the judiciary. With regard to justice operators, the State informed that they could avail themselves of bodyguards and escorts assigned for their protection.

240. Similarly, it was reported that in Ecuador, according to the domestic constitution and legal framework, human rights defenders, as any person in the country, have the possibility to resort to the judicial or police authorities to obtain protection. In particular, the Commission was informed that they could seek such protection by the order of a judge. In this sense, human rights defenders who allege to be victims or witnesses of a crime can obtain protection through the program for protection of victims and witnesses of crimes.
241. With respect to Peru, there is no specific mechanism for the protection of human rights defenders and justice operators, but the State indicated that it guarantees the protection of the constitutional rights of all its citizens through its police force. Nonetheless, the Commission notes that during a public hearing in 2016, the State announced that within the following two months the government, through the Ministry of Justice and Human Rights, was planning to adopt a protocol for the protection of human rights defenders.<sup>417</sup> In this regard, the information reported indicates that a draft protocol was discussed within the Human Rights Council, but since the draft did not meet the minimum standards it had yet to be approved.
242. Regarding Venezuela, the Commission has no information about the existence of a specific mechanism for the protection of human rights defenders or justice operators. The information reported indicates that the domestic constitution and legal frameworks have codified the obligation for the State to protect all citizens under its jurisdiction, including human rights defenders. In this sense, government institutions such as the Public Ministry or Public Prosecutor's Office, the police force, the judiciary, specialized criminal investigative bodies, among others, have the duty to adopt the necessary measures to guarantee the personal safety of individuals who are at risk. A person seeking protection should direct his or her request to the Public Ministry for it to analyze and process the request. In this respect, the Commission was informed that the Public Ministry has the authority to contract with individuals or companies at the national or international level to guarantee the adequate protection of individuals.

➤ The Commission underscores that mechanisms linked to the program to protect victims, witnesses and other subjects participating in criminal cases do not constitute national protection mechanisms for human rights defenders. This is particularly important in States where there is a context of generalized violence against human rights defenders, where national protection mechanisms, legislation, and policies specialized in the situation of human rights defenders are

<sup>417</sup> IACHR, Hearing, 157 Period of Sessions, *Human Rights Situation of Labor Leaders in Peru*, April 8, 2016; Andina, *Presenta al Minjus propuesta para protocolo de protección a defensores de DDHH* [Page last consulted on May 12, 2017].

urgently needed.<sup>418</sup> In this regard, the UN Special Rapporteur on the Situation of Human Rights Defenders has indicated that general witness protection programs “are not sufficient to provide for the safety of defenders, since in most cases they have not been designed for that purpose.”<sup>419</sup> Indeed, as the Commission has previously reported, protection under these programs presupposes that the danger one faces is because of one’s participation in a criminal case, whereas in the case of human rights defenders the threat may be the result of any number of factors, such as work promoting rights in certain communities, or participation in administrative contentious proceedings where considerable financial interests are at stake.<sup>420</sup>

- Furthermore, the Commission reiterates that “the rule requiring a human rights defender to file a complaint in order to get into a protection program can slow the process precisely when swift measures of protection are needed,” leaving the human rights defenders in a potential situation of risk.<sup>421</sup> Therefore, even though the Commission acknowledges the existence of general institutional mechanisms which could be used as tools to afford protection to human rights defenders, mainly in the context of the criminal justice system, the Commission emphasizes the imperative need for States to set in place a comprehensive and integral policy or program specialized in the protection from risks faced by human rights defenders.

## 2. Standards Applicable to National Protection Mechanisms

243. Starting with its 2011 Report, the IACHR has pointed to several components needed in national protection mechanisms for them to conform to inter-American standards and jurisprudence, as well as other applicable international instruments.<sup>422</sup> At this point, the Commission will further develop those guidelines taking into account current developments in applicable international law, as well as challenges identified following the implementation of those mechanisms by a number of States, in some cases quite recently.

<sup>418</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 499-504.

<sup>419</sup> United Nations, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sakaggya*, A/HRC/13/22, December 30, 2009, para. 73; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 499.

<sup>420</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 500.

<sup>421</sup> *Ibidem*, para. 502.

<sup>422</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, Chapter 5,C.

### a) A strong Legal Framework in Support

244. The Commission celebrates efforts by States that have established their national protection programs by law. This ensures that the procedures provided for by law are clear, secure, and transparent, thereby preventing an uneven or arbitrary application by various State entities or geographic disparities.<sup>423</sup> At the same time, although some States have taken steps conducive to developing a protection mechanism via Executive Branch decrees, or else via coordination with bodies within the Police, the Commission considers that a legal framework guarantees that the protection mechanism will be stable and solid while making it clear which authorities are responsible for complying with it and specifying the responsibilities of the government officials and entities involved. Furthermore, a legal framework prevents uneven or arbitrary implementation by various different State entities and/or avoids the mechanism being dependent upon the will of a particular government.<sup>424</sup>
245. The Commission has also been informed that an international network of defenders and civil society organizations have developed a “model law” for the protection of defenders, which has been endorsed by the UN Special Rapporteur on the situation of human rights defenders.<sup>425</sup> The Commission has accompanied the exercise of elaboration of this model law, and has followed its adoption and publication. This model law hopefully serves as an important resource for States when developing protection policies and programs.

### b) Necessary and Sustained Financial and Human Resources

246. An integral part of a State’s political commitment to its program to protect human rights defenders is an appropriate level of staffing with personnel trained in receiving requests for protection, assessing risk, adopting protection measures and their enforcement, and monitoring to make sure they are properly enforced.<sup>426</sup> Indeed, States must provide the budgetary and logistical resources needed to ensure that the protection measures can be in effect as long as the risk subsists.<sup>427</sup>
247. Accordingly, and as was detailed in the Commission’s 2011 report, States should assign the corresponding resources in their budgetary line items, with a view to covering the costs of the personnel who work in the program and the specific expenses related to the protective measures provided to the persons at risk, so that such protection does not become a financial burden on the defender being

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<sup>423</sup> *Ibidem*, para. 488.

<sup>424</sup> *Ibidem*, para. 487.

<sup>425</sup> International Service for Human Rights, *Model national law to protect human rights defenders*, January 16, 2017.

<sup>426</sup> *Ibidem*, para. 493.

<sup>427</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 134; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 495.

protected. Costs such as maintenance of equipment of State security units should therefore not be passed on to the defender benefiting from State protection, as this is the exclusive responsibility of the State.<sup>428</sup>

248. In both of its previous reports on the Situation of Human Rights Defenders in the Americas, the Commission insisted that risk analysis and the enforcement of measures of physical and material protection should generally be assigned to personnel who are members of a State law enforcement agency, but who are not in the intelligence or counterintelligence of that agency.<sup>429</sup> In situations where the risk may relate or have been related to members of state security forces, alternative measures must be adopted, taking into consideration the opinions of beneficiaries. Personnel should include instructors, supervisors, and security experts who work full-time for the protection program and have their own facilities. States must staff the protection programs with personnel who are capable of establishing trust with the persons seeking protection, and who have the knowledge needed to assess risk, implement the protection measures, and monitor them. It is essential that personnel are informed about the rights of human rights defenders and sensitized to their specific needs and realities.<sup>430</sup>

### **c) Collaboration with other State Agencies, Institutions, and Departments**

249. In order to guarantee the efficiency of the protection mechanism, it is essential that the entity in charge of the mechanism have an adequate coordination with other authorities.
250. Therefore, firstly, the Commission reiterates that national human rights institutions, such as the offices of ombudspersons, or “defenders of the people,” play a crucial role in the observance and enforcement of human rights in the Americas, fulfilling a wide variety of tasks in terms of human rights in their countries.<sup>431</sup> They hold a guidance and advisory role within the State, monitor and evaluate the potential impacts of existing and draft human rights legislation, provide recommendations on critical issues, and contribute to encouraging State compliance with its obligations pursuant to international and inter-American human rights law.
251. National human rights institutions “that comply with the Paris Principles are in a unique position to guide and advise governments on their human rights obligations, and ensure that international principles and standards are adequately incorporated

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<sup>428</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 495.

<sup>429</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 136; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 494.

<sup>430</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 245; IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, Recommendation No.23.

<sup>431</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 532.

- into domestic law and mainstreamed into public policies.”<sup>432</sup> They assist victims, support defenders in particular, as well as disseminate information and educate the public on human rights issues. The Commission also underscores that these national human rights institutions have played and continue to play active roles as driving forces within the inter-American system, and have intervened as petitioners in filing requests seeking precautionary measures, individual complaints, and as participants in public hearings held by the Commission.<sup>433</sup>
252. The relative proximity of human rights institutions to defenders also provides them with a special capacity to monitor their concrete situation. Human rights institutions can provide key information regarding the functioning of protection mechanisms and can support defenders in the enforcement of security measures. In fact, some human rights institutions have been instrumental in issuing recommendations to State authorities regarding the most appropriate measures to protect specific human rights defenders.<sup>434</sup>
253. During the expert meeting held for the preparation of this report, participants insisted to the Commission that Ombudspersons enjoy higher levels of public confidence and should therefore be protagonists in the creation and development of public protection policies.<sup>435</sup> Experts also indicated to the Commission that these institutions had great potential to complement protection mechanisms, by offering support to defenders as they request protection measures; contributing to the clarification of the causes of risk and issuing recommendations to the State; providing technical inputs and interventions during the risk analysis and the design of the protection schemes; monitoring measures once issued; and facilitating dialogue between the State and human rights defenders.<sup>436</sup>
254. The Commission considers that national human rights institutions can therefore play an essential role in counselling States on how to comply with the recommendations issued by the various organs of the inter-American system, in relation to the application of an integral protection policy, and on the enforcement of its decisions for the protection of human rights defenders.<sup>437</sup> This is true even though in some cases it is the national institutions themselves that have urgent alerts or precautionary measures to protect at-risk persons that reinforce the already existing protection provided through national mechanisms. The Commission calls on States to take the work of these institutions seriously, and to properly implement their recommendations. The Commission also urges more national human rights institutions in the region to pursue these more active roles in the promotion and protection of the rights of human rights defenders, and notes its

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<sup>432</sup> United Nations, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sakaggya*, Report A/HRC/25/55, December 23, 2013, para. 77.

<sup>433</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 536.

<sup>434</sup> *Ibidem*, para. 539; United Nations, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sakaggya*, Report A/HRC/22/47, January 16, 2013, para. 24.

<sup>435</sup> Expert meeting held in Washington DC on April 1, 2016.

<sup>436</sup> Expert meeting held in Washington DC on April 1, 2016.

<sup>437</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, Recommendation No.1 and para. 538.

satisfaction over the participation of these institutions in the elaboration of this report.

255. Secondly, in cases of federally constituted States, the Commission has previously established the importance of appropriate coordination between the various levels, and has observed that domestic frameworks must clearly designate which attributions and responsibilities related to the protection mechanism correspond to the various institutions at the central government and local levels. Given that the protection of human rights defenders is an international obligation, a national government must adopt the necessary measures within the State to enable effective implementation of a program to protect human rights defenders. The fact that a State is organized as a federal system does not prevent it from ensuring effective protection of human rights defender. The national government is required to comply with all applicable obligations, and is also required to work with the entities within the federation to enable their full compliance at the local level.<sup>438</sup>
256. Thirdly, this Commission observes that the judiciary as well as justice operators can contribute to the protection of human rights defenders who find themselves at risk, by ordering the relevant State institutions to adopt prevention measures, or by informing the relevant authorities tasked with protection of a situation of risk, as a result of the reception of a complaint, or as a result of their own inquiries within one of their investigations. The Commission considers important that justice operators have access to fluid and flexible channels of communication with the program in charge of protection, and that they receive training on international standards, including on the right to defend human rights.
257. The Commission has also emphasized the need for the entities in charge of protection to coordinate with the corresponding investigative agencies to clarify the sources of risk and to identify and punish the perpetrators.<sup>439</sup> As was previously mentioned in this report, progress in investigations can also supplement the effectiveness of the protection measures adopted, and deactivate those elements that are the source of the situation of risk of beneficiaries of the program. For instance, the State of Guatemala, through its Criminal Investigations Division, has set up a unit to respond to offences perpetrated against human rights defenders and assist prosecutors in investigations.<sup>440</sup> The State has also created a specialized emergency hotline to respond to cases of intimidation and persecution of human rights defenders.<sup>441</sup>
258. Fourth, civil society organizations have insisted on the need for coordination among the security forces in charge of applying the protection mechanisms, so as to guarantee efficient prevention, protection, and response to attacks against human rights defenders.<sup>442</sup> Several organizations have told the IACHR about long delays

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<sup>438</sup> *Ibidem*, para. 492.

