



The  
Time is **NOW**

**for effective public policies  
to protect the right to defend human rights**

 **PROTECTION**  
international

**CEJIL** 

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## Preface

Protection International is an organisation that specialises in the protection of Human Rights Defenders (HRDs), while the *Centro por la Justicia y el Derecho Internacional* (CEJIL) has been representing victims of human rights violations in the Americas - many of them HRDs - for over 25 years. This book is the product of much reflection and numerous discussions on the best ways to ensure that the right to defend human rights is guaranteed. It brings together the joint efforts of the two organisations to identify a minimum set of guidelines for the construction of public policy in the field and to ensure its effective implementation.

Much has been said of the importance of people who defend human rights. Different international organisations have developed standards urging their protection, that their work should not be obstructed, that they should enjoy conditions that enable them to defend human rights, and that crimes perpetrated against them should be investigated. But few governments have taken action to implement measures of this kind. On the contrary, despite the fact that HRDs play a fundamental role in democracies, they are stigmatised, pursued, criminalised and murdered.

According to Amnesty International's Annual Report for 2016, a total of 281 HRDs were murdered around the world that year. Of these killings, 217 occurred in the Americas and 85 in Colombia alone. Although the responses made to date in the form of protection measures are a positive development, they are insufficient to truly guarantee the right to defend human rights. There are multiple explanations for this: the contexts in which HRDs work, the power interests they face, the limited resources with which they count, and the range of threats to which they are subjected. To this should be added the low levels (at times the absence) of political commitment to combating impunity for acts of aggression against HRDs or to recognising the legitimacy of their work. The current situation cries out for the development of public policies that are informed by and respond to this complexity.

This book is a reflection on these topics, but it also makes proposals. We hope that our experience in the field will permit us to provide technical suggestions that will in turn enable HRDs to contribute to the discussions currently taking place in many countries around the world, and to establish relations with decision-makers to enable them to understand the importance of approaching the subject from all possible angles.

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## Table of Contents

|   |     |
|---|-----|
| Preface .....   | 5   |
| Executive Summary .....   | 9   |
| Methodology .....   | 11  |
| Acknowledgements .....  | 11  |
| Note on gender and language in the Spanish original .....   | 11  |
| On the translation of the quotations .....  | 12  |
| <b>PART 1. The protection of Human Rights Defenders: translating international norms to the domestic sphere</b> .....   | 13  |
| 1.1. Human Rights Defenders: Who are they and why should states protect them? .....   | 14  |
| Why are national policies to protect the right to defend human rights needed? .....   | 16  |
| 1.2. What should be included in laws or policies on the right to defend human rights? ...   | 20  |
| 1.3. The duty to protect Human Rights Defenders: the translation of international and regional normative frameworks into domestic policy the Americas .....         | 22  |
| The first generation of programmes: Colombia and Brazil .....   | 23  |
| The Mexican and Honduran laws: towards a networked system of government .....   | 28  |
| A brief initial comparison of some key aspects of these mechanisms .....  | 34  |
| 1.4. A critical analysis of the translation of international and regional normative frameworks into domestic legal frameworks in the Americas .....                 | 36  |
| The dissemination of international norms at the domestic level: creating discourses around the contents of the norms it has been decided to adopt .....             | 36  |
| Changes suffered by norms during their translation to the domestic sphere .....   | 37  |
| The interface between “agreed reduction” and the focus adopted by public policies ...   | 39  |
| <b>PART 2. Analysis of the existing mechanisms from a public policy perspective</b> ....  | 41  |
| 2.1. The protection of Human Rights Defenders: political will, a public policy perspective on participation and governance in protection programmes .....           | 43  |
| On the necessary presence of political will, and beyond... ..   | 43  |
| 2.2. Participation and governance .....   | 45  |
| The participation of citizens in public policy .....  | 46  |
| The participation of Human Rights Defenders and other actors existing programmes .....  | 46  |
| The governance of public policy .....   | 47  |
| Networked governance as an advanced model for protection policies .....   | 49  |
| Towards structures of broadly participatory networked governance in public policies for the protection of Human Rights Defenders .....                              | 52  |
| 2.3. Protection programmes and the securitisation of the defence of human rights: a restricted and state-centric focus on security for Human Rights Defenders ..... | 53  |
| How are the problems to be dealt with by a public policy for protection chosen? .....   | 53  |
| Human Rights Defenders as objects of protection: rational, autonomous individuals with power to act .....   | 57  |
| The security threats faced by Human Rights Defenders: physical and structural violence .....  | 60  |
| A critique of the categorisation of the risks faced by Human Rights Defenders .....   | 62  |
| What happens to the perpetrator? How are aggressions against Human Rights Defenders constructed? .....  | 65  |
| By way of conclusion: Human Rights Defenders as subjects (of rights) and not just as objects (of protection) .....  | 67  |
| <b>PART 3. The implementation of existing protection mechanisms</b> .....   | 69  |
| 3.1. Routines and procedures in existing mechanisms .....   | 70  |
| The target population and its access to public protection policies .....  | 70  |
| The response of protection policies: procedures and timescales .....  | 76  |
| The trust required between those with a duty to protect and those with a right to be protected .....  | 79  |
| Systems for monitoring and analysing the security situation of Human Rights Defenders .....   | 81  |
| 3.2. The risk evaluation .....  | 84  |
| The focus on risk in protection programmes .....  | 84  |
| The risk evaluation: differentiating between analysing risk and determining its severity .....  | 85  |
| When should risk be evaluated? .....  | 86  |
| Why is the evaluation of risk important for Human Rights Defenders? .....   | 87  |
| What are the limitations of applying the theory of risk to the protection of Human Rights Defenders? .....  | 88  |
| How is the focus on risk implemented in existing protection programmes? .....   | 89  |
| The collective evaluation of risk (or analyses for groups, such as communities) .....   | 93  |
| 3.3. Protection measures and plans .....  | 94  |
| Prevention measures or “policies” .....   | 94  |
| Ordinary and urgent protection measures .....   | 96  |
| Timescales and duration of protection measures .....  | 97  |
| Analysis of protection measures .....   | 100 |
| Exploring other protection measures .....   | 105 |
| Collective protection measures .....  | 105 |
| Protection plans: beyond protection measures .....  | 109 |
| 3.4. The allocation of resources .....  | 111 |
| Some general data on the programmes .....   | 112 |
| Analysis and comparison of the implementation of programmes .....   | 113 |
| Analysis and comparison with external points of reference .....   | 116 |
| Conclusions concerning adequate budgeting for a public policy for the protection of Human Rights Defenders .....  | 120 |

|   |     |
|---|-----|
| 3.5. The implementation gap or deficit in public policies for Human Rights Defenders..... | 121 |
| Analysis of top-down policy and vice versa .....  | 121 |
| Interpretation of the protection policy .....   | 122 |
| Levels of ambiguity and conflict, and they affect implementation .....                    | 123 |
| Implementation: context, resistance and conflicts .....                                   | 125 |
| Conclusions .....   | 127 |
| Bibliography .....  | 134 |

### List of Tables and Figures

|   |     |
|---|-----|
| Table 1: The process of translating a norm .....  | 36  |
| Table 2: Keys to determining the presence of political will .....                                   | 43  |
| Table 3: Participation and decision-making in the mechanisms .....                                  | 48  |
| Table 4: Standard criteria for gaining access to protection programmes .....                        | 69  |
| Table 5: Comparison of response times by procedure .....  | 76  |
| Table 6: Protection measures and their limitations .....  | 101 |
| Table 7: Comparative data on programmes .....   | 112 |
| Table 8: Analysis of the Ambiguity-Conflict Model in public policies .....                          | 123 |
| Figure 1: Mechanism and policy .....  | 19  |
| Figure 2: Programme governance bodies .....   | 50  |
| Figure 3: Murders of HRDs who had been in contact with the Colombian protection programme .....     | 75  |
| Figure 4: Global risk evaluation .....  | 87  |
| Figure 5: Breakdown of spending on protection measures (Colombia) .....                             | 103 |
| Figure 6: Locations of murders of Human Rights Defenders (Colombia, 2015) .....                     | 103 |
| Figure 7: Spending per HRD (US\$) .....   | 114 |
| Figure 8: Number of HRDs in each programme per 100,000 inhabitants .....                            | 115 |
| Figure 9: Comparison between HRDs in a programme and HRDs murdered .....                            | 115 |
| Figure 10: Ratio of HRDs in a programme to those who have been murdered .....                       | 116 |
| Figure 11: HRDs murdered per 100,000 inhabitants .....  | 117 |
| Figure 12: HRDs murdered compared to overall murder rates .....                                     | 117 |
| Figure 13: Murders per 100,000 inhabitants .....  | 118 |
| Figure 14: Comparison with the Spanish programme for protection against gender-based violence ..... | 119 |
| Figure 15: Ratio of people in protection programmes to murder victims .....                         | 119 |
| Figure 16: Comparison with the theoretical increases in programme size .....                        | 120 |

## Executive Summary

Given the large number of acts of aggression committed against Human Rights Defenders (HRDs) in the Americas (and in the rest of the world), this research has sought to explore what is going wrong with the national protection mechanisms and programmes established by different governments in the region. Protection International and CEJIL believe that current national protection measures for HRDs are inadequate, because they are flawed in the following key areas:

- The translation of the international normative framework to the domestic sphere
- Approaches to the problem
- Design and implementation

We argue that the translation of the United Nations *Declaration on Human Rights Defenders* into domestic law and programmes in Colombia, Brazil, Mexico and Honduras has at the same time been both reductionist and consensual. We call this a model of “agreed reduction”, restrictive in its interpretation of the Declaration but also instrumental to other policies advanced by these governments. In addition, the laws and programmes fail to take into account the evolving standards to which public policies intended to guarantee the right to defend human rights should adhere.

Next, we link the rest of the translation process to public policy theory, indicating aspects of the design and implementation of the mechanisms that are failing to work. In terms of the framing and design of the policies, we indicate that existing protection mechanisms include fundamental aspects such as participation and networked governance that have given rise to two generations of public policy. The second of these aspects involved the standardisation of systems of networked governance that should, in theory, make the policies more durable by enabling them to integrate new elements in order to keep pace with growing international standards. In addition, we argue that the mechanisms approach the problem in a reductionist manner, using a restricted focus that is based only on security and risk (that is, they see HRDs as potential objects of protection). This approach leaves out key aspects such as structural violence and the role played by the perpetrator, and builds a rational, positivist construct of the HRD that has nothing to do with the complexity of the real circumstances in which they operate.

Thus, in our view, which borrows from a critical human security focus, the current mechanisms represent a *securitisation* of the right to defend human rights. This approach is functional to a state-centric approach to security according to which governments maintain their security priorities in relation to, and in spite of, the work of HRDs, and are able to divert attention away from structural causes of the

acts of aggression to which HRDs are subjected. It is fundamentally important to recognise that the problem of the security of HRDs is complex, deeply-rooted and cross-cutting, and that the concept of security should be expanded by using an *intersectional* approach to acts of violence against HRDs that takes into account aspects such as gender, membership of a minority, etc. The goal is to ensure that HRDs are treated as subjects of rights (the right to defend human rights) and not simply as objects of protection.

Turning to the implementation of the mechanisms, we believe they display significant weaknesses, specifically in terms of effective access for the target population, procedures and timescales and - in particular - the application of the focus on risk, the protection measures chosen, and the allocation of resources. In relation to the focus on risk, we conclude that many improvements are required. In particular, that there should be a clear differentiation between the *evaluation* of risk and the *determination of its level*. Furthermore, the evaluation process should be more transparent (using qualitative techniques), include a consideration of the potential actions of the perpetrator, and improve and fully incorporate a gender and *intersectional* focus that must at the same time be both individual and collective.