<sup>439</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, *supra* note 8, para. 196.

<sup>440</sup> Protection International, *Protection of human rights defenders: best practices and lessons learnt*, p. 44.

<sup>441</sup> *Idem*, p. 44.

<sup>442</sup> *Idem*, p. 43.

between the decision to grant protection measures and their effective implementation by the security forces, caused by the lack of coordination and communication between the authorities granting them and those supposed to implement them. Cooperation protocols between these entities or the clear definition of their obligation to provide protection at the behest of the national mechanism are, therefore, essential.

259. Fifth, it is important to ensure appropriate cooperation between the mechanism, the officials directly responsible for providing security, and the entities in charge of providing training in human rights. Once again, the Commission points out that proper training of security personnel can boost trust among the beneficiaries of protection measures and reduce prejudice when deciding whether or not to investigate a complaint filed by a human rights defender.

#### **d) Independence and Autonomy of the Granting Institution**

260. During the expert meeting held on April 1, 2016, the Commission was informed by State and non-State actors of the importance of independence and autonomy in the functioning of protection mechanisms. This is particularly important to be able to enforce measures promptly with no need to rely on the approval of a hierarchically superior institution, as well as to avoid possible undue interferences in decision-making processes. In this sense, the organization Protection International has highlighted the importance that the members of these granting entities “have decision making capacity concerning overall decisions on the adoption and implementation of security measures (because if they have to consult their superiors information is lost in transmission, timescales are stretched, and the decision itself is taken at a remove from the defenders).”<sup>443</sup>
261. The Commission considers that the mechanism should also be capable of decentralizing its operations and working at the rural and local levels when the risk extends to these locations. Achieving an increased proximity to beneficiaries allows a better understanding of the local circumstances and the specific needs of a human rights defender, and should therefore guarantee more efficient and tailored protection schemes.<sup>444</sup>

#### **e) Activation of the Obligation to Protect**

262. To activate the State’s duty to protect, it suffices that any authority has or should have knowledge of an at-risk situation. Thus, when an authority that is part of the mechanism becomes aware of a real and imminent risk to the life of a human rights defender, it is incumbent upon that authority to “ascertain or assess whether the

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<sup>443</sup> *Idem*, p. 83.

<sup>444</sup> *Idem*, p. 44.

person subject to threats and harassment requires protection or to remit the matter to the authority competent to make that assessment.”<sup>445</sup> Said authority must “provide the person at risk with timely information regarding measures available.”<sup>446</sup>

263. Irrespective of the above, when a national mechanism is assigned competence to protect persons at risk, it is essential that there be readily available channels enabling any State authority at any level who is or should be aware of the at-risk situation to refer requests for protection to the national mechanism. Thus, “the assessment of whether a person requires protection measures and of what measures are appropriate” cannot be limited to the victim himself or herself being the one to request protection from a competent authority or being responsible for knowing “what authority is in the best position to deal with his or her situation.” It is up to the State to establish coordination measures among its authorities and officials for that purpose.<sup>447</sup> When the duty to protect is activated by any authority becoming aware of an at-risk situation, it is vital that all State authorities, regardless of their spheres of competence, have received adequate training in the rights of defenders, the risks they face, and the channels of communication available to ensure that the at-risk situation they are aware of is addressed by the competent protection authority.

#### **f) Flexible and Individualized Risk Analysis**

264. States have the obligation to protect the life and physical integrity of human rights defenders when they face a situation of real and immediate risk.<sup>448</sup> In order to evaluate the existence and level of risk, States have adopted different methodologies. Some States assess level of risk through a quantitative analysis that allocates points for different types of acts and situations; and others assess risk through a qualitative analysis that rests on a weighing of the different facts and sources of information at hand. In the Colombian protection mechanism for example, the scale of risk is from 0 to 100, and this range is divided into brackets. Based on the analysis of risk, the potential beneficiary is assigned a number within this scale, with corresponding levels of protection. Experts from civil society have argued before the Commission that risk cannot be quantified correctly, and that a qualitative assessment is best to capture all the factors involved.<sup>449</sup>
265. Regardless of the method chosen, and considering that all situations of risk are unique, this analysis must be flexible and should take into consideration factors

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<sup>445</sup> I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No.269, para. 127.

<sup>446</sup> *Ibidem*.

<sup>447</sup> *Ibidem*.

<sup>448</sup> I/A Court of H.R., *Case of González et al (“Cotton Field”) v. México*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205, para. 280.

<sup>449</sup> Expert meeting held in Washington DC on April 1, 2016.

related to the context in which a defender operates, the specific risk to which a defender is exposed, as well as the concrete protection needs of the defender, his family, organization, and/or community. In addition, the person best positioned to explain the acts having taken place, and their significance within the particular context in which they live, are the human rights defenders themselves. Consequently, the State must ensure that during the risk evaluation, the lines of communication with the applicant human rights defender are adequate, and that he or she takes an active part in the risk assessment. For this to take place, it is fundamental that the activities of risk analysis be assigned to personnel who inspire trust in the beneficiaries of the program.<sup>450</sup>

266. For the purposes of assessing risk to life and integrity, and pursuant to its practice and that of the Inter-American Court in its 2011 Report,<sup>451</sup> the Commission has listed a number of options that States can resort to when performing such assessments, such as conducting: 1) an evaluation of the problem at hand; 2) an analysis of the effectiveness of State actions in response to the situation described; and 3) an analysis of the level of defenselessness in which the persons requesting measures would find themselves, should those measures not be adopted.<sup>452</sup> Particularly as regards the evaluation of the problem at hand, the IACHR has underscored the importance of a two-tier evaluation, first in terms of the general context and, second, with regard to the concrete case at hand.
267. An analysis of context is essential to determine the level of risk.<sup>453</sup> To do so, States must identify and evaluate certain circumstances that could affect the degree of risk that the defenders face. For example, States should consider whether the defenders' work could directly affect the interests of third parties; whether they are in possession of information that could be compromising for some agent of the State or criminal group; and whether their work is conducted in zones of conflict or in places where there have been previous attacks on human rights defenders.<sup>454</sup> A risk assessment should also consider whether local authorities have responded to their complaints; if a defender is a key witness who might bring charges of human rights violations; whether the human rights defender is engaging in his or her activities at a critical moment for the cause; or whether he or she is a member of some organization or group of defenders that has been attacked, threatened, or harassed in the past.

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<sup>450</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 525.

<sup>451</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 509.

<sup>452</sup> I/A Court of H.R., *Matter of Alvarado Reyes et al. the United Mexican States*. Provisional Measures. Order of December 26, 2010, *Operative para.* 61.

<sup>453</sup> I/A Court of H.R., *Matter of Alvarado Reyes et al. the United Mexican States*. Provisional Measures. Order of December 26, 2010, *Operative para.* 61.

<sup>454</sup> I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No.283, para. 20-22; I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269; I/A Court of H.R., *Matter of Castro Rodriguez et al. regarding Mexico*. Provisional Measures. Order of the Court of February 13, 2013, para. 3a).

268. The organs of the inter-American system have pointed to the importance of taking the context into account when determining whether the risk of which the State was made aware is real and imminent. For instance, in the *Case of Human Rights Defender et al. v. Guatemala*, both bodies in the inter-American system based their views on a well-documented situation of vulnerability of human rights defenders working to protect and promote economic, social, and cultural rights and seeking truth and justice in connection with human rights violations committed during the armed conflict in Guatemala, following the signing of the peace agreements.<sup>455</sup> In the *Case of Yarce et al. v. Colombia*, account was taken of the generalized situation of risk derived from the internal armed conflict in Colombia and in the Commune 13 area: a risk which was higher for female defenders.<sup>456</sup> In the *Case of Luna López v. Honduras*, the Commission and the Court analyzed the special context of the risks faced by environmentalists in Honduras.<sup>457</sup> In the Report on the Merits in the *Case of José Rusbel Lara y otros* in Colombia, the Commission took into consideration the critical situation of human rights defenders in the Arauca region in or around 2002, as a result of the presence and operations of paramilitary groups.<sup>458</sup>
269. The Commission specifically insists on the fact that an analysis of context must take into consideration the specific vulnerability of some groups of defenders, and apply a gender, ethno, racial and cultural perspective at this stage of the analysis. The defense of groups that have historically borne the brunt of patterns of structural discrimination may entail additional risks, requiring that the State adopt a differentiated approach in its contextual analysis. This means, for instance, taking into consideration all the forms of discrimination and stereotypes that women have faced historically, which accentuate their risks when performing human rights defense work. For example, in the case of *Ana Teresa Yarce and others*, the Court established that there was in Colombia, at the time, a situation of insecurity and violence perpetrated against women human rights defenders due to the armed conflict and the prominent roles they played in their communities and community organizing; all of which jeopardized their lives, personal integrity, families, and their ability to perform their work.<sup>459</sup> In contexts like these, risk assessments performed by States should include gender-based historical discrimination and stereotypes, and how these accentuate the risks for violence and harassment.

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<sup>455</sup> IACHR, [Report 56/12](#), Case No. 12.775, Merits. *Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al., Guatemala*, March 21, 2012; I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No.283, paras. 76, 78, and 159.

<sup>456</sup> IACHR, [Report 86/13](#), Cases 12.595, 12.596, and 12.621, Merits, Ana Teresa Yarce et al., Colombia, November 4, 2013; I/A Court of H.R., *Case of Yarce et al. v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 22, 2016. Series C No. 325, paras. 87-99, 184, and 185.

<sup>457</sup> IACHR, [Report No. 100/11](#), Case 12.472, Merits, Carlos Antonio Luna López et al., Honduras, July 22, 2011; I/A Court of H.R., *Case of Luna López v. Honduras*. Merits, Reparations, and Costs. Judgment of October 10, 2013. Series C. No. 269, paras. 17-23, 121, and 123.

<sup>458</sup> IACHR, [Report No. 35/17](#), Case 12.713, Merits, José Rusbel Lara et al., Colombia, March 21, 2017.

<sup>459</sup> I/A Court of H.R., *Case of Yarce et al. v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325, paras. 91-99.

270. In analyzing context, States must also factor in the structural racism, exclusion, and violence to which different groups may be confronted due to their membership in indigenous peoples, afro-descendent communities, and other collectivities. The Commission has received information regarding a generalized context of risk and violence for land, environmental, and indigenous defenders in some countries in the hemisphere, which is heightened when they oppose development megaprojects in their lands or territories. The analysis should reflect the increased risk that stems from contexts such as these for these categories of defenders.
271. The Commission has also received information with regards to the particular situation of vulnerability of defenders of persons of African descent due to their activities to promote and defend their collective rights,<sup>460</sup> which is exacerbated because of the structural discrimination they have been subjected to,<sup>461</sup> often in addition to poverty, prejudice, and invisibility. Finally, human rights defenders that identify as LGBTI and who work to protect and promote the human rights of LGBTI persons also experience alarming levels of vulnerability created by the intersection of their sexual orientation, gender identity, role as defenders, and the issues on which they work.<sup>462</sup> Many countries in the Americas continue to struggle with high levels of prejudice related to sexual orientation, gender identity, or expression, which lead to levels of violence that the Commission has referred to as barbaric and cruel.<sup>463</sup> Therefore, an appropriate context-based analysis must take into consideration the greater risk to which LGBTI human rights defenders are exposed.
272. On the other hand, with regard to the specific analysis of the case, the Commission has highlighted in its 2011 report that that States must also consider a) the type of attacks committed; b) whether these attacks are repeated occurrences; c) whether the severity of the attacks has increased over time; and d) whether any agent of the State has participated in the acts of aggression.<sup>464</sup>
273. As to the type of aggression, a State must examine what type of problem the human rights defender seeking protection has experienced. Each type of problem should be examined specifically, considering its impact on the human rights defender's life and personal safety. For example, the risk posed by surveillance of an organization's facilities might be different from the risk posed when a human rights defender is followed home; or e-mail threats issued to all the organizations in the region may

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<sup>460</sup> IACHR, Hearing, 161 Period of Sessions, *Colombia: Attacks on Human Rights Defenders*, March 21, 2017; IACHR, *Resolution 52/2016*, Precautionary measure No.113-14, Luis Ernesto Olave Valencia and Colombia (Spanish only), November 1, 2016, para. 25-26; IACHR, Press Release No. 021/16, *IACHR Condemns Killings and Threats Directed against Human Rights Defenders in Colombia*, February 25, 2016.

<sup>461</sup> IACHR, *The Situation of People of African Descent in the Americas*, OEA Ser.L/V/II. Doc.62, December 5, 2011, para. 59 et ss.

<sup>462</sup> IACHR, *Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas*, *supra* note 59, para. 335.

<sup>463</sup> IACHR, Press Release No. 037/17, *IACHR Condemns Alarming Numbers of LGBT Killings in the Region So Far this Year*, March 23, 2017.

<sup>464</sup> See arguments of the IACHR in I/A Court of H.R., *Matter of Mery Naranjo et al. regarding Colombia*. Provisional Measures. Order of March 4, 2011, "Visto 6" [Only in Spanish].

not carry the same weight as verbal threats made against a specific organization or individual human rights defender.<sup>465</sup>

274. When repeated incidents of aggression are involved, the sequence of events over time has to be examined, taking into account all acts of intimidation, threats, physical assaults, and verbal attacks that the individual human rights defender concerned and the group to which he or she belongs may have experienced. The State should also determine whether the human rights defender's nuclear family or close relatives have been the target of attacks, and the timing in which the most recent episodes occurred in relation to the time at which the State's protection was requested.<sup>466</sup> On this last point, the Commission considers that a risk should not be deemed imminent only when the most recent act of aggression was close in time to the date of the request for protection. Rather, as was pointed out by expert witness Luis Enrique Eguren, presented by the Commission in the case of *Yarce et al. vs. Colombia*, it is possible that a "situation in which a human rights defender is threatened may persist for some time" and "within that continuity there may be an unstable equilibrium until certain events prompt the perpetrator to act."<sup>467</sup>
275. On the other hand, it is also crucially important to ascertain whether State agents were involved in the attacks committed against a human rights defender, or whether they were perpetrated with the acquiescence of those agents. The involvement of State agents in attacks against human rights defenders not only gives rise to international responsibility for the State,<sup>468</sup> but is also a serious obstacle to human rights defenders' ability to obtain adequate protection, in the face of the break of trust generated by the fact that the entity in charge of protecting defenders would in fact be the one involved in attacks against them.<sup>469</sup>
276. Regarding effectiveness of the protection measures adopted by the State, and as it has been noted previously by the Commission,<sup>470</sup> two elements must be assessed: i) whether the corresponding authorities have conducted a serious investigation and prosecuted those responsible for the attacks and harassment committed against a human rights defender, as a means to mitigate risk;<sup>471</sup> and ii) whether the implemented protection measures have succeeded in eliminating the dangers posed to the person being protected, or whether additional measures must be introduced or the protection plan amended.<sup>472</sup> Indeed, if the authorities are aware of the

<sup>465</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 513.

<sup>466</sup> *Ibidem*, para. 514.

<sup>467</sup> I/A Court of H.R., *Case of Yarce et al v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325, para. 188.

<sup>468</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 127.

<sup>469</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 515.

<sup>470</sup> *Idem*.

<sup>471</sup> I/A Court of H.R., *Matter of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 101. Cf. I/A Court of H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 126.

<sup>472</sup> I/A Court of H.R., *Matter of Mery Naranjo et al. regarding Colombia*. Provisional Measures. Order of November 25, 2010, para. 27.

attacks, but the attacks continue because no progress is made in the investigation and apprehension of the perpetrators, or because the protection measures are not appropriately tailored to a defender's needs, the human rights defender may be at even greater peril.

277. Finally, as regards analysis of the degree of defenselessness in which the human rights defender would find himself or herself, if such measures are not adopted, "the State must use the considerations mentioned above to examine how the State's participation through special protective measures may be a suitable and timely means of protecting the human rights defender's life and personal safety and enabling him or her to continue to perform his or her functions."<sup>473</sup> This step in the risk assessment means ascertaining whether the risk to which the human rights defender would be exposed could be corrected through the use of special measures of protection, or whether some other kind of State intervention is needed given the obstacle to the defense of human rights about which a complaint has been lodged.
278. The Commission considers it vital that States ensure that human rights defenders who have been the victims of threats or attacks are not re-victimized during the risk assessment. Accordingly, they should not be repeatedly forced to relive the traumas they suffered by having to recount what they went through to different bodies or to explain their situation several times to different authorities.<sup>474</sup> Numerous experts and civil society organizations have told the Commission that the beneficiaries of protection measures usually suffer psychological damage from the threat and violence they have undergone and that, for that reason, States should recognize the importance of providing psychological support as part of the protection programs.
279. Finally, the Commission stresses that it is essential that the institutions responsible for receiving and processing requests for protection simplify their administrative procedures so as to react without delay to the urgency of each situation. The Commission observes with concern that sometimes risk analyses can take so long that the risk they seek to prevent may materialize. Bearing in mind that, once it is aware of the risk, the State must take all reasonable measures to prevent it, the Commission considers that the State must act as swiftly as possible to immediately protect the rights of the person at risk and even order powerful protection arrangements of a preventive nature that may, if necessary, be adjusted later depending on the findings of a subsequent analysis.
280. With respect to the above, the Commission has been told that some States grant prevention measures while the risk analysis is being conducted. For example, the Colombian State has reported that preventive protection measures are granted so that the beneficiaries are protected during the assessment (Article 12 of Decree 1740 of 2010). Similarly, the Honduran State indicated in its reply to the questionnaire that it had adopted a protection protocol triggered "by allegations by a human rights defender that his or her life and safety are in danger," and that "with the victim's consent, the most appropriate protection measures are adopted to ensure the integrity and safety of the beneficiary, while an investigation is initiated

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<sup>473</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 519.

<sup>474</sup> *Protection International: Protection of human rights defenders: best practices and lessons learnt*, 2004, p. 71.

into the source of the alleged threat.” The Guatemalan State also reported to the Commission that its legal framework allows the implementation of protection measures prior to risk assessment if the circumstances and need for protection are urgent. The Commission acknowledges and encourages these practices, provided that they are swiftly implemented and include suitable and effective prevention measures.

### **g) Participation of the Beneficiaries**

281. The active participation and consultation of human rights defenders is key to the functioning of a protection program.<sup>475</sup> States must ensure that the beneficiary human rights defender plays an active role in selecting the appropriate protection measures. This active participation and consultation of prospective beneficiaries must be sought at every stage of the preparation of a protection scheme, including the phases of risk analysis, the design and enforcement of the measures, and their monitoring and eventual lifting. In addition, and as the United Nations Special Rapporteur on the Situation of Human Rights Defenders has also said,<sup>476</sup> the Commission welcomes the participation of civil society organizations in the mechanism’s decision-making processes, given that their proximity to the context in which human rights work is conducted and the at-risk situations that go with it provides added insight when it comes to assessments.
282. The Court has also held that when protection measures are ordered, the beneficiaries should be given an active role in their planning and implementation; in general, they are to be kept informed on the progress made in their implementation.<sup>477</sup> The Court has established that the State and the beneficiaries must jointly design the type of protection measures to be provided.<sup>478</sup> In this respect, it is essential for State authorities to “establish clear and direct means of communication with the beneficiaries in order to establish the necessary trust for their adequate protection,”<sup>479</sup> which will help ensure that the measures are

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<sup>475</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 523; I/A Court of H.R., *Case of Luna Lopez v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No.269, para. 243.

<sup>476</sup> United Nations, *Report of the Special Rapporteur on the situation of Human Rights Defenders, Margaret Sekaggya*, A/HRC/25/55, December 23, 2013, para. 89.

<sup>477</sup> IA Court of H.R., *Matter of Community of Punta Piedra and its members*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 14, 2014, par. 22; I/A Court of H.R., *Matter of Mery Naranjo et al. regarding Colombia*. Provisional Measures. Order of March 4, 2011, Operative para. 4; I/A Court of H.R., *Case of Caballero Delgado and Santa regarding Colombia*. Provisional Measures. Order of June 3, 1999, Operative para. 3.

<sup>478</sup> I/A Court of H.R., *Matter of the “Globovisión” Television Station regarding Venezuela*. Provisional Measures. Order of November 21, 2007, Operative para. 11.

<sup>479</sup> IA Court of H.R., *Matter of Community of Punta Piedra and its members*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 14, 2014, par. 22; I/A Court of H.R., *Matter of Adrián Meléndez Quijano and others*, Operative para. 9; I/A Court of H.R., *Matter of Álvarez y otros*. Provisional Measures relating to Colombia. Order of May 22, 2013, Operative para. 37; I/A Court of H.R.,

executed diligently and effectively.<sup>480</sup> The Commission has highlighted the importance of holding periodic meetings, and of establishing a specific focal point between the solicitor or beneficiary and the State's protection mechanism. Only through stable, respectful, and constructive dialogue will the beneficiary and authorities be able to overcome the challenges that arise throughout the lifespan of the measures, in such a way as to guarantee that the protection measures correspond properly to the degree of danger that the defender is experiencing, and his or her specific work-related needs.

283. The Commission has heard that sometimes persons requesting measures have not played an active party in the adoption of those measures due to unfamiliarity with or distrust of the mechanism; or that beneficiaries have rejected the measures offered as a way of pointing out their insufficiency or the State's disinterest in deciding on them.<sup>481</sup> With regard to this matter, the Commission reiterates that when a State has been made aware of a real and imminent risk situation, circumstances such as those just described do not exempt it from its duty to protect, which requires that it adopt all measures that it can reasonably be expected to adopt to prevent the risk from materializing. Thus, even though persons requesting protection measures should actively participate in the process, it is up to the State to make the arrangements or take whatever action is needed to try and overcome such challenges, by providing adequate information to the applicants and beneficiaries about the procedure and measures available, about how existing protection arrangements could be adjusted, or, wherever possible, about how supplementary measures might be coordinated with other authorities.

## **h) Suitability and Effectiveness of Protection Measures**

284. In The IACHR has observed that the protection measures for human rights defenders at risk must be adequate and effective. For protective measures to be adequate they must be an appropriate or suitable means of protecting the person at risk; to be effective, they must produce the expected results, so that the risk to the person being protected ceases.<sup>482</sup>
285. The Court and the Commission have considered that when protection measures are to be ordered, the beneficiaries of these measures must be given an active role in their planning and implementation; in general, they are to be kept informed on the

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*Matter of Mery Naranjo et al. regarding Colombia. Provisional Measures. Order of November 25, 2010, Operative para. 28.*

<sup>480</sup> IA Court of H.R., *Matter of Community of Punta Piedra and its members*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 14, 2014, par. 22; I/A Court of H.R., *Matter of Luis Uzcátegui regarding Venezuela*, Provisional measures. Order of the Court of January 27, 2009. *Operative para. 13.*

<sup>481</sup> *Protection International: Protection of human rights defenders: best practices and lessons learnt*, 2004, p. 71.

<sup>482</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 523.

progress made in the execution of these measures.<sup>483</sup> In this respect, the Commission reiterates once more that those who can best assess the risk they are facing or the manner in which they may be brought to feel more secure are the defenders in search of protection themselves.