After describing and analysing current protection measures, the most worrying conclusions are, on the one hand, the fact that very little research has been carried out to demonstrate their effectiveness and, on the other, that there is reasonable doubt about the effectiveness of hard measures such as the provision of armed bodyguards. In any case, it is fundamentally important to design protection plans that incorporate and contextualise the different measures they contain in a way that is consistent with the findings of the evaluations of the risks faced by HRDs, and that ensures them access to (still ill-defined) collective protection measures. In terms of budgetary provision, we argue that - though necessary - financial resources are not in themselves sufficient to achieve the results expected from a public policy for the protection of HRDs.

We end our analysis of the implementation of the mechanisms with the criticism that they are based on a top-down view of policy implementation that fails to ensure an adequate analysis of their implementation gaps or to recognise the importance to programmes of local contexts and bottom-up interpretations. Our discussion of this approach leads us to analyse the ways in which the ambiguous drafting of the norms creating the programmes, and the conflicts between the different measures they contain, risks ending up with an implementation process that is almost entirely symbolic. A critical focus on protection policies leads us to indicate the importance of transforming these points of friction into negotiated spaces of implementation that permit a shared understanding of the policy to be constructed.

In short, we argue that the currently existing mechanisms should be converted into public protection policies containing all the usual elements of such instruments, and should employ a broad and inclusive conception of the right to defend human rights, as contained in the growing body of available international standards. Thus, as the work of HRDs becomes better understood and as their activities evolve in response to changing realities, the incorporation of these standards into protection policies will contribute to deepening and broadening the scope of the United Nations Declaration on the Right to Defend Human Rights. This will help inform new or more nuanced public policy components for protecting the right to defend human rights.

## Methodology

The study evolved as it was being prepared. Initially, the intention was to carry out a series of interviews in different countries that, jointly with the relatively small number of available reports on the matter and informed by our two organisations' experience over the years, we hoped would prove sufficient to carry out a comparative analysis and to update similar existing studies.<sup>1</sup> But work in defence of human rights changes and expands continuously in a process that has been matched by alterations to the protection mechanisms available to HRDs, although paradoxically the paucity of the results of these policies is ever more apparent. This led us to change our approach and to focus instead on carrying out an investigation that went beyond our initial plans, and was transformed into an examination of the lack of results and - above all - became focused on proposing alternatives. This required wholesale changes to be made to the original drafts. We initially conducted some 40 interviews but ended up completing over 100 (with HRDs, analysts, experts, public servants, etc.), as well as participating in multiple meetings, forums and debates.<sup>2</sup> Rather than the dozen or so documents originally consulted we have now reviewed scores of formal publications, analyses and reports. We have also carried out applied theoretical research on public policies and their implementation, an endeavour that we believe to be novel and that offers new opportunities for improving protection policies.<sup>3</sup>

## Acknowledgements

Because we agreed to ensure the confidentiality of many interviewees, we do not list the names of everyone with whom we spoke, but we do wish to express our thanks to everybody who agreed to answer our questions.

Other individuals cooperated in different ways, and we owe them a debt of gratitude. María Martín initiated the work on the legal aspects of the duty to protect HRDs. Marcia Aguiluz of CEJIL, and Mauricio Ángel of Protection International reviewed the texts and made important suggestions of ways to improve them; these were incorporated into this final version. Antonio Jaén reviewed the Spanish language copy and Daniel Barrera provided a critical analysis of parts of the study. In addition, many other people made minor and major suggestions for improvement. It would be difficult to include all their names here without forgetting someone.

### Note on gender and language in the Spanish original, slightly adapted for the English version

Spanish is a sexist language because it reduces all genders to the masculine. We therefore think it is very important to break with this rule when using spoken language, by duplicating gender (referring to “he” and “she” – *él y ella* - rather than just “he”) and using more inclusive

<sup>1</sup> For example, Martín and Eguren (2011).

<sup>2</sup> These interviews and meetings were carried out face-to-face, by telephone and using electronic media, in Colombia, Brazil, Guatemala, Honduras and Mexico, both in the capital cities and the regions. Others were conducted in Brussels, Geneva and Washington.

<sup>3</sup> Among other texts by the author, this study includes sections drawn from Enrique Eguren's Doctoral Thesis presented to the Human Rights Institute at the University of Deusto (Bilbao, España).

language, etc. This approach exploits the inherent limitations of the language in order to highlight everyday sexism – in other words, to turn the limitations into a cause. But written language is different. We believe that the aim of making the sexism of a language visible is lost when the same tactics are used in a printed text. In our opinion, the duplications it causes and the lengthening of phrases the technique requires, mean that the reading experience becomes more cumbersome and loses clarity. For this reason we have opted to follow the general rules of Spanish in the book. This does not distance us from our desire to make common cause with feminist struggles but, on the contrary, confirms us in our resolve to continue on the path. We hope that everyone, *todas y todos* - female and male - will approve of what we have done.

The English version adheres to a current tendency to use “their” as the possessive form of singular pronouns in order to reduce the inherent sexism of this language. However, as it is less cumbersome in English than in Spanish to use non-sexist language the text does at times also make explicit the fact that subjects are as likely to be female as male.

## The translation of the quotations

The quotes in the English language version of this book are drawn from official translations when these exist, for example in the case of most (but not all) documents produced by the United Nations or the Inter-American System. When no such official translations exist, they have been prepared by the translator. The text has been prepared using British English. Note, however, that some of the documents quoted use standard US spelling while others follow British rules. No attempt is made to change these.

## PART 1

### THE PROTECTION OF HUMAN RIGHTS DEFENDERS: translating international norms to the domestic sphere

## 1.1. Human Rights Defenders: Who are they and why should states protect them?

*In this first chapter we introduce the legal concept of the Human Rights Defender and the obligations of states concerning the protection of the right to defend human rights.*

In 1999, the UN General Assembly approved 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* (hereafter “the UN Declaration on Human Rights Defenders”, “the UN Declaration” or, simply, “the Declaration”), which describes Human Rights Defenders as “individuals, groups and associations [who contribute to] the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” (UN General Assembly: 1999).<sup>4</sup> For the Inter-American Commission of Human Rights (IACHR) a Human Rights Defender (or HRD) is any man or woman “who in any way promotes or seeks the realisation of human rights and fundamental freedoms, nationally or internationally” (IACHR: 2011, par. 12).

Since 2000, reports by successive UN Special Rapporteurs on the Situation of Human Rights Defenders have recognised the fundamental work of such people. This has been confirmed in several declarations of the UN Human Rights Council and by General Assembly Resolutions, which have reiterated the obligation of states to protect activities carried out in defence of human rights.<sup>5</sup>

Furthermore, the IACHR has recognised that:

*[T]he work of Human Rights Defenders is fundamental for the universal implementation of human rights, and for the full existence of democracy and the rule of law. Human Rights Defenders are an essential pillar for the strengthening and consolidation of democracies, since the purpose that motivates their work involves society in general, and seeks to benefit society. Accordingly, when a person is kept from defending human rights, the rest of society is directly affected (ibid., par. 13).*

For the IACHR, the work of HRDs “cannot be subject to geographical restrictions, and that it implies the possibility of freely and effectively promote and defend any right whose acceptance is unquestioned, the rights and freedoms contained in the Declaration on Defenders itself, as well as any ‘new rights or components of rights whose formulation is still a matter of debate’” (ibid., par. 16).

For its part, the Inter-American Court of Human Rights (IACtHR) has highlighted the important role played by HRDs in the construction of a democratic society,<sup>6</sup> and the collective repercussions of threats and attacks against them, taking into consideration that these “can have an intimidating effect on other Human Rights Defenders. The fear caused by such an event can directly reduce the possibility of Human Rights Defenders exercising their right to perform their work by means of Denunciations”<sup>7</sup>

Given that HRDs make public complaints about abuses and violations of human rights, the IACHR has recognised that their work constantly exposes them to risks that can affect their rights to life, personal integrity and to pursue their work. In these situations, the duty to protect requires states to adopt all reasonable measures to prevent any threats, acts of harassment or aggression that might be committed against them, independently of whether they are committed by state actors or by private.<sup>8</sup>

Against this background, the American Convention on Human Rights (ACHR) holds that states have the duty both to respect the rights of HRDs and to prevent attacks on them. On this matter, the IACtHR has established that

*the international responsibility of States arises at the time of the violation of the general obligations erga omnes to respect and ensure respect for – guarantee – the norms of protection and also to ensure the effectiveness of all the rights established in the Convention in all circumstances and with regard to all persons, which is embodied in Articles 1(1) and 2 thereof.<sup>9</sup>*

Thus, states are obliged to prevent situations that might lead, by action or omission, to negative repercussions on human rights.<sup>10</sup> In addition, the IACtHR has indicated that this overall duty to provide guarantees also imposes special duties of protection that derive from the particular needs of affected person, “either owing to [their] personal situation or to the specific situation in which [they find themselves]”.<sup>11</sup>

According to the IACtHR, states have four specific duties they should fulfil in order to protect the lives and security of HRDs. These are: a) to provide the necessary means for HRDs to conduct their activities freely; b) to protect them when they are subject to threats, in order to ward off any attempt on their lives or physical integrity; c) to refrain from imposing restrictions

<sup>4</sup> United Nations (1999). *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. A/RES/53/1994. Adopted by General Assembly resolution 53/144 of 9 December 1998

<sup>5</sup> See the compilation of these reports at: <https://www.protecting-defenders.org/en/reports-and-documents> (Consulted on 9/01/17).

<sup>6</sup> “[T]he monitoring, denunciation, and educational activities undertaken by Human Rights Defenders make an essential contribution to respect for human rights, because they act as guarantors against impunity. Thus, Human Rights Defenders complement the role, not only of the States, but of the inter-American system for the protection and promotion of human rights”. IACtHR (2008). *Case of Valle Jaramillo et al. v Colombia. Merits, Reparations and Costs, Judgment of 27th November*, IACHR Series C no 192, Series C No.192, par. 88.

<sup>7</sup> *ibid.*, par. 96. Similarly, see IACHR: 2011, par. 108.

<sup>8</sup> See IACHR: 2011, par. 42; Sekaggya: 2009, par. 43. See also: UN Human Rights Committee (2004). *General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May; *cf. IACtHR (1998). Case of Velásquez Rodríguez v Honduras. Merits. Judgment of 29 July*, Series C No. 4, par. 177.

<sup>9</sup> IACtHR (2006). *Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31*, Series C No. 140, par. 111; (2005) *Case of the “Mapiripán Massacre” v. Colombia. Judgment of September 15*, Series C N. ° 134, par. 111; (2003) *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A., No.18, par. 140.

<sup>10</sup> IACtHR (2004). *Case of the Gómez-Paquiyaury Brothers v. Peru. Judgment of July 8 (Merits, Reparations and Costs)*, Series C No. 110, par. 124.

<sup>11</sup> IACtHR (2006) *Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31, Series C No. 140*, par. 111.

that might hinder them from performing their work; and d) to conduct serious and effective investigations into any violations committed against them.<sup>12</sup> As will be made clear later the IACtHR has, in successive judgments, established requirements that states should include in their public protection policies,

In conclusion, there is consensus at the international level concerning the prominent role played by HRDs in strengthening democracy and the Rule of Law, on the risks they run in fulfilling this task, and on the obligation of states to guarantee their protection. The current challenge, as this study will make apparent, is to translate these obligations into effective public policies that states are able to implement in order adequately to protect the right to defend human rights.