286. In the case of *Human Rights Defender v. Guatemala*,<sup>484</sup> the Court developed the elements established by the Commission. Indeed, the Court considered that in order to comply with the requirement of suitability, in the case of human rights defenders, the State must ensure that special measures of protection are: a) in keeping with the functions performed by the defenders; b) the level of risk must be assessed in order to adopt measures and monitor those that are in force; and c) it must be possible to modify such measures in accordance with changes in the level of danger. Therefore, the type of protective measures offered must be decided in consultation with the human rights defenders in order to ensure a timely and focused intervention, proportionate to the danger that the defender could face. Furthermore, particular attention should be paid to a gender-based approach within the risk-assessment procedure, because it could reveal a differentiated level of danger, and could have an impact on the implementation of protection measures.
287. Addressing the effectiveness requirement, the Inter-American Court found that the following elements are essential: a) an immediate State response as soon as it becomes aware of the existence of the danger, to ensure that the measures are timely; b) that those involved in the protection of defenders have the necessary training to perform their functions and understand the importance of their actions; and c) the measures must be kept in effect for as long as the victims of violence or threats require them.
288. Experts consulted in the framework of this initiative underscored that flexibility should be a guiding principle in the granting of protection measures.<sup>485</sup> Although national protection systems generally rely on “hard protection measures,” such as the provision of bullet-proof vests and vehicles, armed bodyguards, or police patrols around the homes or workplaces of beneficiaries, defenders may not find these types of measures suitable to their needs, and accept them reluctantly or simply refuse them.<sup>486</sup> Beneficiaries of protection schemes may prefer other types of measures which fall outside of the usual scope of protection schemes, but are just as relevant and effective for their personal security, and may even be less costly in human and financial resources. For example, civil society organizations have indicated that defenders can view their communities as safe-spaces with strong

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<sup>483</sup> I/A Court of H.R., *Matter of Mery Naranjo et al.* regarding Colombia. Provisional Measures. Order of March 4, 2011, Operative para. 4.

<sup>484</sup> I/A Court of H.R., *Matter of Human Rights Defender et al. v. Guatemala*. Judgment of August 28, 2014. Preliminary objections, Merits, Reparations and Costs, para. 157.

<sup>485</sup> Expert meeting held in Washington DC on April 1, 2016.

<sup>486</sup> JASS, CEJIL and PI, *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*, (available in Spanish only), 2016, p. 32.

support networks, and may find it more effective to be granted means of protection within their communities or during displacements, rather than resettlement.<sup>487</sup>

289. Various civil society organizations have informed the Commission that human rights defenders may lack trust in the State security forces assigned to their protection, particularly when they are viewed as a source of the threats or violence they have faced, or in the private security guards that may not have the necessary interest and training in human rights.<sup>488</sup> The Commission has also heard, and expressed concern about, indications by civil society organizations that protection arrangements may be assigned to private security companies with historical ties to self-defense groups or demobilized members of armed groups with little knowledge of, or interests at variance with, the work of human rights defenders.<sup>489</sup>
290. On this point, the Commission reiterates that it is the State who holds the obligation to protect persons whose rights are at risk, and therefore that it is the State who is directly responsible for failures, omissions, or violations to the rights of solicitors or beneficiaries, perpetrated by those who participate in the protection schemes. In this regard, the IACHR considers that the best course of action is for the States to have a special security force exclusively for the protection program, separate from those elements in the police that engage in intelligence and counterintelligence work. The personnel in this force or group should be selected, recruited, and trained with complete transparency and with the participation of representatives of the programs' target population, so as to create confidence and trust between the persons protected and those who are protecting them.<sup>490</sup>
291. It is vital that the protection measures enforced enable human rights defenders to carry on with their work. In order for the measures to be suitable, they must be tailored to the work needs of the subject being protected and should be able to be adjusted as the danger that the activities of defending and promoting human rights may vary in intensity over time; special care should be taken to reinforce those measures when a human rights defender is at a critical stage in defending his or her cause. In this sense, justice operators have insisted that suitable measures must include the protection of their offices and other work spaces, the safeguarding of their case files and evidence, as well as guarantee the confidentiality of their complaints.<sup>491</sup>
292. To ensure the suitability and effectiveness of the measures, the persons who will be involved in the human rights defender's protection - such as personal bodyguards,

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<sup>487</sup> *Ibidem*, p. 35.

<sup>488</sup> Sur Revista Internacional de Derechos Humanos, *Un análisis del contexto latino-americano: Brasil, Colombia y México*, July 2016, Sur 23, v.313, No.23, 175-184, p. 180; Women Human Rights Defenders International Coalition (WHRDIC), *Our Right to Safety: Women Human Rights Defenders' Holistic Approach to Protection*, Toronto, 2014, p. 14.

<sup>489</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, *supra* note 8, para. 179.

<sup>490</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 136.

<sup>491</sup> IACHR, Hearing, 157<sup>th</sup> Period of Sessions, *National Protection System for Defenders and Justice Operators in the Americas*, April 8, 2016.

patrols or security personnel posted at the headquarters of the organizations - must have the training necessary to perform their functions. The personnel involved in the security arrangements must instill a sense of confidence and trust in the beneficiaries of the protection. The Court has emphasized that “the measures of protection [...] [must] not [be] provided by the security officials who, according to the beneficiaries, were involved in the reported facts” so that the personnel appointments must be done with the beneficiaries participating.”<sup>492</sup>

293. The Commission received information from several organizations about the use of protective accompaniment by international organizations or national human rights institutions, as a means of safeguarding defenders in a situation of risk.<sup>493</sup> They have informed the Commission that the presence and collaboration of local or international actors, brings both national and international attention to the situation of the specific human rights defender, has helped to deter attacks, places increased pressure on the State at issue to afford them protection, and has provided psychological support to defenders.<sup>494</sup>
294. The use of panic buttons and cellular phones has been useful for human rights defenders. Nonetheless, the Commission has been informed of the deficiencies of these protective tools in remote areas where there is no or very little access to electricity or satellite signals, which can render them ineffective. The Commission therefore welcomes initiatives such as those of the State of Colombia to provide remote communities with small electrical plants to counteract these deficiencies.<sup>495</sup>
295. It is important that States create and support temporary international relocation initiatives for defenders at particular risk. A number of States offer protection by issuing special visas or residence permits to foreign defenders on political or humanitarian grounds, and by providing funding and support to local governments and civil society organizations providing shelter and services. Civil society organizations that support relocation initiatives have found that strong relations with relevant government officials have helped them to overcome challenges when obtaining visas and negotiating immigration status for defenders at risk in a timely way.<sup>496</sup> In this regard, the Court, in the matter of *Alvarado Reyes and others*, welcomed the efforts of the State of Mexico to provide, in consultation with the beneficiaries, consular support to family members who had been forced to flee to another country due to the situation of risk they were facing within the jurisdiction

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<sup>492</sup> I/A Court of H.R., *Matter of Mery Naranjo et al. regarding Colombia*. Provisional Measures. Order of March 4, 2011, Operative para. 3.

<sup>493</sup> Women Human Rights Defenders International Coalition (WHRDIC), *Our Right to Safety: Women Human Rights Defenders' Holistic Approach to Protection*, Toronto, 2014, p. 14; JASS, CEJIL and PI, *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*, (available in Spanish only), 2016, p. 32-35; Protection International, *Protection of human rights defenders: best practices and lessons learnt*, p. 109, 112; United Nations, *Report of the Special Rapporteur on the situation of human rights defenders*, A/HRC/31/55, February 1, 2016, para. 65 et ss.

<sup>494</sup> *Idem*.

<sup>495</sup> Information received by experts during the Expert meeting held in Washington DC on February 1, 2016.

<sup>496</sup> United Nations, *Report of the Special Rapporteur on the situation of human rights defenders*, A/HRC/31/55, February 1, 2016, para. 65 et ss.

of Mexico, and encouraged the State to implement the necessary assistance in favor of the beneficiaries, within the sphere of its extraterritorial competence.<sup>497</sup>

296. It must be possible “to modify such measures in accordance with changes in the level of danger.”<sup>498</sup> States must also set in place policies that enable them to periodically monitor the effectiveness of the measures selected to protect at-risk human rights defenders that nonetheless allow defenders to continue exercising their work. Protection measures must be effective; otherwise, they must be adapted to the situation of the human rights defender and the context within which he operates. Both the Commission and the Court have observed cases where protective measures implemented by the State were neither effective nor sufficient to remedy the particular situation the defender was facing: for instance, in some cases, beneficiary’s family members continued being threatened or murdered despite the measures still being in effect, in others, the beneficiaries were murdered.<sup>499</sup> The Court has found that these instances reveal the inefficacy of the means adopted to eradicate the sources of the risk and properly protect the beneficiaries.<sup>500</sup> In such cases, States have a duty to reassess the situation of risk of the beneficiaries and to elaborate, in collaboration with the beneficiary, a new protection scheme, better suited to his or her needs for protection.
297. States must set in place mechanisms that allow them to periodically assess if the measures adopted are providing the expected results, that is, “whether they have succeeded in putting a stop to the dangers posed to the person being protected or whether additional measures must be introduced and the protection plan amended.”<sup>501</sup> These periodic reassessments of the situation of risk are instrumental in maintaining their suitability and effectiveness, as they are conducive to the remolding of protection measures according to current needs. They are particularly important when the risk level has increased. To be fully adequate, protection measures must be proportional to the risk faced by a specific human rights defender, and as the risk increases, so too should the implemented measures. Consequently, if the situation of risk decreases, in part because of the efforts made by the State to investigate the threats and acts of violence and prosecute those responsible, or because the implemented measures of protection have proven suitable and

<sup>497</sup> I/A Court of H.R., *Precautionary measure, Case of Alvarado Reyes and others with respect to Mexico*, June 23, 2015, paras. 33-34.

<sup>498</sup> I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No.283, para. 157.

<sup>499</sup> IACHR, Press Release No.024/16, *IACHR Condemns the Killing of Berta Cáceres in Honduras*, (March 4, 2016); Joint press release of the United Nations and the IACHR, *Honduras, uno de los países más peligrosos para los defensores de derechos humanos – advierten expertos*, (August 19, 2016); IACHR, Press Release No.039/16, *IACHR Deplores Killing of Nelson Noé García in Honduras*, (March 21, 2016); IACHR, Press Release No.161/16, *IACHR Repudiates the Killing of José Ángel Flores and Silmer Dionisio Georqe in Honduras*, (November 3, 2016), among others.

<sup>500</sup> I/A Court of H.R., *Matter of Mery Naranjo et al.* regarding Colombia. Provisional Measures. Order of November 25, 2010, *Operative para.* 53.

<sup>501</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 518; I/A Court of H.R., *Matter of Mery Naranjo et al.* regarding Colombia. Provisional Measures. Order of March 4, 2011, *Operative para.* 4.

effective, then States can reassess risk and if indicated adjust the measures of protection. In this respect, civil society organizations have informed the Commission that flexibility in the granting of protection measures is essential, in order to take into account the constant reworking of the strategies of violence faced by human rights defenders.<sup>502</sup> The Commission notes that these periodic monitoring mechanisms also allow for beneficiaries to provide input and feedback with regard to the strengths and weaknesses of the protection schemes, which can allow the State to find solutions and strategies to improve its response.

298. Human rights defenders have informed the Commission of the importance of receiving visits from protection mechanism officials, or from a high level official with decision-making capacity. These “good offices” efforts, in the opinion of the IACHR, can increase effectiveness of protection measures, as such visits, or meetings with such officials, demonstrate that the State mechanisms are aware of and capable of responding to the situation. The UN Special Rapporteur on the situation of human rights defenders has insisted that visiting and meeting with defenders at risk are important ways of showing concern for their security, well-being, and support for their work, and are invaluable for counteracting isolation and stigmatization of defenders. Field visits to defenders outside of capital cities in particular, are a valuable way of engaging with and providing support to a broad range of defenders.<sup>503</sup>

### **i) Differentiated Approach for the Protection of Groups in Special Conditions of Vulnerability or Groups Subject to Historical Discrimination**

299. From Articles 1(1) and 2 of the Convention derive special obligations for States, “which are determined according to the particular needs for protection of the subject of law, either owing to his personal situation or to the specific situations in which he finds himself,”<sup>504</sup> making it “imperative that the States take all appropriate measures to actively protect the right to life of especially exposed human rights defenders,”<sup>505</sup>
300. Even though the analysis of a situation of risk must respond to the particular situation of each human rights defender, certain groups of defenders have specific protection needs due to the particular conditions of vulnerability or historical discrimination in which they may find themselves. This requires the adoption of a

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<sup>502</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, *supra* note 8, para. 186.

<sup>503</sup> United Nations, *Report of the Special Rapporteur on the situation of human rights defenders*, A/HRC/31/55, February 1, 2016, para. 65 et ss.

<sup>504</sup> I/A Court of H.R., *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 111.

<sup>505</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 256.

differentiated approach in the assessment of risk as well as in the implementation of the protection measures.

301. Despite the fact that such differentiated measures remains a pending task in many States, the Commission observes that some States have already implemented one. For instance, a series of rulings of the Constitutional Court of Colombia have provided the legal basis for the application of a differentiated approach in the analysis of issues, including risk assessments, involving the rights of children and adolescents (Ruling 251 of 2008),<sup>506</sup> indigenous peoples (Ruling 044 of 2009),<sup>507</sup> the Afro-descendant population (Ruling 005 of 2009)<sup>508</sup> persons with disabilities who are part of the population that has fallen victim to forced displacement (Ruling 006 of 2009),<sup>509</sup> and women (Ruling 098 de 2013).<sup>510</sup>
302. In the following section, the Commission will refer to a few elements that must be taken in consideration when dealing with women human rights defenders, or defenders of indigenous peoples, afro-descendent peoples, the environment or the LGBTI community.
- ***Women Human Rights Defenders***
303. Experiences of violence, risk, and security are often influenced by gender. Women human rights defenders have informed the Commission that they are particularly exposed to violations to their rights to life and personal integrity, including various forms of gender-based violence and discrimination, sexual violence, and violence against their families as reprisals for their work, in addition to the other types of violations that threaten the work of human rights defenders generally.<sup>511</sup> Women human rights defenders reported to the IACHR that deeply-engrained gender stereotypes are repeatedly used by their opponents against them, their families, communities, and organizations to delegitimize their work.<sup>512</sup>
304. The inclusion of a gender-specific approach to protection schemes requires taking the time to understand and assess how women human rights defenders experience violations of their human rights differently because of their gender, and the

<sup>506</sup> Corte Constitucional de Colombia. Auto No. 251/08, October 6, 2008.

<sup>507</sup> Corte Constitucional de Colombia. Auto No. 004/09, January 26, 2009.

<sup>508</sup> Corte Constitucional de Colombia. Auto No. 005/09, January 26, 2009.

<sup>509</sup> Corte Constitucional de Colombia. Auto No. 005/09, January 26, 2009.

<sup>510</sup> Corte Constitucional de Colombia. Auto No. 098/13, May 21, 2013.

<sup>511</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, supra note 1, para 283; IACHR, Report No. 86/13, Cases 12.595, 12.596 and 12.621, *Merits, Ana Teresa Yarce et al., Comuna 13*, Colombia, November 4, 2013, para. 167-174; I/A Court of H.R., *Case of Yarce et al v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 22, 2016. Series C No. 325; UN GA, *Resolution Adopted by the General Assembly, 68/181. Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders*, A/RES/68/282, December 18, 2013; United Nations, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*, Chapter II: Women human rights defenders and those working on women's rights or gender issues, A/HRC/16/44, December 20, 2010.

<sup>512</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, supra note 1, para. 286; Women Human Rights Defenders International Coalition (WHRDIC), *Our Right to Safety: Women Human Rights Defenders' Holistic Approach to Protection*, Toronto, 2014, p. 5.

economic, social and cultural contexts in which they operate, and then to design and implement measures specifically tailored to these realities. It is imperative to count on the knowledge and expertise of women human rights defenders at each step of the tailoring of these measures, from the assessment of their needs and priorities, to the design of effective schemes for their protection. States must also give specific attention to the adoption of measures that, in addition to gender, consider additional vulnerabilities related to age, disability, sexual orientation, urban or rural background, and that consider a further differentiated focus that contemplates other specific characteristics related to their ethnicity and the particularities of the communities to which these women belong.

305. In terms of physical protection measures, women human rights defenders have continued to express concern to the Commission on the failure of national protection schemes to take into consideration their specific needs as human rights defenders. The Commission therefore reiterates that protection measures meant to address the specific risks and security needs of women human rights defenders should consider: (i) protection material adapted to the needs of women, for example bullet-proof vests that are tailored for women's different body shape and size in comparison to men; (ii) the granting of protection to the nuclear family group, when requested; (iii) access to comprehensive psychosocial services for women human rights defenders who experience violence by virtue of the work they undertake; (iv) attention to women victims of sexual violence by personnel adequately trained in gender sensitivity and trauma relief; (v) alternatives to the presence of armed men in their households in certain cases, which can include the use of female police officers or the use of accompaniment that does not include an armed presence; (vi) the independence of the protection unit and its human resources so as to guarantee that the armed protection personnel tasked with the protection of the woman defender is not from the same State entity that is being accused of violating their rights; (vii) training of security and law enforcement officials on human rights and on the specific risks and challenges faced by women human rights defenders, and their specific needs for protection; and (viii) protection of their work environments, whether through security cameras, cell phones, caller ID, police patrols and escorts, among other measures.<sup>513</sup>
306. The Commission acknowledges the efforts of a number of States that have developed gender-based specialized protocols. At the same time, the Commission expresses concern with information it has received pointing to the lack of consistent application of these protocols, the persistence of a gender-neutral approach to protection, the lack of proper investigations into crimes against women human rights defenders, and the prevalence of stereotypes throughout these protection mechanisms. The Commission values the efforts that have been undertaken by these States, and encourages them to continue their work to guarantee the consistent application of these gender-based specialized protocols and measures to safeguard the security of women human rights defenders. The Commission also urges other

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<sup>513</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para 230; Women Human Rights Defenders International Coalition (WHRDIC), *Our Right to Safety: Women Human Rights Defenders' Holistic Approach to Protection*, Toronto, 2014, p. 13-18; JASS, CEJIL and PI, *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*, (available in Spanish only), 2016.

States to adopt specialized protocols to address the specific realities faced by women human rights defenders with a gender perspective and with a specialized approach that increases the adequacy and effectiveness of the measures.

- ***Indigenous communities, Afro-descendants, and defenders in rural areas***

307. The Commission continues to receive consistent information concerning the murders, assaults, threats, harassment, and criminalization of indigenous, Afro-descendant and rural land defenders in various countries of the region,<sup>514</sup> for reasons most commonly related to their activities in defense of the rights of their peoples or communities to their lands and to their opposition to extractive or development projects.<sup>515</sup>
308. The Commission has identified indigenous leaders as being at increased risk of harm on numerous occasions. Frontline Defenders revealed in its 2016 annual report that defenders of land, the environment, and of indigenous people's rights were the victims of 41% of homicides of human rights defenders in the region.<sup>516</sup> These attacks are generally intended to dissuade them from engaging in activities to defend and protect their lands and natural resources, as well as to their right to autonomy and cultural identity. In this regard, during hearings, the IACHR was informed of the elevated and differentiated risk to which indigenous defenders and communities are exposed, as they often find themselves in isolated and remote areas.<sup>517</sup> In one recent hearing before the Commission, civil society organizations denounced acts of sexual violence perpetrated against indigenous women leaders and defenders while harvesting crops, as a strategy to pressure indigenous communities away from their lands and move towards cities, making way for extractive activities.<sup>518</sup> Once again, the Commission must underline that these attacks have consequences that extend far beyond their impact on the life and personal integrity of the defenders themselves. They carry significant social and cultural consequences, as they break down the sense of community that binds these

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<sup>514</sup> See, for example, IACHR, *Hearings*, 161 period of sessions, *Investigation of Attacks on Human Rights Defenders in Colombia*, March 22, 2017; 161 period of sessions, *Situation of criminalization of defenders who oppose hydroelectric projects in Guatemala*, March 20, 2017; 161 period of sessions, *Situation of defenders of the environment in Panama*, March 17, 2017; 154 Period of Sessions, *Hearing on the Human Rights Situation of the Leaders and Defenders of the Shuar people in Ecuador*, March 17, 2015; 156th Period of Sessions, *Human Rights Situation of Defenders of the Environment in the Context of Extractive Industries in America*, October 19, 2015. See also IACHR, *Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II./Doc.47/15, December 31, 2015, para. 316.

<sup>515</sup> *Idem*.

<sup>516</sup> Frontline Defenders, *Annual Report 2016: Stop the killing of Human Rights Defenders*, p. 12.

<sup>517</sup> IACHR, *Hearing on the Human Rights Situation of Defenders of the Environment in the Context of Extractive Industries in America*, 156<sup>th</sup> Period of Sessions. October 19, 2015.

<sup>518</sup> IACHR, *Hearing*, 161 period of sessions, *Situation of Environmental Rights Defenders in the Americas*, March 22, 2017.

groups together in their struggle to defend their human rights; and generates forced displacement and migration towards cities.

309. The IACHR has been monitoring the situation of Afro-descendent leaders, defenders, and communities affected by forced displacement. The Commission has been alerted to the various threats and murders of those who are fighting to obtain restitution of land and collective ownership of territories.<sup>519</sup> Some defenders have been assassinated after their level of risk had been characterized as ordinary, which, according to civil society, demonstrated the failure of the ethnic-neutral risk analysis to take into consideration the specific contexts in which these defenders operate, which called for the implementation of a collective and differentiated approach in the risk assessment.<sup>520</sup>
310. The violence against defenders described above has individual and collective impacts in indigenous and Afro-descendent communities. These consequences are intensified in contexts of conflicts over extractive industries, where entire communities and their defenders can face forms of violence, threats, and intimidation. In these circumstances, protection measures cannot merely be conceived from an individual approach. As a result, the Commission has encouraged States to implement a differentiated approach for collective measures including an ethnic and racial perspective, and to take into account *inter alia* the conditions of the persons to be protected, and the need for culturally adequate protection measures.<sup>521</sup> For some communities who live without access to satellite service or electricity, panic buttons and cell phones can be of no utility.
311. In addition, the Commission has found that given the specific needs and dynamics of the groups that require protection, as well as the geographic particularities of the location of some communities, protection measures should be coordinated by the State and the beneficiaries, in order to jointly design the modality of every measure.<sup>522</sup> Measures such as providing motor boats and means of communication, as well as solar panels to guarantee the ability to use electronic protection devices when necessary have been successfully implemented in Colombia as part of a collective approach to protection. In the context of Colombia, the Commission has insisted that when it comes to deciding on, implementing, and following up on protection measures, the State should take into consideration geographic location and the needs and special situation that communities of African descent have faced in the context of the armed conflict.

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<sup>519</sup> IACHR, Hearing, 161 period of sessions, *Investigation of Attacks on Human Rights Defenders in Colombia*, March 22, 2017; IACHR, Press Release No. 11/17, *IACHR Condemns Murders of Human Rights Defenders in the Region*, February 7, 2017.

<sup>520</sup> IACHR, *Hearing on the investigation of Attacks on Human Rights Defenders in Colombia*, 161 period of sessions, March 22, 2017; IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, *supra* note 8, para. 186.

<sup>521</sup> IACHR, *Annual Report 2015*, *Follow-up on Recommendations issued by the IACHR in its Report on the Situation of Human Rights in Colombia*, para. 79.

<sup>522</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, *supra* note 8, para. 184.

312. In this regard, the Commission notes that the State of Colombia has adopted specific protocols concerning indigenous persons<sup>523</sup> and Afro-descendent communities,<sup>524</sup> and that the Constitutional Court in Colombia has created a “constitutional presumption of risk,” which applies to indigenous and Afro-descendant communities. Civil society organizations characterized these measures as fundamental tools to address the particularities of the situations of risk faced by indigenous and afro-descendent communities, as well as their organizations, leaders, and individual members.<sup>525</sup> The Commission urges all States to integrate a collective and differentiated approach to the analysis, design, and implementation of protection measures to guarantee the adequate and effective protection of indigenous, Afro-descendent, and rural communities and individuals within them.