### Why are national policies to protect the right to defend human rights needed?

Article 2 of the UN Declaration on Human Rights Defenders indicates that states have a duty to protect the right to defend human rights. Article 3 indicates that the Declaration should be put into effect using the domestic legal framework:

*Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realisation of those rights and freedoms should be conducted.*

There are many reference to the need and obligation of states to develop national-level public policies to protect the right to defend human rights. In chronological order, some of the principal ones are:

- In its judgment in the Valle Jaramillo case mentioned above,<sup>13</sup> the IACtHR made clear to the member states of the Inter-American System of Human Rights that they had an obligation to protect HRDs by: a) providing the means persons who protect human rights require to conduct their activities freely; b) protecting them when they receive threats, in order to ward off any attempt on their lives or personal integrity; c) refraining from imposing restrictions that would hinder them from performing their work; and d) conducting serious and effective investigations into any violations committed against

them. Furthermore, in two of its judgments the Court has ordered states to develop public HRD protection policies.<sup>14</sup>

- In its Second Report on Human Rights Defenders, published in 2011, the IACHR argued that member states should take a series of parameters into account when developing “global policies of protection”,<sup>15</sup> that went beyond restricting themselves, for example, to “provid[ing] security to defenders who are in danger, but do[ing] nothing to investigate the source of the threats made against them”.<sup>16</sup> The report goes on to develop some of the parameters required for promoting and recognising the role of HRDs, protecting the lives of those at risk, and removing obstacles to ensuring they have the freedom to defend the right to defend human rights.
- Epigraph 2 of UN Human Rights Council Resolution 22/6 (2013) on the protection of HRDs, orders states<sup>17</sup> “to create a safe and enabling environment in which Human Rights Defenders can operate free from hindrance and insecurity, in the whole country and in all sectors of society...”. It goes on to exhort states, among other things, to carry out actions to ensure respect for the independence of HRD organisations and their right to access the resources they require to fund their work, as well as to abstain from negatively affecting HRDs working in circumstances in which states are combatting terrorism or seeking to protect national security, and to refrain from criminalising the defence of human rights.
- In her 2013 reportHR (mos por ejemplo a la Feadle en Mexico con cero resultados on the situation of HRDs, the then UN Special Rapporteur on Human Rights Defenders Margaret Sekaggya, created the concept of a “safe and enabling environment for Human Rights Defenders”, specifically mentioning the responsibility of states in the matter, and listing a series of actions and measures to help create such an environment:

*States have the primary responsibility to ensure that defenders work in a safe and enabling environment. Such an environment should include a conducive legal, institutional and administrative framework; access to justice and an end to impunity for violations against defenders; a strong and independent national human rights institution; policies and programmes with specific attention to women defenders; effective protection policies and mechanisms paying attention to groups at risk; non-State actors that respect and support the work of defenders; safe and open access to international human rights bodies; and a strong, dynamic and diverse community of defenders.<sup>18</sup>*

- The UN General Assembly provides two important points of reference:

<sup>12</sup> IACtHR. (2009). *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs, Judgment of 3 April, Serie C No. 196, par. 145*; (2008) *Case of Valle Jaramillo et al. v Colombia. Merits, Reparations and Costs, Judgment of 27th November, IACHR Series C no 192, par. 91*; (2006) *Case of Nogueira de Carvalho et al. v. Brazil. Judgment of November 28, 2006 (Preliminary Objections and Merits), Serie C No. 161, par. 77.*

The UN Human Rights Council urged states to investigate “in a prompt, effective, independent and accountable manner, complaints and allegations regarding threats or human rights violations”, indicating also the need to initiate proceedings against the perpetrators so as to ensure that impunity for such acts. UN. (2010) Protection of human rights defenders. A/HRC/RES/13/13. Resolution adopted by the Human Rights Council on 15 April by the IACHR.

<sup>13</sup> IACtHR. (2008). *Case of Valle Jaramillo et al. v Colombia.* Series C No. 192, par. 91.

<sup>14</sup> IACtHR. *Case of Luna López v. Honduras. Judgment of October 10. Merits, Reparations and Costs. Series C No. 269, par.s 243-244, and Case of Human Rights Defender et al. v. Guatemala, Judgment of August 28, 2014 (Preliminary objections, merits, reparations and costs), par. 263.*

<sup>15</sup> IACHR (2011). *Second Report on the Situation of Human Rights Defenders in the Americas*, par. 472 and ff.

<sup>16</sup> *ibid.*, par. 472.

<sup>17</sup> UN (2013). A/HRC/RES/22/6, 12 April.

<sup>18</sup> *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya.* A/HRC/25/55. Human Rights Council, 25th Period of Sessions 23 December 2013, par. 129. Available at: [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-55\\_sp.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-55_sp.doc)

- Epigraph 19 of Resolution 68/181 of 18 December 2013, on the protection of women HRDs (WHRDs) “[u]rges States to develop and put in place comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women Human Rights Defenders...”.
- Resolution A/C.3/70/L.46/Rev1 of 2015 on “Recognizing the role of Human Rights Defenders and the need for their protection” goes further in Epigraph 4, which “[u]rges States to acknowledge through public statements, policies or laws the important and legitimate role of Human Rights Defenders in the promotion of human rights, democracy and the rule of law as essential components of ensuring their recognition and protection...”. Epigraph 10 “[c]alls upon all States to create and maintain a safe and enabling environment for the defence of human rights”, while Epigraph 11 “[e]ncourages States to develop and put in place comprehensive and sustainable public policies and programmes that support and protect Human Rights Defenders at all stages of their work, including their family members, associates and legal representatives”.
- In his February 2016 report the current UN Special Rapporteur on Human Rights Defenders, Michel Forst returns to the concept of a “safe and enabling environment for Human Rights Defenders”, defining it as follows:

*An enabling environment for defenders must be one in which their work is rooted in the broad support of society and in which the institutions and processes of government are aligned with their safety and the aim of their activities. Both are essential for the creation of an environment in which perpetrators of violations of defenders’ rights are held to account and are not allowed to enjoy impunity for their actions”.*<sup>19</sup>

He then goes into greater depth on some of the aspects of this enabling environment, such as the creation of support for human rights and the work of HRDs, and the development and strengthening of legislation, policies and practices to protect HRDs.<sup>20</sup>

- The Human Rights Council Resolution of 21 March 2016<sup>21</sup> highlights the importance of providing specific protection to Human Rights Defenders working in the field of economic, social and cultural rights (ESCR). In paragraph 8 it

*[e]mphasizes the importance of national protection programmes for Human Rights Defenders, and encourages States to consider, as a matter of priority, enacting relevant legislative and policy frameworks to this end, in consultation with Human Rights Defenders, civil society and relevant stakeholders, taking into account, inter alia, the principles presented by the Special Rapporteur on the situation of Human Rights Defenders.*<sup>22</sup>

For its part, the April 2016 report by the UN High Commissioner for Human Rights<sup>23</sup> provided “[p]ractical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned”.

Thus, existing mechanisms for the protection of HRDs at risk should be seen as no more than a component – though an important one - of a broader more comprehensive focus of any public policy on the right to defend human rights (see Figure 1).

FIGURA 1: MECHANISM AND GLOBAL POLICY



There is clearly no shortage of authoritative texts alluding to the requirement and the obligation to develop these public policies: resolutions, reports and decisions of the UN, IACHR reports, and judgments of the IACtHR provide a series of **standards** concerning the design of public policies intended to create a secure and enabling environment for HRDs. These standards may be used by states to design and develop laws, policies and plans for the defence of human rights, as explained below.<sup>24</sup>

#### RECOMMENDATIONS

- There is an international requirement and obligation on states to design and develop broad and comprehensive domestic laws and policies to protect the right to defend human rights.
- The standards provided by UN resolutions and reports, and the reports and judgments of the IACtHR, provide the legal basis on which these policies should be constructed.

<sup>19</sup> Forst, Michel (2016). *Report of the Special Rapporteur on the situation of human rights defenders*. A/HRC/31/55, par. 77.

<sup>20</sup> *ibid.*, par.s 78-96.

<sup>21</sup> See A/HRC/31/L.28.

<sup>22</sup> For the principles mentioned in the Resolution, see Forst, Michel, *op. cit.* A/HRC/31/55.

<sup>23</sup> See A/HRC/32/20.

<sup>24</sup> New research is currently being carried out on this matter. See Eguren (2017).

## 1.2. What should be included in laws or policies on the right to defend human rights?

*This chapter briefly indicates the content and dimensions of a potential broad and comprehensive policy for the defence of human rights. To do so, it examines the ways in which current standards reflect a changing and evolving reality that should be taken into account during any process of policy design.*

In this study we argue that existing laws and protection policies have not always been capable of grounding the principles - general in nature - contained in the UN Declaration on Human Rights Defenders and of converting them into concrete state action.

The defence of human rights occurs in a changing reality, subject to permanent evolution, which is marked by emerging aspects that, because of their gravity, have, over time, come to figure more significantly in the thinking of international and regional bodies and to occupy greater space in their documents. Ever since the earliest days of the Declaration, almost 20 years ago, it has faced challenges that have moulded the responses of these bodies, with the result that their reports, resolutions and declarations have also developed and evolved.

Logically, this process of adaptation and development should inform the contents of domestic laws or policies for the defence of human rights.<sup>25</sup> Governments should, therefore, take into account the challenges faced by HRDs, and the recommendations made both by them and by the international community,<sup>26</sup> in order to incorporate the **standards** contained in the documents mentioned above. These challenges include:

- a. The persistence of multiple and grave attacks on the lives and physical integrity of HRDs (including torture and forced disappearance).
- b. The impunity that characterises attacks against HRDs.
- c. Articles 9 and 12 of the Declaration indicate the obligations of states in this matter, but reality indicates an absence of effective investigation, leading to impunity for attacks of this kind.
- d. Violations of the rights of HRDs to assembly and association, freedom of expression and liberty of movement, and freedom to choose a residence.

The growing abuse associated with the excessive use of force in response to demonstrations and peaceful actions should also be noted.

- e. Undue administrative and financial restrictions and interference, and related abuses.
- f. Defamation, stigmatisation and, in particular, criminalisation of HRDs.

Article 12 of the Declaration deals with this area, but the phenomenon is on the increase, especially in certain sectors, such as with HRDs working on environmental and land rights, and the rights of sexual minorities.<sup>27</sup>

- g. Obstacles that restrict access to information, contact with national and international organisations, and freedom for HRDs to analyse and disseminate information.
- h. Active discrimination against sectors of the population that affects HRDs working to defend their rights, either because they themselves belong to the group in question or because they are engaged in the defence of the rights of its members.<sup>28</sup>

According to this perspective, it is very difficult to contemplate the protection of HRDs if no attempt is made to address the generalised abuse of the rights of the groups with which they work.

- i. A growing number of laws that (applying a restrictive interpretation of article 13) constrain rights contained in the Declaration, for example by limiting access to foreign resources or the right to demonstrate.

On occasion, protection policies for HRDs conflict with other laws and policies that affect human rights protection: in Colombia, Mexico and Guatemala for example, protection mechanisms or measures coexist with markedly restrictive laws on the right to demonstrate. Or, as we have seen, it is important to adopt measures for the protection of HRDs who defend the rights of minorities, but this protection is ineffective if there are no laws to combat the discrimination they face (or worse: if discrimination is actually compounded by specific laws or policies). For a public policy to provide effective benefits to HRDs, it should form a part of a broader framework of domestic laws and policies that provide real protection to human rights. Furthermore, constitutional and legal frameworks must be harmonised in order to permit and promote activities in defence of human rights.

- j. Acts of aggression committed against HRDs by “non-state actors”.