- ***LGBTI Persons***

313. Defenders of the human rights of LGBTI persons face serious challenges to the carrying out of their work, including threats, attacks, and the criminalization of their activities.

314. The IACHR has received substantial amounts of information concerning the obstacles to their work confronted by those who promote and defend the rights of LGBTI persons. In its recent report on *Violence against LGBTI defenders*, the Commission highlighted that “Human rights defenders who are advocating for the rights of LGBTI individuals face serious challenges in carrying out their work, including threats, attacks, and criminalization of their activities.”<sup>526</sup> In addition to violence, the report underscores that human rights groups and individuals who are active on issues of sexuality, sexual orientation, and gender identity, are often very vulnerable to prejudice, marginalization, and public repudiation, not only by State forces, but also by other social actors.<sup>527</sup> In a press release dated March 23, 2017, the Commission condemned the alarming number of killings of LGBT persons in the region, indicating that in the first three months of the year, at least 41 serious crimes against LGBT persons had been reported in Argentina, Brazil, Colombia, El Salvador, the United States, and Venezuela, including attacks with signs of torture, and extreme cruelty.<sup>528</sup>

315. The IACHR has affirmed that the protection of defenders of LGBTI rights requires a differentiated approach, because many attacks against LGBT human rights defenders take place within a generalized context of violence against persons with non-normative sexual orientations and gender identities. In this regard, in the

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<sup>523</sup> Corte Constitucional de Colombia. Auto No. 004/09. January 26, 2009.

<sup>524</sup> *Idem*.

<sup>525</sup> AFRODES, *Documento concertado con alternativas para mejorar la efectividad del Programa de Protección coordinado por la Dirección de Derechos Humanos del Ministerio del Interior y de Justicia* (Spanish Only).

<sup>526</sup> IACHR, *Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas*, *supra* note 59, para. 334.

<sup>527</sup> *Idem*.

<sup>528</sup> IACHR, Press release No. 037/17, *IACHR Condemns Alarming Numbers of LGBT Killings in the Region So Far this Year*, March 23, 2017.

absence of specific protocols and adequate training, State authorities, often times influenced by stereotypes and prejudice, will not consider the motive for an attack, threat or act of harassment to be related to the victim's promotion and defense of human rights, or his or her sexual orientation and gender identity.<sup>529</sup>

316. The Commission urges all States to move swiftly to take into account the gender expression, gender identity, and sexual orientation of the persons who turn to the protection program in the relevant protocols, guidelines, risk assessment procedures, and implementation to follow-up measures of protection. In this context, it is necessary for State authorities to work jointly to create guidelines and to train the pertinent institutions as to how such situations of risk should be assessed in light of the various forms of violence – including sexual violence – and social exclusion experienced by LGBTI persons, and by human rights defenders who work on this issue. In this regard, the Commission recalls that States should initiate or continue dialogue processes with LGBTI human rights defenders, in order to learn about the problems they face, and facilitate their active participation in the adoption of these public policies.<sup>530</sup>

## j) Access to Information and Transparency

317. The Commission has considered that in democratic societies, States have a positive obligation “to ensure transparency in public administration,”<sup>531</sup> which allows for the effective protection of human rights.<sup>532</sup> In addition, Article 13(1) of the Convention also guarantees the right to transparency, given that freedom of thought and expression encompasses the right to seek and receive information.<sup>533</sup>
318. In the particular case of national protection mechanisms, transparency and access to information are crucial for beneficiaries, as they directly relate to their ability to be informed of the existence of the mechanism for the protection of their rights and its functioning, as well as to their ability to forge channels for dialogue with the

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<sup>529</sup> IACHR, *Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas*, supra note 59, para. 341; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, supra note 1, para. 331.

<sup>530</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, supra note 8, para. 164.

<sup>531</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, supra note 1, Footnote 88: “The Inter-American Democratic Charter establishes at its Article 4: “Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.”; I/A Court of H.R., *Barrios Altos (Chumbipuma Aguirre y otros vs. Perú)* Case, Judgment of March 14, 2001, Series C, N° 75., para. 45.

<sup>532</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, supra note 1, para. 89; I/A Court of H.R., *Case of Barrios Altos (Chumbipuma Aguirre y otros vs. Perú)*, Judgment of March 14, 2001. Series C, N° 75, para. 45.

<sup>533</sup> I/A Court of H.R., *Case of Barrios Altos (Chumbipuma Aguirre y otros vs. Perú)*, Judgment of March 14, 2001. Series C, N° 75, para. 45.

authorities of the protection mechanism, which in turn increases the chances of implementation of more adequate and effective protection measures.

319. Experts and civil society organizations alike have brought to the Commission's attention that potential beneficiaries, and their representatives, continue to be left without information regarding the grounds for determination of a specific risk level.<sup>534</sup> The Commission has previously indicated its concern with the fact that some States did not give access to the report prepared on the beneficiaries' situation of risk, reportedly for confidentiality reasons.<sup>535</sup> The Commission has been firm in stating that "the State's response to a request for protection measures should be duly motivated and therefore, the applicants should be informed about both the final decision and the elements taken into consideration to justify that decision".<sup>536</sup> In this respect, the Commission has acknowledged that the right of access to information is not an absolute right and may be subject to certain specific limitations, any such limitations must strictly abide by the requirements that stem from Article 13(2) of the American Convention, i.e. exceptional conditions, provided for by law, legitimate objectives, necessity, and proportionality.
320. Therefore, the Commission "urges the competent authorities to implement suitable mechanisms so that both those persons seeking protection and the persons covered by the program can have access to the respective reports – bearing in mind the considerations deemed pertinent in light of domestic legal provisions and international standards –and so that they can obtain a reasoned response in the decisions made by the entities in charge of risk assessment."<sup>537</sup>

### **k) Decision to Revoke or to Discontinue Granted Measures of Protection**

321. Protection measures are essentially provisional and temporary in nature;<sup>538</sup> as they are aimed at overcoming the situation of real and imminent risk a human rights defender is facing. Nevertheless, it is possible that the risk situation persists over time, due to the lack of supplementary measures for overcoming it, such as the removal of the obstacles that human rights defenders face, a hostile environment,

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<sup>534</sup> IACHR, Hearing, 161 Period of Sessions, *Colombia: Attacks on Human Rights Defenders*, March 21, 2017; Expert meeting held in Washington DC on April 1, 2016.

<sup>535</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, *supra* note 8, para. 164.

<sup>536</sup> *Idem*.

<sup>537</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 136.

<sup>538</sup> I/A Court of H.R., *Matter of the Jiguamiandó and Curbaradó communities*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, considering para. 70; I/A Court of H.R., *Case of Gutiérrez Soler*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of June 30, 2011, considering para. 21; I/A Court of H.R., *Matter of Liliana Ortega et al. Regarding Venezuela*. Provisional Measures. Order of July 9, 2009. *Operative para. 40*.

sometimes triggered by State authorities themselves, or failure to mitigate the underlying sources of risk through diligent and effective investigation.

322. The fact that no threats have been issued over a period of time does not *per se* mean that the risk to the person has ceased. However, if a certain period of time passes without further threats occurring, the reasons why those threats have stopped needs to be examined to determine whether the protection measures should be kept in place or not.<sup>539</sup> Indeed, the Court has considered that “the lapse of a reasonable period of time without threats or intimidation, coupled with the lack of an imminent risk, may lead to the rescission of protection measures.”<sup>540</sup> In these circumstances, the Court has found that “the beneficiaries’ and the Commission’s burden of proof and argument becomes greater as time goes by and new threats do not arise.” Yet, as the Court has emphasized, “[o]f course, the effective protection provided by the order of the Tribunal or its deterring effect may be the reason why no new threats have been committed;”<sup>541</sup> and should therefore be taken into consideration during the examination of the persistence of the situation of risk.
323. In any event, when it comes to analyzing whether protection arrangements may be lifted, States need to consider the aforementioned factors for assessing the risk involved, which include the context in which the defender operates and its impact on the persistence of an at-risk situation.<sup>542</sup> Thus, the work being done by a human rights defender, assessed in a current and specific context, may warrant maintaining the protection measures, even if there has been no recent recurrence of acts of aggression.<sup>543</sup>
324. The Commission considers that a finding of more moderate risk than that which gave rise to a decision to maintain protection arrangements could, if necessary, translate into an adjustment of some of the components within those arrangements or into a gradual dismantling of them, and not necessarily into their being lifted; the reason being that human rights defenders could be left so vulnerable that it could trigger the materialization of a risk. When protection arrangements are adjusted, if, later on, a new at-risk situation were to arise, it is possible to restore or implement protection measures to ensure that protection is effective and suitable.
325. Accordingly, the Commission underscores the importance of guaranteeing rapid procedures for reviewing or reinstating protection arrangements, if new risk factors arise. The Commission stresses that the State’s duty to protect remains in effect for

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<sup>539</sup> I/A Court of H.R., *Matter of Liliana Ortega et al.* Provisional Measures Regarding Venezuela. Order of July 9, 2009. *Operative para. 40.*

<sup>540</sup> I/A Court H.R., *Matter of Guerrero-Gallucci regarding Venezuela.* Provisional Measures. Order of the Inter-American Court of Human Rights of November 21, 2011; I/A Court of H.R., *Matter of Gallardo Rodríguez.* Provisional Measures Regarding Mexico. Order of the Inter-American Court of Human Rights of July 11, 2007, *Operative para. 21.*

<sup>541</sup> I/A Court H.R., *Matter of Guerrero-Gallucci regarding Venezuela.* Provisional Measures. Order of the Inter-American Court of Human Rights of November 21, 2011.

<sup>542</sup> I/A Court of H.R., *Matter of Castro Rodríguez Regarding México.* Provisional Measures. Order of the Inter-American Court of Human Rights of February 13, 2013, para. 16.

<sup>543</sup> I/A Court of H.R., *Matter of Liliana Ortega and others regarding Venezuela.* Provisional Measures. Order of the Inter-American Court of Human Rights of July 9, 2009, considering para. 41.

as long as it is or should be aware of a situation of real and imminent risk. Thus, in cases in which an internal risk assessment has led to a conclusion that contradicts the beneficiaries' own perception of the risk they face, the competent authorities must take that situation seriously and rigorously ensure every opportunity to receive information from the defenders or their representatives regarding the reasons why they consider that changing or lifting their protection arrangements would be inappropriate in light of the risk they face.

326. In any event, a decision to lift protection measures that have been granted or a rejection of a request for protection, may not be construed as a decision terminating the State's obligation to reassess and, where applicable, reconsider adopting protection measures. This is because the duty to protect, in an at-risk situation, must be analyzed in light of present conditions, which tend to change depending on the specific circumstances and work done by human rights defenders. Thus, irrespective of whether a defender previously requested a protection measure that was not granted or was previously a beneficiary of a protection measure, every time the State becomes aware of a real and imminent threat, it must assess that risk using the new information provided and, where applicable, grant or strengthen protection measures. On this matter, the Commission points out that civil society organizations, in the "Model Law" adopted in relation to protection for human rights defenders, referred to the importance of there being a way to review decisions not to approve protection measures or to withdraw protection measures that had been adopted.<sup>544</sup> Experts consulted for this report and civil society both told the Commission about huge delays in making risk assessments. They insisted that human rights defenders that previously were beneficiaries of protection measures, because their situation of risk previously warranted such measures, should the benefit from a presumption of risk and recover their protection arrangements as soon as possible.
327. Finally, the Commission emphasizes that, even in situations in which protection measures may be lifted, the State still has its general obligations to respect and guarantee rights, including the obligation to conduct investigations needed to throw light on the facts and punish those responsible for offenses.<sup>545</sup>

## I) Relationship between National and Inter-American Protection Measures

328. For more than three decades, the Inter-American Commission's precautionary measures mechanism has helped protect thousands of people exposed to risks in all OAS Member States.<sup>546</sup> The precautionary measures mechanism is regulated by Article 25 of the Rules of Procedure of the Inter-American Commission. It was last amended in 2013 to reflect practices in the processing of precautionary measures, including the factors taken into account when analyzing requests and those that give

<sup>544</sup> ISHR, *Ley Modelo para la Protección de las Personas Defensoras de Derechos Humanos*, 16 de enero de 2017. Sección 6.