Non-state actors (including armed opposition groups and criminal organisations but also –in a different form - others such as transnational corporations, religious groups or the media) play varied roles in respect of the right to defend human rights. Nevertheless, all sources agree that these actors are obliged not only to respect the law of the nation in which they develop their activities but also to recognise and support work carried out in defence of human rights. All the available sources make specific mention of the role of national and transnational corporations in relation to HRDs and include, furthermore, other aspects, such as the need to ensure effective accountability for their actions.

- k. Risks faced by WHRDs because of their gender.

- l. Improved access for all HRDs to existing public policies, bearing in mind that the recommendations place emphasis on barriers such as gender, discrimination, language and geographical isolation.

- m. Documentation of the violations and abuses suffered by HRDs, permitting the phenomenon to be understood better, and for more adequate responses to be formulated.

- n. The establishment of effective and transparent ways of evaluating the level of risk faced by HRDs.

<sup>25</sup> A challenge taken up by the International Service for Human Rights in its *Model National Law*. See ISHR (2017).

<sup>26</sup> For more detailed information on this question, see Eguren (2017).

<sup>27</sup> See examples (in Spanish) in Comisión de Derechos Humanos del DF (2011, 23), and Espacio OSC (2015, 28).

<sup>28</sup> For example, epigraph 14 of the 2015 *General Assembly Resolution* expresses “concern about stigmatisation and discrimination that target or affect individuals and associations defending the rights of persons belonging to minorities or espousing minority beliefs or views, or other groups vulnerable to discrimination, and calls upon States to renounce firmly all discrimination and violence, underlining that such practices can never be justified on any grounds” (UN General Assembly: 2015).

- o. The importance of evaluating the real results of the mechanisms and, in this way, their actual effectiveness in meeting the positive philosophy of the Declaration.
- p. The strengthening of the role assigned to National Human Rights Institutions

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#### RECOMMENDATIONS

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- Broadly-framed domestic laws or policies should enable states to take concrete measures, based on the UN Declaration, to protect the right to defend human rights, and which incorporate the standards enumerated in the resolutions and declarations of the different international and regional bodies.
  - As the work of HRDs becomes better understood, and as it evolves and adapts to changing realities, the application of these standards will contribute to deepening and expanding the reach of the UN Declaration on the Right to Defend Human Rights and, in consequence, to increasing the availability of information on the standards contained in public policies for the protection of HRDs.
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### 1.3. The duty to protect Human Rights Defenders: the translation of international and regional normative frameworks into domestic policy the Americas

*This chapter provides a brief description and summary of the mechanisms, programmes and laws that have been developed in different countries of the Americas. They are discussed in the same order in which they were created, in order better to transmit the evolution of the contents and focus of the policies. The chapter subsequently provides a critical analysis of the translation process, before ending by providing recommendations.*

The general tendency is for the existing mechanisms and programmes to consist of structures controlled by the government that HRDs who are considered to be at-risk then approach for protection. Following a formal risk evaluation, HRDs who are considered to face a given level of risk are assigned protection measures. These measures are maintained for a period of time that is defined by the mechanism. The mechanisms tend to include some additional nominal measures, for example relating to prevention or training for public employees on the defence of human rights, etc. Despite this, implementation is in practice very limited.

### The first generation of programmes: Colombia and Brazil

#### *Colombia: the pioneer*

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##### A BRIEF OVERVIEW:

Colombia's was the first protection mechanism to be established (in 1997). It is also the largest, with the biggest budget (although it should be noted that the programme covers other groups too, such as members of local authorities and former Presidents). In 2015, it covered some 1,810 HRDs and spent US\$23 million on bodyguards and vehicles alone. The mechanism was created by presidential decree, subsequently undergoing a range of further developments and modifications brought in by different decrees and resolutions, which have adapted it to varying administrative requirements, the demands of HRDs, and decisions of the Colombian legal system. The mechanism has been severely criticised by human rights organisations because, despite the breadth of its scope, the number of HRDs who have been threatened and murdered during its existence has increased.

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There has been a protection programme for Colombian HRDs in situations of risk since 1997. *Law 418* of 1997 ordered the Interior Ministry to establish a protection programme for people at risk as a consequence of the armed conflict and political violence. The programme has undergone numerous developments and modifications.<sup>29</sup> The current *Programa de Prevención y Protección de los derechos a la vida, la libertad, la integridad y la seguridad de personas, grupos y comunidades* (Programme for Prevention and Protection of the Rights to Life, Liberty, Personal Integrity and Security of Persons, Groups and Communities) dates from 2011.<sup>30</sup> The programme is implemented by the *Unidad Nacional de Protección* (National Protection Unit, NPU),<sup>31</sup> a dependency of the Interior Ministry's Human Rights Directorate, whose objective is to:

*articulate, coordinate and execute the provision of protection services to those whom the National Government determines, owing to their political, public, social, humanitarian, cultural, ethnic or gender activities, condition or situation or their status as victim of violence, displaced person or human rights activist, to be at extraordinary or extreme risk of death, personal injury or loss of liberty or personal safety or to be in danger because they hold public office or engage in other activities that may involve extraordinary risk, such as leading a labor union, non-governmental organization (NGO) or group of displaced persons, and to ensure the timeliness, effectiveness and suitability of the measures taken.*<sup>32</sup>

The NPU states that its target group consists of leaders of political and opposition parties, HRDs, trade unionists, leaders or activists from social groups, leaders or members of ethnic

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<sup>29</sup> Law 418 of 1997 has been extended and modified by Laws 548 (1999), 782 (2002) and 1106 (2006), and developed by a series of regulatory decrees, resolutions and directives emitted by the Ministries of the Interior and Justice, and of Defence. See Martín and Eguren (2009, 12 and anexos 2 and 5).

<sup>30</sup> Decree 4912 of 26 December 2011 ([www.upn.gov.co/componentes/Documents/decretos/dec491226122011.pdf](http://www.upn.gov.co/componentes/Documents/decretos/dec491226122011.pdf)), modified by *Decreets 4100* and 1225 of 2012, and Decree 1066 of May 2015 ([www.upn.gov.co/decretos-y-leyes](http://www.upn.gov.co/decretos-y-leyes)) (Accessed 1/12/16).

<sup>31</sup> Created by Decree-Law 4065 of 2011 ([www.upn.gov.co/](http://www.upn.gov.co/)) (Accessed 22/03/16).

<sup>32</sup> Decree-Law 4065 of 2011, articles 1 and 3 [translation taken from Immigration and Refugee Board of Canada, *Response to Information Request, COL104011.E*, Available (in English) at: <https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/07/COL104011.E.pdf>].

groups, members of the medical mission, witnesses or victims of violations of human rights and International Humanitarian Law (IHL), journalists or communications professionals, current or former public servants with responsibility for human rights, leaders of armed groups demobilised between 1994 and 1998, leaders of the *Unión Patriótica* (Patriotic Union) and the Colombian Communist Party, legal representatives involved in human rights and IHL-related legal cases, and teachers.<sup>33</sup> It is apparent that HRDs form only a small part of the programme's target population. In fact, according to the organisation *Somos Defensores* (We are Human Rights Defenders) (2014a), nearly 6,000 HRDs sought protection from the NPU between 2012 and 2014, but only 2,611 were accepted by the programme. The NPU's *Informe de Rendición de Cuentas* (Accountability Report), published in late 2015<sup>34</sup> reported that at that date the programme had 11,888 beneficiaries, of whom 1,810 (only 15% of the total) might be considered HRDs.<sup>35</sup> In 2015 the NPU had a budget equivalent to US\$156 million, and spent almost US\$145 million on protection measures.

If HRDs made up 15% of the beneficiary population, the proportional share of the budget corresponding to them would be some US\$45 million. However, it appears that the NPU assigned many fewer resources to HRDs than to the rest of its beneficiary population. According to the magazine *Semana*, quoting NPU information for May 2015, the average spend on bodyguards and vehicles for the 655 public servants and their families was approximately US\$57,000 - almost four times the US\$14,800 spent on the same items on HRDs or community leaders.<sup>36</sup>

The NPU has been embroiled in a series of scandals involving corruption and mismanagement. In the former case, towards the end of August 2014, high-level NPU officials were accused of using illegal contracts and payments to appropriate more than US\$200,000.<sup>37</sup> Simultaneously, the Unit's Director announced that the body was suffering from a deficit and had been obliged to withdraw protection measures and cut budgets, resulting, for example, in the removal of 15% of overall protection measures (corresponding to 1,131 beneficiaries), 200 bodyguards and 100 vehicles from the security schemes of protected persons.<sup>38</sup>

The *Contraloría General de la República* (the Comptroller General's Office, responsible for overseeing public finances) identified mismanagement in the NPU, including the

unnecessary acquisition of firearms, bullet-proof vehicles and vests, and payment for goods and services (such as tolls, fuel, etc.) without collecting receipts; serious deficiencies and irregularities in contracting; inflated invoicing; the contracting-out of protection; and a failure to adhere to budgeting principles.<sup>39</sup> According to Protection International (2014, 17), "[t]he outsourcing of protection to private security companies in Colombia is evidence that, in addition to providing training to the bodyguards who work with the contracting firms, additional measures are also required to prevent and combat corruption".

Different civil society organisations have been involved in monitoring and evaluating the protection mechanism, in particular *Somos Defensores*, whose *Sistema de Información y Análisis sobre Defensores de Derechos Humanos* (Information and Analysis System on Human Rights Defenders, or SIADDHH),<sup>40</sup> produces annual and thematic reports. The reiterated critiques of the programme made by HRD organisations, alongside a succession of decisions by high-level judicial institutions, have led to its frequent modification<sup>41</sup> in an attempt to create a more structured approach to protection.

However, the results of the programme continue to be severely criticised by *Somos Defensores*, for various reasons: its approach is informed by a logic that sees protection as a purely material matter and that ignores the need for political acts to provide protection; the actions required to prevent acts of aggression against HRDs are not in place, and impunity is prevalent; there is a marked ignorance of the legislative changes affecting the mechanism and of how protection measures should be implemented (in particular on the part of local and regional authorities); and there is a lack of coordinated activity between the authorities. At the level of implementation, there are insufficient financial and human resources; the response to requests for protection is too slow; and protection has effectively been privatised by outsourcing services to commercial security companies.<sup>42</sup>

One change to the programme brought about by the demands of HRD organisations has been the adoption by the NPU in 2012 of a gender policy covering the protection it provides<sup>43</sup> However, the *Comité de Transversalidad de Género* (Gender Mainstreaming Committee), established to implement the focus, was not created until the end of 2014.<sup>44</sup> Subsequently, Resolution 0680<sup>45</sup> was published in October 2015, modifying the membership and functions of the committee. At the time this study was being prepared it was not possible to evaluate the impact of these efforts to establish a gendered approach to the defence of human rights, but we return to the matter below.

33 See [www.upn.gov.co/quehacemos](http://www.upn.gov.co/quehacemos) (Accessed 22/03/16). The Unión Patriótica was a political party created by the FARC guerrilla group during the peace process of the 1980s. Thousands of members have been murdered.

34 See [www.upn.gov.co/atencion-usuario/Paginas/informe-rendicion-de-cuentas-2015.aspx](http://www.upn.gov.co/atencion-usuario/Paginas/informe-rendicion-de-cuentas-2015.aspx) (Accessed 6/12/16).

35 Calculated by adding together the figures for HRDs, trade union leaders and activists, leaders of ethnic or Afro-Colombian groups, and journalists or communications professionals. According to *Semana* magazine, in May 2015 "57% of beneficiaries were mayors and governors, high court judges, ministers, the President of the Republic and his nuclear family, Senators and Members of the House of Representatives, the Vice-President of the Republic and his nuclear family, former Presidents and their family groups, and various former public servants". *Semana* (27 May 2015). "El exorbitante gasto para proteger a los servidores públicos". Available at: [www.semana.com/nacion/articulo/estado-gasta-93000-millones-en-la-seguridad-de-funcionarios/429182-3](http://www.semana.com/nacion/articulo/estado-gasta-93000-millones-en-la-seguridad-de-funcionarios/429182-3) (Accessed 9/11/16).

36 *Revista Semana* (Op.cit.).

37 Fiscalía General de la Nación (2014). "Fiscalía solicitó orden de captura con fines de extradición contra directivo de la NPU". 5 September. Available at: [www.fiscalia.gov.co/colombia/noticias/destacada/fiscalia-solicito-orden-de-captura-con-fines-de-extradicion-contra-directivo-de-la-NPU](http://www.fiscalia.gov.co/colombia/noticias/destacada/fiscalia-solicito-orden-de-captura-con-fines-de-extradicion-contra-directivo-de-la-NPU) (Accessed 10/11/16); *Revista Semana* (2015). "Fiscalía solicitará extradición del exsecretario de la NPU". 20 August. Available at: [www.semana.com/nacion/articulo/fiscalia-solicitar-extradicion-del-exsecretario-de-la-NPU/439249-3](http://www.semana.com/nacion/articulo/fiscalia-solicitar-extradicion-del-exsecretario-de-la-NPU/439249-3) (Accessed 10/11/16).

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

39 Contraloría General de la República (2015). "Unidad Nacional de Protección. Diferentes anomalías encontró la Contraloría General en los diferentes ejercicios de control fiscal". 7 December. Available at: [www.contraloria.gov.co/documents/20181/455513/INTERVENCION+OFICIAL+RENDICI%C3%93N+DE+CUENTAS.pdf/04f2c1fb-397e-48e6-af60-911fba24133f](http://www.contraloria.gov.co/documents/20181/455513/INTERVENCION+OFICIAL+RENDICI%C3%93N+DE+CUENTAS.pdf/04f2c1fb-397e-48e6-af60-911fba24133f) (Accessed 27/09/17).

40 See [www.somosdefensores.org/index.php/en/publications/informes-siaddhh](http://www.somosdefensores.org/index.php/en/publications/informes-siaddhh) (Accessed 02/03/17).

41 At least 15 (in the form of laws, decrees, decree-laws, resolutions, etc.), during the 19 years the programme had been in existence when this document was being prepared.

42 *Somos Defensores*. Conjunto de informes SIADDH. Available at: [www.somosdefensores.org/index.php/en/publications/informes-siaddhh](http://www.somosdefensores.org/index.php/en/publications/informes-siaddhh)

43 See *Resolución 0805* de 14 de mayo de 2012. Available at: [www.upn.gov.co/Resoluciones-circulares](http://www.upn.gov.co/Resoluciones-circulares)

44 See *Decreto 0639* del 25 de noviembre de 2014. Available at: [www.upn.gov.co/normatividad/Documents/Resoluci%C3%B3n%20639-2014%20creacion%20comite%20transseesality%20de%20genero.pdf](http://www.upn.gov.co/normatividad/Documents/Resoluci%C3%B3n%20639-2014%20creacion%20comite%20transseesality%20de%20genero.pdf)

45 See *Resolución 0680* de 9 de octubre de 2015. Available at: [www.upn.gov.co/normatividad/Documents/RES%20%200680%20Octubre%20de%202015.pdf](http://www.upn.gov.co/normatividad/Documents/RES%20%200680%20Octubre%20de%202015.pdf)

In relation to collective measures for the protection of communities, in 2015 the Interior Ministry created the *Ruta de Protección Colectiva*, or Roadmap for Collective Protection, which operates as a part of the programme.<sup>46</sup> Although this had been a permanent demand of the HRDs participating in the *Mesa Nacional de Garantías* (National Round Table on Guarantees) the resolution was neither discussed in - nor agreed by - this body.<sup>47</sup> In November 2015 the NPU convened the first *Comité de Evaluación de Riesgo Colectivo* (Committee for the Evaluation of Collective Risk) in the Department of Cauca.<sup>48</sup> Later, in June 2016, a second, similar, evaluation was conducted concerning indigenous communities from the Emberá Katío nation in the northwestern Pacific coastal region.<sup>49</sup> At the time this report was being prepared it was not possible to evaluate the impact of this focus on collective risk, but it is examined further below.<sup>50</sup>

### *Brazil: the law that never was*

#### A BRIEF OVERVIEW:

This is the second oldest mechanism (established in 2004), created by decree and scarcely modified over the years. It is run by the national-level *Secretaría de Derechos Humanos* (Human Rights Secretariat) in Brasilia and at the end of 2016 was operating in five priority states. This mechanism has also been widely criticised by human rights organisations. The law that is required in order to establish the programme remains in draft form and has been under discussion in the legislature since 2009.

On 26 October 2004, the Brazilian government presented the *Programa de Proteção aos Defensores de Direitos Humanos* (National Protection Programme for Human Rights Defenders)<sup>51</sup>, which was intended to coordinate the actions of different state bodies with responsibility for the protection of HRDs. The programme did not enter into operation until 2005, but only actually functioned during its first two years of existence (Justicia Global: 2016, 37). The *Política Nacional de Proteção aos Defensores de Direitos Humanos* (National Policy for the Protection of Human Rights Defenders) was created by decree in 2007.<sup>52</sup> It

#### **BRAZIL: THE LAW THAT NEVER WAS**

*Draft Law 4575* was presented in 2009 and was debated in different commissions of the Brazilian parliament, generating expectations, as it was to be the world's first HRD law. However, it was never approved, and in 2017 it seems less likely than ever that it will be.

establishes the principles and guidelines governing the provision of protection and support to individuals, organisations and social movements that promote and defend human rights. However, the law intended to institute the policy (which was drafted in 2009), has yet to be approved.<sup>53</sup>

The programme's National Coordination Office is in Brasilia, and is made up of members of the legislative, executive and judicial branches, the prosecuting authorities, and representatives of civil society. Its functions include: training in security and self-protection for HRDs; monitoring regions where human rights violations might reoccur; maintaining a database of complaints; and, with the cooperation of federal bodies, implementing protection measures mentioned in international mechanisms, and investigating threats and complaints. The programme came to have a presence in nine states, albeit with numerous discontinuities (Justicia Global: 2016, 38), but this had been reduced to five by the end of 2016 (Espírito Santo, Minas Gerais, Pernambuco, Ceará and Maranhão).<sup>54</sup> The State Coordinations are responsible for implementing the programme locally. HRDs at risk who live in states other than those with their own programme are dealt with from Brasilia. According to the *Secretaría de Estado de Derechos Humanos* (State Human Rights Secretariat), in April 2016 the programme included 342 HRDs across the country.<sup>55</sup>

Coordination with civil society, and the work of the *Comitê Brasileiro de Defensoras y Defensores de Derechos Humanos* (Brazilian Committee of Human Rights Defenders) - a coordination of HRD organisations founded in 2004<sup>56</sup> - have been fundamental to the creation, elaboration and monitoring of periodic recommendations made to the programme. However, serious difficulties are still apparent, including a lack of resources and technical expertise; the absence of real participation in the programmes by the security forces; the lack of continuity in the State-level programmes caused by the excessive bureaucratisation of implementation; the fact that the mechanism employs a policing model of protection, which is considered to be both insufficient and merely palliative; and the absence of measures to deal with the structural causes of violence against HRDs, such as, for example, actions to ensure abuses are investigated or to legitimise human rights defence work.<sup>57</sup>

More recently the Brazilian Committee of Human Rights Defenders expressed concern when responsibility for the programme was assigned to the *Ministério da Justiça e Cidadania* (Ministry of Justice and Citizenship) as part of a process to merge various bodies including the Human Rights Secretariat, on the grounds that its coverage would be weakened as a result.<sup>58</sup> In April 2016 civil society participation in the programme's National Coordination was curtailed,

46 *Resolución 1085* de agosto de 2015.

47 Personal communication, Protection Desk Colombia: these requests tend to be made in the context of the National Round Table on Guarantees (a space for dialogue and agreement on the protection of HRDs), but this resolution specifically was neither consulted nor agreed within this space.

48 See [www.upn.gov.co/noticias-noviembre-004](http://www.upn.gov.co/noticias-noviembre-004) (Accessed 10/11/16).

49 See [www.upn.gov.co/noticias-junio-2016-03](http://www.upn.gov.co/noticias-junio-2016-03) (Accessed 10/11/16).

50 Protection Desk Colombia (a joint project co-implemented by PI and Pensamiento y Acción Social - PAS) is currently conducting research on this focus on risk and on collective protection measures.

51 See [www.sdh.gov.br/assuntos/combates-as-violacoes/programas/defensores-dos-direitos-humanos-1](http://www.sdh.gov.br/assuntos/combates-as-violacoes/programas/defensores-dos-direitos-humanos-1) (Accessed 22/03/16).

52 *Decree 6044* del 12 de febrero de 2007. See [www.lexml.gov.br/urn:urn:lex:br:federal:decreto:2007-02-12:6044](http://www.lexml.gov.br/urn:urn:lex:br:federal:decreto:2007-02-12:6044) (Accessed 02/03/17).

53 *Proyecto de Ley 4575/2009*. Available at: [www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=422693](http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=422693) (Accessed 10/11/16). See also De Marchi Pereira et al. (2014). Available at: <http://focus.protectionline.org/es/nueva-publicacion-focus-2014> (Accessed 23/03/16).

54 Email interview with leading Brazilian NGO (8/12/16).

55 See [www.sdh.gov.br/assuntos/combates-as-violacoes/programas/defensores-dos-direitos-humanos-1](http://www.sdh.gov.br/assuntos/combates-as-violacoes/programas/defensores-dos-direitos-humanos-1) (Accessed 22/03/16).

56 Initially, this committee was made up of representatives from Justicia Global, Terra de Direitos, Conselho Indigenista Missionário, Comissão Pastoral de la Tierra and the Movimento Nacional de Direitos Humanos. (Justicia Global; 2016, 37-38)

57 De Marchi Pereira et al. (Op.cit.).

58 See <http://terradedireitos.org.br/2015/10/14/carta-aberta-do-comite-Brazileiro-de-Human-Rights-Defenderas-e-Human-Rights-Defenders-de-direitos-humanos/> (Accessed 11/11/16) and Justicia Global (2016, 41).

along with other backward steps (Justicia Global: 2016, 38). By late 2016, the concerns expressed went even further, to the extent that some HRDs now speak of the dismantlement of protection policies in the country.<sup>59</sup>

## The Mexican and Honduran laws: towards a networked system of government

### *Mexico: legislation represents a step forward*

#### A BRIEF OVERVIEW:

Established in 2012, Mexico saw the introduction of the first protection mechanism in Latin America governed by statute. The mechanism is the responsibility of the Secretaría de Gobernación (Interior Ministry) although in large part, because of Mexico's federal structure, its actual implementation depends on agreements signed with State governments. Civil society organisations (of journalists and HRDs) have four representatives on the governing body. In May 2016 the programme was responsible for 316 cases. Successive analyses and evaluations carried out by civil society organisations have resulted in numerous criticisms of the mechanism, including its low staffing levels (37 people in 2016) and its lack of national coverage. In general, Mexico's HRD organisations argue that the programme is ineffective and that it fails to inspire confidence.

Thanks to the pressure exerted by national and international organisations and institutions, and to the concrete proposals made by HRD and journalist organisations, Mexico became the first country in the Americas to promulgate a law to protect HRDs and journalists on 25 June 2012, following the signing of a series of agreements. The law was subsequently regulated, and guidelines developed covering protection measures and risk evaluation.<sup>60</sup> Both the law and its associated documentation had been amply consulted in a process that counted with the active participation of HRD organisations.