<sup>545</sup> I/A Court of H.R., *Matter of Gallardo Rodríguez regarding México*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 11, 2007, Operative para. 21.

<sup>546</sup> IACHR, Press Release No. 84/09. *IACHR Publishes New Rules*, December 10, 2009.

rise to their being granted, the period for which they are granted, and their lifting. The Commission is empowered to request the adoption of precautionary measures to prevent risks or irreparable harm to persons in serious and urgent situations.

329. As with the provisional measures granted by the Inter-American Court, recognized in Article 63.2 of the American Convention, precautionary measures have a “precautionary” function in the sense of preserving a legal situation vis-à-vis the exercise of jurisdiction by the Commission and a “protective” function in the sense of safeguarding the exercise of the fundamental human rights upheld in the instruments of the inter-American system, thereby avoiding irreparable harm to individuals.<sup>547</sup>
330. The precautionary and provisional measures granted by the inter-American system of human rights are binding upon States,<sup>548</sup> which must act in good faith and diligently to comply with them. States are required to use all means at their disposal to abide by the measures granted at the international level.<sup>549</sup>
331. As indicated earlier, with regards to the adoption of internal protection measures, the Commission considers that, for the purpose of issuing or maintaining a precautionary measure already in effect, that the referral of a measure to an internal mechanism is not enough *per se* to invoke the principle of complementarity. The Commission deems it necessary to assess in each concrete case whether the requirements of seriousness, urgency and irreparability are given under the specific circumstances of the case. This applies especially when, despite protection arrangements adopted by the State, human rights defenders requesting or benefiting from precautionary measures continue to be at serious and urgent risk as a result of the unsuitability or lack of effectiveness of the measures adopted, as may be evidenced, for example, by the persistence of incidents involving aggression,

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<sup>547</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 233.

<sup>548</sup> I/A Court H.R., *Matter of Guerrero-Gallucci regarding Venezuela*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 21, 2011, para. 3; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 459; IACHR, *Report on Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, *supra* note 8, para. 175; I/A Court of H.R., *Matter of Liliana Ortega and others regarding Venezuela*. Provisional Measures. Order of the Inter-American Court of Human Rights of June 14, 2005, para. 13. The binding nature of precautionary measures has been recognized by various States. For example, in the case of Colombia, the Constitutional Court of Colombia, in its sentences, has stated that: [...] Precautionary Measures granted by the IACHR are binding at the domestic level, given that the IACHR is an organ of the Organization of American States – the OAS – organization of which Colombia is a party, just as it is a State Party to the American Convention on Human Rights approved by Law 16 in 1972 and ratified July 31, 1973. It is also binding as the Statutes of the IACHR were adopted by the General Assembly of the OAS, in which Colombia participated. Also, pursuant to Article 93 section 1 of the Constitution, the Convention, a Human Rights treaty, is incorporated in the domestic legal framework and is part of the constitutional corpus juris”. Constitutional Court of Colombia, *Sentence T-524/05*, May 20, 2005, para. 6 [Our translation].

<sup>549</sup> I/A Court H.R., *Matter of Guerrero-Gallucci regarding Venezuela*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 21, 2011, para. 3; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 459; IACHR, *Report on Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, *supra* note 8, para. 175; I/A Court of H.R., *Matter of Gallardo Rodríguez regarding Mexico*. Provisional Measures. Order of the Inter-American Court of Human Rights of June 14, 2005, para. 13.

attacks, or harassment directed against them, making international protection necessary.

332. At the same time, the Commission emphasizes that when a precautionary or provisional measure has been adopted, its implementation through a national protection mechanism can contribute significantly to its suitability and effectiveness. Without prejudice to the foregoing, when a provisional or precautionary measure has been ordered, what States have to do is implement it. Accordingly, the beneficiaries should not have to go through another “demonstration of risk” process to obtain the required protection.<sup>550</sup> Risk assessments or analyses should not be used by States as an aspect that conditions the granting of protection measures for beneficiaries of measures already granted by the organs of the inter-American system.
333. The Commission reiterates that, as it pointed out in its 2011 Report, a review of the risk must be construed as the means by which the State will examine the best way in which it can comply with its obligation to protect. For that, it must guarantee that during the risk evaluation process, there is adequate communication with the defender asking for protection and his or her active participation.<sup>551</sup> The Commission considers that, through its review, the State may, together with the participating defender, be able to identify the most suitable and effective measures or the most appropriate mechanisms for complying with the measures ordered by the organs of the inter-American system.
334. Finally, the Commission underscores that the decision to lift special international protection measures lies with the Commission and the Court, as the case may be, and is based on the information presented. While precautionary and provisional measures are in effect, the State is required to provide appropriate and effective protection of the defender beneficiary.

#### ***D. The Obligation to Investigate, Prosecute and Punish***

335. The Commission has also emphasized that the observance of the State obligations contained in Articles XVIII (right to a fair trial) and XXVI (right to due process of law) of the Declaration, and Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention recognize the duty of the State to investigate with due diligence acts of violence against human rights defenders. The Commission considers that full compliance with the aforementioned obligations to investigate, punish, and provide redress is essential to combat impunity in matters related to human rights defenders. This has also been recognized by Michel Forst, the current UN Special Rapporteur on the Rights of Human Rights Defenders, who stated that: “[t]he best way to protect them [human rights defenders] is to fight

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<sup>550</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 454.

<sup>551</sup> *Ibidem*, para. 403.

against impunity [...] the best protection they could have is when justice is served and perpetrators are held accountable.”<sup>552</sup>

336. Indeed, in the Commission’s opinion, impunity – be it total or partial <sup>553</sup> – not only impairs victims’ right of access to justice; it also constitutes a factor that tends to obstruct the causes that defenders advocate, because of the fear of new reprisals and latent danger caused by not knowing the true motives behind acts of aggression or, in many cases, the failure to punish the instigators or perpetrators. As experience has shown, “protection [...] needs to start with prevention and mitigation of risk. Providing an escort for [someone] does not free that person. Someone threatened will not be safe so long as his or her persecutors are at large.”<sup>554</sup>
337. In that sense, investigation of the factors triggering an unsafe environment for human rights defenders is a key part of integral protection policy. Indeed, such a policy cannot be truly effective unless a clear message is sent through a diligent investigation that acts of violence against defenders will be duly punished. Failure to investigate and punish perpetrators creates an environment conducive to the repetition of those violations.
338. In terms of the duty to investigate human rights violations, once State authorities have knowledge of a violation, they must initiate a serious, impartial and effective investigation, *ex officio* and without delay.<sup>555</sup> While the duty to investigate is an obligation of means and not results, it nevertheless must be assumed by the State as its own, and not as a mere formality preordained to be ineffective. The initiation and conduct of an adequate investigation should not depend on the initiative of the

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<sup>552</sup> UN HROHC, Press Release, *impunity is the best way to protect Mexico’s human rights defenders – UN Expert*, Geneva/Mexico City, January 25, 2017; UN HROHC, *End of mission statement by the United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst on his visit to Mexico from 16 to 24 January 2017*, January 24, 2017.

<sup>553</sup> The Inter-American Court, which has referred to impunity as the “the absence of any investigation, pursuit, capture, prosecution and conviction of those responsible for the violations of rights protected by the American Convention”. I/A Court of H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 299; I/A Court of H.R., *Case of the Mapiripan Massacre v. Colombia*, Merits, Reparations and Costs. Judgment of September 15, 2005. Serie C No. 134, para. 237; I/A Court of H.R., *Case of the Moiwana Community v. Surinam*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 15, 2005. Serie C No. 124, para. 203; and I/A Court of H.R., *Case of the Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Serie C No. 120, para. 170.

<sup>554</sup> FLIP, *15 años de protección a periodistas en Colombia: Esquivando la violencia sin justicia*, 27 de agosto de 2015.

<sup>555</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, paras. 256-257; See, also: IACHR, *Press Releases 2017*, 11/17, *IACHR Condemns Murder of Human Rights Defenders in the Region* (February 7, 2017); Nos.88/17, *Experts Condemn the Attacks and Killings of Environment Defenders in Guatemala* (June 30, 2017); 72/17, *IACHR issues call of OAS States to Protect Defenders of the Land and Environment* (June 5, 2017), 11/17, *IACHR Condemns Murder of Human Rights Defenders in the Region* (February 7, 2017); IACHR, *Press Releases 2016*, Nos. 39/16 - *IACHR Deplores Killing of Nelson Noé García in Honduras* (March 21, 2016); 24/16 - *IACHR Condemns the Killing of Berta Cáceres in Honduras* (March 4, 2016); I/A Court of H.R., *Case of García-Prieto et al. v. El Salvador*. Judgment of November 20, 2007, Preliminary Objections, Merits, Reparations, and Costs, para. 101; I/A Court of H.R., *Case of the Gómez-Paquiyaauri Brothers v. Peru*. Judgment of July 8, 2004, Merits, Reparations and Costs, para. 146.

victim or the family at issue.<sup>556</sup> Investigations of human rights violations should be pursued with due diligence, employing all legal means available, and having as focus the establishment of the truth and the pursuit, capture, prosecution, and punishment of the perpetrators. States have the obligation to ensure that all necessary steps are taken to unveil the truth of the events at issue and to ensure the punishment of those responsible when appropriate.<sup>557</sup>

339. Along these lines, the authorities should also adopt all reasonable measures to guarantee an appropriate process of collecting evidence, including an investigation based on context, or the accumulation of similar cases that may lead to the demonstration of a pattern.<sup>558</sup> This obligation remains regardless of the agent to whom the violation may eventually be attributed, even private individuals, because the failure to conduct an effective investigation would indirectly send the message that States condone such actions on their territory, thereby incurring international responsibility.<sup>559</sup> When a violent death is involved, the State must act with due diligence in the initial procedures of the investigation, gathering evidence without delay and managing crime scenes according to international standards, and must act with due diligence in relation to the logical lines of investigation, in the gathering and processing of evidence, and must be timely. It is imperative that States undertake thorough investigations of threats and acts of intimidation against human rights defenders, including acts beyond physical violence.<sup>560</sup>
340. The *Minnesota Protocol on the investigation of potentially unlawful death*, which was recently revised and updated, applies to all potentially unlawful deaths, including circumstances where the State may have failed to meet its obligation to exercise due diligence to protect life.<sup>561</sup> The protocol establishes that this includes “any situation

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<sup>556</sup> I/A Court of H.R., *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988, para. 177; I/A Court of H.R., *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007, para. 120.

<sup>557</sup> I/A Court of H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 146; I/A Court of H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No.160, para. 382.

<sup>558</sup> In conducting this investigation, the State in question must make every effort to: (i) determine all the facts surrounding the threat and how they were manifested; (ii) to determine whether there is a pattern of threats against the beneficiary or the group or entity to which he or she belongs; (iii) to determine the object or purpose of the threat, and (iv) to determine those responsible for the threat and, if appropriate, punish them. IA Court of H.R., *Case of Caballero Delgado and Santana regarding Colombia*. Provisional Measures. Order of February 25, 2011, considering para. 21; I/A Court H.R., *Matter of Guerrero-Gallucci regarding Venezuela*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 21, 2011, para. 28.

<sup>559</sup> I/A Court of H.R., *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No.166, para. 122; I/A Court of H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No.283, para. 200.

<sup>560</sup> I/A Court of H.R., *Case of Caballero Delgado and Santana regarding Colombia*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 25, 2011, *Operative para. 21*; I/A Court H.R., *Matter of Guerrero-Gallucci regarding Venezuela*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 21, 2011.