The mechanism created by the Law began functioning at the end of 2012, after the establishment of its Advisory Council. In addition to the Council, the mechanism also counts with an Executive Coordination comprised of three Units (Receipt of Cases and Rapid Reaction, Evaluation of Risks, and Prevention, Monitoring and Analysis). In May 2016 the mechanism provided protection to 316 at-risk journalists and HRDs.<sup>61</sup>

Civil society organisations have conducted several evaluations of the mechanism, which as well as recognising certain advances, have also made significant criticisms.

#### THE MEXICAN MECHANISM'S ADVISORY COUNCIL

This Advisory Council is the consultative and advisory body of the Governing Board. It is made up of nine representatives of HRDs and journalists (of whom four rotate membership in the Governing Board). Its members are unpaid. It has broad responsibilities (article 16 of the Law) and controls its own agenda. We believe it plays a significant role as a bridge between civil society and the protection mechanism.

In 2013 a group of 80 Mexican human rights organisations presented their initial critique of the mechanism to the IACHR.<sup>62</sup> In 2014 and 2016 analyses were published by several international NGOs,<sup>63</sup> while 2015 saw the appearance of the *Segundo diagnóstico sobre la implementación del mecanismo de protección para personas defensoras de derechos humanos y periodistas*, or Second Analysis of the Protection Mechanism for the Protection of Human Rights Defenders and Journalists (Espacio OSC: 2015, 61). This analysis argued that the results of the mechanism remained disappointing and that state institutions continued to demonstrate a lack of political will at all levels (federal, state and municipal). It further maintained that the mechanism's risk evaluations were flawed and lacking in transparency, and that "the deficiencies in the risk analysis were, and have been, resolved during [meetings of] the Governing Board thanks to the intervention of the four civil society advisors and the accompaniment of the organisations belonging to the *Espacio OSC* (Civil Society Organisation Space)" (Espacio OSC: 2015, 53). The analysis also suggested that follow up to cases was inadequate, impeding appropriate responses to the identified risk and that the programme lacked personnel with the necessary training. In relation to implementation across the country, the analysis recognised that cooperation agreements had been signed with 32 federal bodies. However, these agreements were not binding and the Federal Government lacked the capacity to enforce implementation, with the result that the local authorities ignored the instructions imparted by the mechanism. In fact, a 2015 civil society observation mission found that the programme was not implemented by all federal agencies.<sup>64</sup>

Several federal states have established their own mechanisms. The Mexico City example was created by statute in 2015.<sup>65</sup> However, its deficiencies led some members of its Advisory Council to withdraw from the body. The criticisms levelled against it mentioned a lack of interest on the part of the city's government, its repeated operational failings, its inadequate budget, the failure to implement measures and jurisdictional conflicts between the Mexico City authorities and the federal mechanism. The organisations included a series of recommendations in their letter of resignation from the Mexico City mechanism, including the importance of ensuring that the members of the Executive Secretariat were suitably qualified, full disclosure of budgetary information, the preparation of three-monthly progress reports and the adequate implementation of protection measures.<sup>66</sup>

59 Justicia Global (2016, 38) and email interview with leading Brazilian NGO (8/12/16).

60 See [www.derechoshumanos.gob.mx/es/Derechos\\_Humanos/Ley\\_para\\_la\\_Proteccion\\_de\\_Personas\\_Defensoras\\_de\\_Derechos\\_Humanos\\_y\\_Periodistas](http://www.derechoshumanos.gob.mx/es/Derechos_Humanos/Ley_para_la_Proteccion_de_Personas_Defensoras_de_Derechos_Humanos_y_Periodistas) (Accessed 23/03/16).

61 See <https://www.wola.org/analysis/what-is-mexico-doing-to-protect-human-rights-defenders-and-journalists/> (Accessed 10/11/16).

62 Report presented during the 147 IACHR Period of Sessions (14 March 2013). See <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=131&page=2> Report Available at: [www.fundar.org.mx/mexico/pdf/Audiencia-147Situacion-General-de-Derechos-Humanos-en-Mexico.pdf](http://www.fundar.org.mx/mexico/pdf/Audiencia-147Situacion-General-de-Derechos-Humanos-en-Mexico.pdf) (Accessed 02/03/17).

63 PBI, WOLA, LAWG and Front Line (2014), and WOLA and PBI (2016). See also, Pablo Romo Cedano, *presidente del Consejo Consultivo del Mecanismo de Protección a Personas Defensoras de Derechos Humanos y Periodistas*. "El Mecanismo para la Protección de Personas Defensoras y Periodistas". In: Protection International. *Focus 2014. Public policies for the protection of human rights defenders. Latest Trends*. Available at: <http://focus.protectionline.org/focus-2014/>

64 Misión de Observación Civil sobre la situación de las personas defensoras en México (2015). *En defensa de la vida*. Available at: [http://www.cmdpdh.org/publicaciones-pdf/cmdpdh\\_en\\_defensa\\_de\\_la\\_vida\\_conclusiones\\_de\\_la\\_mision\\_de\\_observacion\\_civil\\_sobre\\_situacion\\_de\\_personas\\_defensoras\\_en\\_mexico\\_2015.pdf](http://www.cmdpdh.org/publicaciones-pdf/cmdpdh_en_defensa_de_la_vida_conclusiones_de_la_mision_de_observacion_civil_sobre_situacion_de_personas_defensoras_en_mexico_2015.pdf) (Accessed 23/03/16).

65 See [http://data.consejeria.cdmx.gob.mx/portal\\_old/uploads/gacetas/4c73fe0d89dbcbea67720aad169b92de.pdf](http://data.consejeria.cdmx.gob.mx/portal_old/uploads/gacetas/4c73fe0d89dbcbea67720aad169b92de.pdf) (Accessed 10/11/16).

66 Díaz, Gloria Leticia (2014). "Se desmorona consejo del Mecanismo de Protección a Periodistas del DF". In: *Proceso*, 14 May. Available at: [www.proceso.com.mx/?p=372259](http://www.proceso.com.mx/?p=372259) (Accessed 23/03/16).

Also in 2015, the state of Oaxaca created the *Defensoría Especializada para la protección de Periodistas, Defensoras y Defensores de Derechos Humanos* (Specialised Protection Mechanism for Journalists and Human Rights Defenders)<sup>67</sup> as a dependency of the *Defensoría de los Derechos Humanos del Pueblo de Oaxaca*, (Office of the Human Rights Ombudsman of the People of Oaxaca).<sup>68</sup> Once again, civil society organisations played a fundamental role in creating this specialised mechanism.<sup>69</sup> Several other states, including Hidalgo, Guerrero, Baja California, Coahuila, San Luis Potosí and Veracruz have also created their own mechanisms.<sup>70</sup> It is beyond the scope of this study to evaluate each of these state laws, but it is to be hoped that they will at least keep step with the national law. In fact, the mechanisms differ from each other, a situation that gives rise to grievances, as in general HRDs are able to seek protection from only one of them.

### *Honduras: the perfect example of a protection law (on paper)*

#### A BRIEF OVERVIEW

This was the second protection mechanism established by statute in the Americas (approved in May 2015). Operating within a government ministry (the specific identity of which has changed during the lifetime of the mechanism), after one year of operation it had responded to the cases of only 25 HRDs and journalists. While it is too early to evaluate its results, because of the brief period of its existence, the mechanism clearly faces significant challenges associated with the structural weaknesses of the country and the high number of grave acts of aggression committed against HRDs.

On 15 May 2015, the Honduran National Congress approved the *Ley de Protección para las y los Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia* (Law for the Protection of Human Rights Defenders, Journalists, Communications Professionals and Justice Operators),<sup>71</sup> and as a result, Honduras became the second state in the Americas – after Mexico in 2012 - to pass legislation of this kind.

Once again, the law was the culmination of an extensive process during which civil society groups had expressed their concerns, applied pressure, and presented complaints. In addition, criticisms had been expressed by the Human Rights Unit of the Honduran Security Ministry,<sup>72</sup> and recommendations made by bodies including the IACHR, the UN Human Rights Council

and the UN Special Rapporteur on Human Rights Defenders.<sup>73</sup> But it was an IACtHR judgment<sup>74</sup> that led the *Secretaría de Justicia y Derechos Humanos* (Justice and Human Rights Ministry) to present a draft law in late 2012, which was then put out to consultation before suffering a series of delays. In 2014 the Ministry presented the draft law, which was eventually approved by Congress in 2015, following a lengthy and eventful consultation process involving national and international organisations. On 20 August 2016 the law's regulations were promulgated, establishing that it was to operate under the auspices of the Ministry of Human Rights, Justice, Government and Decentralisation.

The stated objective of the Honduran law is to recognise, promote and protect the human and other fundamental freedoms of all individuals and organisations dedicated to the promotion and defence of human rights. It creates several bodies, including the *Consejo Nacional de Protección* (National Protection Council), the *Dirección General del Sistema de Protección* (General Directorate of the Protection System) and the *Comité Técnico* (Technical Committee). It also authorises different state institutions to grant protection measures to HRDs who are facing danger as a result of their activities.

In normative terms the new law is an advance and has the potential to improve protection for HRDs in Honduras. It is positive that it incorporates key aspects of the UN Declaration on Human Rights Defenders, and recognises the work of HRDs, the risks they face and the importance of their work. But it also faces serious challenges, principally associated with reversing the climate of stigma against HRDs, which is promoted from the highest echelons of government, guaranteeing its adequate implementation, and ensuring it has sufficient resources to operate (Protection International: 2015).

By July 2016 the mechanism had accepted only 25 cases despite the fact that Honduras is a country with high levels of attacks against HRDs. Already at an IACHR hearing in December 2016, several organisations had expressed concerns about the way it was functioning.<sup>75</sup> At the time of publication, the mechanism had not been in operation long enough for it to be properly evaluated.

67 See [www.derechoshumanosoaxaca.org/noticia.php?idnoticia=297](http://www.derechoshumanosoaxaca.org/noticia.php?idnoticia=297) (Accessed 23/03/16).

68 An autonomous state body, created by statute in 2012. See [www.derechoshumanosoaxaca.org/legislacion.php](http://www.derechoshumanosoaxaca.org/legislacion.php) (Accessed 23/03/16).

69 *Informe defensores de derechos humanos en la mira* (2016).

70 For a detailed list, see OSC: 2015, 111-115.

71 *Decree No. 34-2015*, del 15 de mayo de 2015. Available at: [www.sdhjgd.gob.hn/biblioteca-virtual/documentos-de-interes/298-ley-de-proteccion-para-las-y-los-defensores-de-derechos-humanos-periodistas-comunicadores-sociales-y-operadores-de-justicia/file](http://www.sdhjgd.gob.hn/biblioteca-virtual/documentos-de-interes/298-ley-de-proteccion-para-las-y-los-defensores-de-derechos-humanos-periodistas-comunicadores-sociales-y-operadores-de-justicia/file) (Accessed 23/03/16).

72 The Honduran Human Rights Unit was responsible for implementing and monitoring the protection measures issued by the Inter-American Human Rights System. However, the work of this body has been harshly criticised by civil society because of its many limitations and the ineffectiveness of the protection measures offered to beneficiaries (IACHR: 2011, par. 465).

73 In the November 2010 Universal Periodic Review, the Human Rights Council included six recommendations concerning the protection of HRDs; in her report on her visit to the country in February 2012 on the situation of HRDs, the UN Special Rapporteur on Human Rights Defenders, Margaret Sekaggya, recommended the adoption of a legal framework and policies for the protection of people who defend human rights. Margaret Sekaggya (2012). *Mission to Honduras*. Doc A/HRC/22/47/Add.1.

74 IACtHR. (2013). *Case of Luna López v. Honduras. Judgment of October 10 (Merits, Reparations and Costs)* Series C No. 269. At the proposal of CEJIL the author of this study presented expert testimony, which was cited by the Court in its Judgment (149 Period of Sessions, 28 October 2013), which criticised the failure of the Honduran state to implement the precautionary measures that had been requested to protect at-risk HRDs. See: [www.oas.org/es/IACHR/audiencias/Hearings.aspx?Lang=en&Session=132](http://www.oas.org/es/IACHR/audiencias/Hearings.aspx?Lang=en&Session=132).

75 Public Hearing at the 159 Period of Sessions of the IACHR (1 December 2016). See [www.oas.org/es/IACHR/audiencias/Hearings.aspx?Lang=es&Session=146](http://www.oas.org/es/IACHR/audiencias/Hearings.aspx?Lang=es&Session=146).

## Guatemala: a fledgling policy

### A BRIEF OVERVIEW

There is no protection mechanism in Guatemala per se, although measures have been taken to provide protection since 2004. In 2014 the IACtHR ordered the Guatemalan state to create a public protection policy, but by mid 2017 a possible draft policy was still under construction (in consultation with civil society and other sectors).

In a judgement of 28 August 2014, the IACtHR ordered the Guatemalan state to “implement an effective public policy for the protection of Human Rights Defenders”.<sup>76</sup> In the absence of substantial advances by the state, in February 2016 the IACtHR required the Guatemalan government to report on its progress towards fulfilling this part of the judgment by May of the same year.<sup>77</sup> But the policy had still not been completed by the mid-year point.

In 2004, ten years before this IACtHR judgment, the *Unidad Coordinadora de Protección para Defensores de Derechos Humanos, Administradores y Operadores de Justicia, Periodistas y Comunicadores Sociales* (Coordinating Unit for the Protection of Human Rights Defenders, Justice Administrators and Operators, Journalists and Communications Professionals) had been created<sup>78</sup>, under the jurisdiction of the *Comisión Presidencial de Derechos Humanos*, (Presidential Human Rights Commission, COPREDEH). The Unit’s function was to coordinate with other state institutions to ensure the implementation of protection measures ordered by international human rights bodies. In 2009 the government presented its *Propuesta de Política Pública de Prevención y Protección para DDH, Sujetos Procesales, Periodistas y Comunicadores Sociales* (Proposed Public Prevention and Protection Policy for HRDs, Parties to Legal Proceedings, Journalists and Social Communicators), along with a *Plan de Acción Nacional de Protección* and a *Catálogo de Medidas de Protección* (National Action Plan for Protection and Catalogue of Protection Measures).<sup>79</sup> Despite the fact that a Governmental Agreement was signed, these initiatives were never approved.

In 2008, the *Instancia de Análisis de Ataques contra Defensores de Derechos Humanos en Guatemala* (Unit for the Analysis of Attacks against Human Rights Defenders in Guatemala)<sup>80</sup> was established, with the following functions: analyse the patterns of attacks on HRDs; develop recommendations aimed at the responsible authorities concerning the investigation of these cases; recommend technical criteria to be used by the authorities when determining the levels of risk, threat or vulnerability faced by HRDs; and gather information on the fulfilment of prevention and protection measures in order to evaluate the effectiveness of actions taken to reduce risk. This body is composed of representatives of the *Dirección General de Inteligencia*

*Civil* (General Directorate of Civil Intelligence), the Prosecuting Authorities and the National Civilian Police, and of national and international NGO.<sup>81</sup>

For several years the Unit has been the principal forum in which governmental bodies and HRD organisations have met to discuss protection, and it has had some significant results. However, it has been inactive for long periods of time, a factor that has led to questions being raised about its effectiveness. In 2011 the IACHR indicated that “its institutional status is fragile, temporary, and without the support needed from authorities in the Interior Ministry”, a situation that had led to “a lack of results and a failure to identify patterns of attacks” (IACHR: 2011, 97). In 2012, a total of 32 Guatemalan and international organisations wrote to the President of the Republic criticising the Unit and suggesting ways to improve it.<sup>82</sup> When no reply was forthcoming, the HRD organisations withdrew from the Unit, citing its poor results, and communicating their concerns to the IACHR.<sup>83</sup>

In 2013 the Office of the UN High Commissioner for Human Rights (OHCHR) in Guatemala echoed this disquiet, arguing that, in spite of the efforts that had been made, the Unit had ceased to be effective, and that “[t]he representatives of the institutions participating in the Unit were replaced by technical officers, which contributed to the decision by some civil society organizations to no longer participate in the Unit”.<sup>84</sup> Throughout 2015, several Guatemalan HRD organisations recognised that improvements had been made in the functioning of the Unit and began to participate in it again. In March 2016 inter-institutional agreements were reached between the Interior Ministry, the *Fiscalía* (Public Prosecutor’s Office) and COPREDEH in order to improve official participation in it.<sup>85</sup>

Following the UN Human Rights Council’s Universal Periodic Review (UPR) in October 2012, the Guatemalan government committed to creating a protection mechanism for journalists and communications professionals.<sup>86</sup> In late November 2013, with the support of UNESCO and the OHCHR, the government unveiled its initial proposal for the mechanism<sup>87</sup>. This involved plans to create a new dedicated unit that would be responsible for receiving

76 IACtHR (2014). *Case of Human Rights Defender et al. v. Guatemala. Judgment of August 28, 2014 (Preliminary objections, merits, reparations and costs)*. Judgment. Series C 283, operative point No. 14, 28 August. See [www.corteidh.or.cr/docs/casos/articulos/seriec\\_283\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_283_esp.pdf) (Accessed 02/03/17). See also: Protection International (2014, 15). Invited on this occasion by UDEFEGUA, the author of this study provided expert testimony that was accepted by the IACtHR in its judgment on the case.

77 See [www.corteidh.or.cr/docs/supervisiones/defensor\\_23\\_02\\_16.pdf](http://www.corteidh.or.cr/docs/supervisiones/defensor_23_02_16.pdf) (Available only in Spanish. Accessed 23/03/16).

78 By *Acuerdo Interno 11-2004* of the *Comisión Presidencial de Derechos Humanos de Guatemala* (Presidential Human Rights Commission - COPREDEH).

79 See Martín and Eguren (2011, anexos 6 and 8).

80 *Acuerdo Ministerial 103-2008*. See Martín and Eguren (2011, anexo 7).

81 Initially, the body was created for a period of four years, but its mandate was extended by a further four years in 2012. In 2015 it had 22 investigators, a dedicated telephone line was created to improve the process of receiving complaints and a protocol was established to provide immediate protective responses for trade unionists. Ministerio de Gobernación (2015). *Analizan protección de Defensores de Derechos Humanos* 20 January. Available at: [www.mingob.gob.gt/index.php?option=com\\_k2&view=item&id=8603%3AAnalizan-proteccion-de-defensores-de-derechos-humanos&Itemid=372](http://www.mingob.gob.gt/index.php?option=com_k2&view=item&id=8603%3AAnalizan-proteccion-de-defensores-de-derechos-humanos&Itemid=372)

82 *Carta abierta de ONG internacionales al Presidente de la República de Guatemala, Otto Pérez Molina* [Open letter from international NGOs to the President of Guatemala, Otto Pérez Molina], dated 21 November 2012. *Fortalecer la Instancia de Análisis de Ataques a Defensores de Derechos Humanos y mejorar la protección a los y las Defensores y Defensoras de Derechos Humanos*. [Strengthen the Body Responsible for Analysing Attacks against Human Rights Defenders] Available at: [www.ciel.org/Publications/CartaInstancia\\_HRDsH\\_Nov2012.pdf](http://www.ciel.org/Publications/CartaInstancia_HRDsH_Nov2012.pdf) (Accessed 02/03/17).

83 IACHR Hearing on the Situation of Human Rights Defenders in Guatemala during the 149th Period of Sessions, 28 October 2013. See <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=132>

84 UN High Commissioner for Human Rights. *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala*. (2013). A/HRC/25/19/Add.1, par. 49. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/101/61/PDF/G1410161.pdf?OpenElement>

85 See [www.mingob.gob.gt/index.php?option=com\\_k2&view=item&id=1297:fortaleceran-proteccion-a-defensores-de-derechos-humanos-en-el-pais&Itemid=667](http://www.mingob.gob.gt/index.php?option=com_k2&view=item&id=1297:fortaleceran-proteccion-a-defensores-de-derechos-humanos-en-el-pais&Itemid=667) (Accessed 23/03/16).

86 Par. 102, Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC228\\_English.PDF](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC228_English.PDF) (Accessed 23/03/16).

87 See [www.unesco.org/new/es/media-services/single-view/news/guatemala\\_launches\\_a\\_proposed\\_mechanism\\_for\\_the\\_protection\\_of\\_journalists/#.VvJpx3pu5ex](http://www.unesco.org/new/es/media-services/single-view/news/guatemala_launches_a_proposed_mechanism_for_the_protection_of_journalists/#.VvJpx3pu5ex) (Accessed 23/03/16).

complaints and ensuring judicial investigations were conducted so that journalists could pursue their activities in safety. In February 2014 a mechanism was created, comprising of a *Mesa de Alto Nivel* (High Level Round Table) and a *Mesa Técnica* (Technical Round Table). A Coordinator was appointed in the middle of the year. The members of these round tables were drawn from the *Secretaria de Comunicación Social de la Presidencia* (Presidential Communications Office), the Interior Ministry, the Prosecuting Authorities, the *Procuraduría de los Derechos Humanos* (Office of the Human Rights Ombudsman) and COPREDEH<sup>88</sup>. They received technical accompaniment from the OHCHR and UNESCO. The round tables were tasked with developing a project to establish a protection mechanism for journalists in Guatemala. The work continued during 2015, a series of consultations being conducted with journalists and communications professionals in the capital Guatemala City and in the regions. The mechanism was expected to commence operations in 2017.

**A brief initial comparison of some key aspects of the mechanisms**

This section provides a brief comparison between certain key aspects of these mechanisms, which it will be useful to bear in mind when reading the rest of the study.

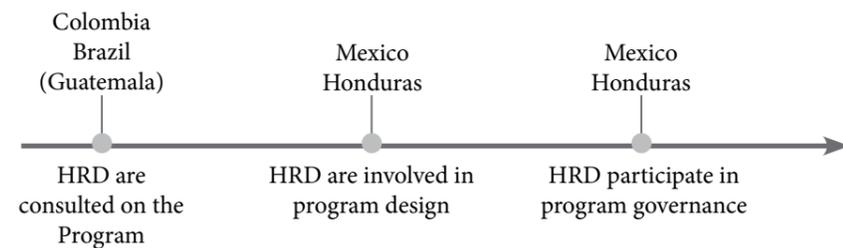
**What legal instrument was used to establish the mechanism?**

**Criterion:** statutes provide more normative stability, as different state institutions must be involved if they are to be altered or repealed, while decrees depend merely on whichever government happens to be in power.

| DECREE             | LAW                |
|--------------------|--------------------|
| Colombia<br>Brazil | Mexico<br>Honduras |

**What is the extent of HRD participation in the mechanisms?**

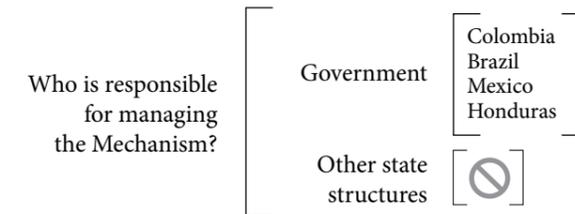
**Criterion:** the participation of HRDs in the design and governance of the mechanism.