<sup>561</sup> Office of the United Nations High Commissioner for Human Rights, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)*, *Revised United Nations Manual on the Effective Prevention and Investigation of extra-legal, arbitrary and summary executions*, New York/Geneva, 2017.

where a state fails to exercise due diligence to protect an individual or individuals from foreseeable external threats or violence by non-State actors.”<sup>562</sup> The Protocol thus provides important guidance in how to investigate deaths of human rights defenders where the State had a duty to protect, by virtue of its knowledge of the situation of risk.

341. As for how the investigation is conducted, the due diligence standard was developed by the Inter-American Commission in its *Second Report on the Situation of Human Rights Defenders in the Americas*, which found that due diligence requires that, whenever there are allegations that a crime may have been a reprisal against their work, the investigating authority must necessarily investigate that possible motive exhaustively.<sup>563</sup> The Commission considers that the investigating authority must look at the victim’s status as a defender and take her or his activities into account in order to identify the interests that might have been affected by those activities and thereby develop lines of investigation with respect to this initial hypothesis regarding the motive for the crime. The IACHR deems it important that, even though other hypotheses may arise in the course of the investigation, the one relating to the possibility of the crime being the result of work in defense of human rights, should continue to be pursued exhaustively.
342. In order to combat impunity, the Commission has welcomed the establishment of units specializing in the investigation of crimes against defenders and, more generally, it has urged OAS Member States to reinforce the independence of justice operators in their respective countries through clear selection and appointment procedures mindful of the principle of transparency and public scrutiny. In its report on Guarantees for the Independence of Justice Operators, the Commission put forward a series of standards in that regard.<sup>564</sup> In order to combat impunity, this Commission has recommended that States set up specialized units within the police force and the public prosecutor’s office, armed with the necessary resources, training and cooperation protocols, to investigate crimes against human rights defenders in a serious, prompt, and efficient manner.<sup>565</sup> It has also insisted on the importance of combatting the illegal armed groups which are often at the root of the violence against human rights defenders, and called for the implementation of a serious policy to investigate, prosecute, and punish all of the actors involved in the execution, promotion, support or financing of violence against human rights defenders.
343. The IACHR reiterates that, an important step in order to guarantee diligent investigations of violations of the rights of human rights defenders, is the education and training of officials responsible for investigating crimes and administering

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<sup>562</sup> *Ibid.*

<sup>563</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 236.

<sup>564</sup> IACHR, Press Release No. 30/16, *IACHR Calls on States in the Region to Strengthen Judicial Independence*, March 7, 2016; IACHR *Guarantees for the Independence of justice operators*, *supra* note 1.

<sup>565</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 245; IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, recommendation 23.

justice, from the highest levels, on the leading role human rights defenders play in democratic systems, in order to increase their knowledge, competence and responsiveness in cases in which violations are alleged against defenders.<sup>566</sup> Training on the differentiated impacts of violence on women human rights defenders and other particularly exposed groups of defenders is also essential, to guarantee that no prejudicial or stereotypical beliefs lead to unjustified preliminary dismissals of cases, discrimination, or other problems in access to justice.

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<sup>566</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 1, para. 244.



CHAPTER 5  
RECOMMENDATIONS



## RECOMMENDATIONS

344. The Commission concludes this report urging States to act with due diligence to protect human rights defenders from harm and to prevent human rights violations against them. An adequate and effective integral protection policy consists of urgent measures to protect the life and integrity of defenders, and positive steps to ensure the building of contexts and environments free from violence and harassment. States must also work diligently to recognize the important role of human rights defenders in the building of democracies and rule of law, and to promote recognition of that role in society more generally.
345. The protection approach of the State should be institutionalized and vested with the sufficient political will, including the development and consolidation of well-resourced national protection mechanisms, joined by legislation, policies, and programs specialized in the situation of human rights defenders. States must always keep in mind a gender and ethno-racial perspective in the adoption of measures, as well as the situation of groups of defenders at increased risk, including those working on behalf of indigenous peoples and land rights, women, and LGBTI persons. With these goals and considerations in mind, and in addition to reiterating the recommendations set out in its 2011 report,<sup>567</sup> the Commission concludes with a number of recommendations to assist States in their prevention, protection, and investigation efforts on behalf of human rights defenders:
1. Adopt the appropriate measures to recognize by law the right to defend human rights and to disseminate what this right means within government, as well as through educational and promotional activities within society more generally. The Commission calls upon the States to widely publicize and promote the *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. The Commission also urges the States develop or strengthen programs or specific measures intended to enforce the Declaration.
  2. Implement or strengthen, as a priority matter, an integral protection policy for human rights defenders. To achieve this objective, the IACHR urges the States to implement the following specific recommendations:

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<sup>567</sup> *Ibid*, para. 539.

## **A. *Promoting the Work of Human Rights Defenders and Acknowledging their Role in Democratic Societies***

3. Foster a culture of human rights in which the fundamental role played by human rights defenders in guaranteeing democracy and the rule of law is recognized publicly and unequivocally. The commitment to this policy should be reflected at every level of the State – local, state or provincial, and national – and in every branch of government – executive, legislative, and judicial.
4. Foster a safe environment in which human rights defenders are empowered to freely exercise their right to defend human rights, by guaranteeing all of the human rights that are necessary to carry out human rights work within State jurisdiction.
5. Publicly recognize that protecting and promoting human rights is a legitimate action and that human rights defenders are not working against the interests of the State, but rather, are helping to strengthen the rule of law and to expand the rights and guarantees of all persons. All State authorities and officials at the local level should be aware of the principles regarding the activities of human rights defenders and their protection, as well as the guidelines for respecting those principles.
6. The States must not tolerate any attempt on the part of their authorities to call into question the legitimacy of the work of human rights defenders and their organizations. Public officials must refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally merely because they engage in promoting and protecting human rights. States should give precise instructions to their officials in this respect and should impose disciplinary or other applicable sanctions on those who do not comply with such instructions.
7. Undertake education and dissemination activities targeting all State agents, the general public and the press, to raise awareness about the importance and validity of the work of human rights defenders and their organizations.
8. Instruct their authorities to ensure that, from the highest levels, spaces are created for open dialogue with human rights organizations, to learn their views on the public policies and problems that affect them, so as to jointly identify opportunities for improvement.

## ***B. Protecting Human Rights Defenders to Prevent Attacks on their Lives and Personal Integrity***

9. Protect human rights defenders when their lives and personal integrity are in jeopardy, by adopting an effective and exhaustive strategy of prevention in order to prevent attacks against human rights defenders. To do this, States must demonstrate the political will to take effective action, as well as designate the required resources to support the responsible institutions and programs.
10. Maintain up-to-date statistical data and accurate information regarding acts of violence in which the victim or alleged victim is a human rights defender, to establish patterns of violence, and elaborate more efficient public policies of prevention. This information must include statistics on murders of human rights defenders, as well as all acts of intimidation, threats, harassment, and attacks as these are often the first manifestations of an escalating danger.
11. In those countries where attacks on human rights defenders are more systematic and numerous, the States must deepen and intensify the initiatives and resources available to prevent harm to their lives and physical safety. The IACHR considers that the special protection programs can enable these States to comply with their obligation to protect by allowing greater proximity and more firsthand knowledge of the particular situation of the defender in jeopardy to facilitate a prompt and specialized response proportional to the danger that the human rights defender is facing.
12. States must ensure that the specialized programs have the backing of a strong political commitment on the part of the State, reflected in the manner in which the program's operation is ensured by law, the effectiveness within the ranks of the officials in charge of the program, and in the assignment of sufficient and suitable resources and staff.
13. Take into account the standards set out in this report when conducting risk assessment studies and implementation of protection schemes, in particular concerning suitability, effectiveness, flexibility, participation of the beneficiary and transparency, among others. The IACHR also urges the States to allow and enable human rights defenders to have access to the results of their risk analysis, as well as the grounds for the decision, so as to allow human rights defenders, where pertinent, to request a review of the risk analysis.
14. Ensure that the personnel who are involved in the security arrangements are designated in consultation with the beneficiaries and with their agreement, so as to build trust. The protection measures may not be provided by security personnel who, according

to the beneficiaries, were involved in the reported facts. The Commission recommends that the States have security personnel for this purpose separate from the security personnel involved in intelligence and counterintelligence work; the personnel in this special group would be selected, recruited, and trained with complete transparency; and with the participation of representatives of the programs' target population.

15. Guarantee the security of human rights defenders who are especially vulnerable by adopting specialized protocols for their protection based on their activities and the risks they routinely encounter. A gender- and diversity-sensitive approach should be integrated into all protection legislation, policies, and practices, and in particular into the risk analysis, design and implementation phase of protection measures.
16. Allocate human, budgetary, and logistical resources to adapt domestic laws so as to be able to implement appropriate protective measures requested by the Inter-American Commission or the Inter-American Court to protect the life and personal integrity of human rights defenders. Such measures must be maintained in force for the time requested by the Commission or the Court, and be implemented in consultation with the defenders to ensure they are relevant and allow them to continue carrying out their activities.

***C. Removing Obstacles and Adopting Measures to Ensure the Defense and Promotion of Human Rights in a Free and Full Manner***

17. Ensure that the authorities or third parties, businesses in particular, do not use the punitive power of the State and its organs of justice to harass or hinder the work of human rights defenders who are engaged in legitimate and lawful activities. States must adopt all measures necessary to prevent State investigations from being used to unjustly persecute persons who are legitimately demanding observance and protection of human rights. The following are among the measures that States should implement: conduct a review to ensure that the crimes commonly invoked to arrest human rights defenders are formulated in accordance with the principle of legality; avoid the use of pretrial detention; make sure that prosecutors and judges are educated on the human rights situation of defenders, and are aware of a zero tolerance policy for the use of the legal system as a means of intimidation; ensure that the authorities presiding over the cases issue their decisions within a reasonable period of time; ensure that the authorities and third parties do not violate the principle of presumption of innocence by making statements that stigmatize as criminals human rights defenders who are being criminally prosecuted.

18. Refrain from having official registration procedures for human rights organizations that become an impediment to their work, ensuring that any such requirements are simple, and do not request information that exceed the boundaries of confidentiality; that an answer from the State authorities is provided within the framework of the prescribed law and within a reasonable time; that organizations whose registration is denied have a remedy to challenge that decision before an independent court; and that registration officials do not have discretionary authority to refuse to register the organizations. States must ensure that laws and policies on registration of human rights organizations do not use vague, imprecise, and broad definitions of the grounds for restricting their establishment and operation; that impede these organizations from taking political stances; or that restrict their means of receiving financial assistance, whether from national or international sources.
19. As a matter of public policy, States should adopt prompt steps to eradicate impunity for violations of the rights of human rights defenders by conducting exhaustive and independent investigations into the attacks suffered by defenders and punish the material and intellectual authors. The IACHR urges the States to set up specialized units within the police force and the public prosecutor's office, armed with the necessary resources, training and specialized protocols needed to enable them to act in coordination and with due diligence when investigating attacks on human rights defenders, while establishing lines of investigation taking into account the interests that may have been affected by the activities of the human rights defender.
20. Illegal armed groups are among the main perpetrators of violence against human rights defenders. States must strengthen and enforce decisive measures to investigate, prosecute, and punish all of the perpetrators involved, not just their armed members, but also those who promote, direct, support, or finance such groups or participate in them.
21. Strive for the eradication of corruption. To this end, strengthen the mechanisms for the administration of justice and guarantee the independence and impartiality of justice operators, as these are conditions *sine qua non* for the access to justice of human rights defenders, and for the courts' required response of investigation, prosecution and punishment.
22. Ensure that military courts do not have jurisdiction to investigate and prosecute members of the military who commit crimes against human rights and fundamental freedoms.
23. Encourage the ombudspersons within the region to play a more active role in checking for compliance with the international commitments undertaken by their respective States, in keeping with the Paris Principles, and to redouble their participation in and

coordination with the inter-American system for the protection of human rights.

24. Issue the necessary orders to promptly and effectively comply with the recommendations of the Inter-American Commission and the judgments of the Inter-American Court of Human Rights.