<sup>88</sup> Translator's note: the names of the different state bodies with responsibility for overseeing the actions of public institutions and servants and for prosecuting alleged crimes ("Control Bodies") are difficult to translate into English for three principal reasons: a) they often have no direct equivalents in Common Law traditions, b) the accepted translations for institutions from different countries with the same functions may be different and c) in some cases (notably in the case of different *Procuradurías*), their functions are in fact very different.

**Who is responsible for managing the mechanism?**

**Criterion:** all of these public policies are in the hands of governments.



**HRD PROTECTION PROGRAMMES IN OTHER COUNTRIES AND REGIONS**

It is beyond the limited scope of this study to examine protection schemes in countries outside the Americas. It is sufficient to emphasise that the most advanced protection initiatives have been developed in this continent, and that two of only three mechanisms in the world that are backed by legislation (Mexico and Honduras, the other being Côte d'Ivoire) are found there. Here, we simply summarise the situation elsewhere, providing a list of the other initiatives that have been established, and indicating sources where further information may be obtained, namely: Focus, the global observatory on national policies on defenders' protection (Protection International), which has provided extensive information and annual reports on the topic since 2013 and is available at <http://focus.protectionline.org/>. Also useful is the International Service for Human Rights (ISHR) model national law to protect Human Rights Defenders, available at [www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders](http://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders).

**THE AMERICAS**

Peru: an incomplete initiative was started in 2009, but has advanced no further; other initiatives and debates in 2016.  
Paraguay: parliamentary debates during 2017.

**AFRICA**

Côte d'Ivoire: Law 2014-388, 20 June 2014.  
Burkina Faso: Law 039/2017/AN, 27 June 2017.  
Democratic Republic of Congo: Provincial Edict, Province of South Kivu, January 2016. National Law approved by the Senate in 2017.  
Mali, Cameroon: draft legislative proposals.  
Uganda: draft decree or law; debates during 2017.  
Burundi, Kenya, Niger, Sierra Leone: incomplete initiatives.

**ASIA**

Philippines: draft law on HRDs in 2013; new debates during 2017.  
Thailand: incomplete initiative, no progress to date.  
Nepal: draft decree in 2009, no further developments; other initiatives during 2016.

## 1.4. A critical analysis of the translation of international and regional normative frameworks into domestic legal frameworks in the Americas

*This chapter provides a critical analysis of the translation of international norms to domestic frameworks in the Americas, bearing in mind that the content of the norms does not remain static during the process.*

International norms are incorporated into domestic legal frameworks through complex processes that depend on many factors. Several different disciplines have taken an interest in examining these processes. For now, we are interested in focusing on the fact that these international norms do not remain static during the process of their incorporation, and that these changes can be analysed (i) as discourses, and (ii) as stages that occur during each process of adoption.

### The dissemination of international norms at the domestic level: creating discourses around the contents of the norms it has been decided to adopt

Some authors<sup>89</sup> treat international norms as “discourses” conditioned by the power relations that exist between the different entities involved in their diffusion, by the existence of other, prior, domestic norms, and by certain cognitive frameworks and systems of meaning. They argue, for example, that the dynamic, changing and even ambiguous nature of discourse on norms is a “doubled edged sword” as it allows them to be adapted as they are adopted, but may also lead to the champions of a norm losing control over it once it has been adopted.

Bearing this in mind, we argue that the idea of a restricted discourse on “the protection of some at-risk HRDs” has prevailed over the broader alternative found in the recommendations quoted at the start of this chapter, namely the right to defend human rights. In other words, a focus on individual risk and security has been substituted for more classical human rights discourses that focus primarily on the dissemination of norms. Why is this the case? In deliberative terms it is perhaps true that those governments that have adopted international norms did so in an attempt to create their own discourses, consistent with the UN Declaration on HRDs, choosing the most visible aspects of the matter in the process, namely that HRDs have been attacked and murdered. In relation to this restricted discourse, governments might perhaps have opted not to adopt new norms but to see which aspects of the problem could be dealt with using existing tools such as, for example, protection programmes for high status individuals or victims and witnesses. Accordingly, they would be pursuing a certain resonance with both the external context (reacting to a problem) and the internal (adhering to the logic of security used in the existing programmes mentioned above), all as part of a single endeavour.

This view of security might offer two further advantages for governmental discourse. Firstly, it would make the programme more acceptable in the short term, as it would demonstrate immediate results albeit it only in terms of implementation, not results. That is: a dedicated

budget (also supported, in some countries, by the international community), a given number of protection measures implemented for a corresponding number of at-risk HRDs, etc. Secondly, it might to an extent permit the problem to be “de-politicised”: an exclusive focus on security allowing the profound social injustices and human rights violations at the root of acts of aggression against HRDs to be ignored, only the symptoms - namely the acts of aggression themselves - being dealt with.

### Changes suffered by norms during their translation to the domestic sphere

The incorporation of norms into domestic frameworks occurs in stages, during which they are interpreted, or translated to the domestic level. This translation process is not linear, but undergoes advances and setbacks according to the power and interests of the different parties involved. Some authors identify three stages in the translation process: how the norms are translated into national discourse (or how they are interpreted), how they are translated into the form of a law or decree, and how they are translated in order to be implemented.<sup>90</sup> During these stages, different forms of advance and resistance to the norm are manifested, as may be seen in Table 1:

TABLE 1: THE PROCESS OF TRANSLATING A NORM (BASED ON ZIMMERMAN: 2016, 106)

|  | RESISTANCE  | ↔  | FULL ADOPTION  |
|--|---|--|--|
| <b>First stage:</b><br>Translation into national discourse | Domestic frameworks and practices contest the validity of the norm. | The validity of the norm is not contested, but it is <b>reinterpreted</b> in the light of domestic frameworks and practices.     | The validity of the norm is not contested, and it is interpreted in accordance with the interpretation of the international community. |
| <b>Second stage:</b><br>Translation into law or decree     | The norm is not translated into a law or decree.                    | The norm is <b>remade</b> when it is translated into a law or decree (things are added, or left out, modifications are made...). | Full adoption of the international standards.  |
| <b>Third stage:</b><br>Translation into implementation     | There is no translation into implementation.                        | The norm is <b>remade</b> when it is implemented (things are added, or left out, modifications are made...).                     | Full implementation.   |

One particularly significant aspect of this table is that the different cells allow different combinations to occur during the translation of the norm, as each stage might be characterised by varying degrees of resistance or acceptance. Zimmerman (2016) highlights two of these potential combinations:

### The embedding of the norm:

Norms are translated by “embedding” when their validity is rejected by internal discourse (first stage), even though the government adopts them by decree anyway (second stage) and tries to implement them in line with international standards (third stage). This “embedding”

89 See Krook and True (2012).

90 Acharya (2004) and Zimmerman (2016). This analysis is re-worked in more detail by Eguren (2017).

might occur as a result of an international context that applies considerable pressure on a government to adopt a norm, and/or when a government is weak and has little room for manoeuvre and is therefore unable to reject this pressure. In our opinion, the adoption of the HRD protection law in Honduras (and perhaps in Guatemala) might be an example of the embedding of the norm, as in both cases the process began in the wake of multiple IACtHR judgments, which are binding. The Honduran law incorporates the principal advances that have been made at regional level (second stage), though little can be said about its implementation (third stage). However, concerning the first stage, we believe that the frameworks and practices both of the government and of the local elites in Honduras roundly contradict the contents of the UN Declaration.

### Reshaping the norm:

Norms are reshaped when governments are less susceptible to international pressure concerning their adoption: they are reinterpreted from the very beginning, and a unique discourse created that is maintained during the two subsequent stages.

Do the Colombian, Mexican or Brazilian cases provide examples of translation by reshaping the norm? We believe not, for several reasons. On the one hand, the norms are not adopted in these countries in response to the validity of their international originals but because there was no prior, alternative, discourse of reference in the international sphere. In point of fact they are established in agreement with the international community. These were the first countries to adopt the UN Declaration on HRDs domestically. That is, a shared discourse was constructed on the hoof, with the intention of reflecting an international standard that had been inexactly defined during the first stage, and which, when it was given legal form during the second, was reformulated to include “protection against acts of aggression”, but left out aspects that are key to ensuring the defence of human rights. This translation was then reformulated again during the third stage, as it was interpreted in the form of restrictively defined risk evaluations, and of a narrow catalogue of scarcely effective protection measures that are, nevertheless, perfectly aligned with the overarching logic governing the translation of the Declaration.

We propose calling this third model the “agreed reduction” model, in order to differentiate it from the two models presented above. In order to understand this model better, we must return to the starting point, namely the upper right-hand cell of Table 1. Domestic discourses on HRD protection programmes have been built in a way that is consistent with the discourse of the “international community”, around which there is considerable consensus. It is enough to look at the numerous countries that have developed instructions or guidelines on the defence of human rights, or that have signed resolutions or declarations on the matter. In addition, successive UN Special Rapporteurs on the Situation of Human Rights Defenders have cooperated closely with HRD organisations, both internationally and in the countries they have examined, for example during their *in situ* visits, at UN events in Geneva, or while preparing their periodic reports and recommendations.<sup>91</sup> The same might be said of the ample and fluid collaboration with the IACHR’s Rapporteurs on Human Rights Defenders<sup>92</sup> or those

of the African Commission on Human and Peoples’ Rights.<sup>93</sup> In addition, an examination of the sizeable body of reports and analyses compiled by HRD organisations on the rights situation in their countries<sup>94</sup> uncovers no direct criticism of the discourses on the protection of HRDs developed by the UN or by regional bodies.

This homogenous international community discourse, which might be classed as positive, is based on a prolonged agreement on its terms between civil society, governments, the UN and regional bodies. Successive governments of the five countries examined here have initiated and maintained HRD protection programmes that, as we have seen, have been constructed “voluntarily”, according to the terms of this concordant international discourse. For this reason, we argue that the existing national programmes have been built on the basis of an “agreed reduction” of existing domestic discourses according to an international discourse that is both homogenous (i.e., it is shared by governments, the UN and civil society) and general (it is constructed in general terms, on the basis of the Declaration). However, it should not be forgotten that:

- This adoption of domestic norms does not seem to have had a positive impact on the enormous restrictions on the right to defend human rights experienced by HRDs in countries where programmes have been established, nor in the rest of the world. Amnesty International’s 2017 report on HRDs includes 281 cases of murdered HRDs globally, an increase of 80% over the number documented the year before (Amnesty International: 2017). 75% of these cases occurred in the Americas, the region in which the countries examined here are to be found.
- During the years that have passed since the promulgation of the UN Declaration on HRDs numerous standards and recommendations have been produced by authoritative organisations.

For these two significant reasons we believe that it is important to conduct a critical review of the clear concordance between the domestic and international discourses, posited in the “agreed reduction” model. As might be expected, we start this critical review with an analysis of the construction of the international consensus. In this study we indicate some aspects that might usefully inform such a critical review: the limited perspective on security that characterises current protection programmes, the substitution of a focus on the right to defend human rights for a view that considers HRDs to be objects, or recipients, of protection and the absence of a true *intersectional* focus incorporating gender, social and class discrimination, etc.

Finally, but no less important for that, we believe that HRDs themselves, or key players from NGOs or the UN, should take the lead in the process, as the positions they occupy qualify them for this role.

### The interface between “agreed reduction” and the focus adopted by public policies

The “agreed reduction” model that we analyse for the cases of Colombia, Brazil and Mexico makes it easier to influence the dissemination of the international norm and its conversion into

91 The author of this study has cooperated with them on several occasions and has witnessed this widespread collaboration. Consequently it may be affirmed that there is consensus in the HRD community concerning the value of the work of the different Rapporteurs.

92 See <http://www.oas.org/en/iachr/defenders/mandate/composition.asp> (Accessed 07/04/17).

93 See [www.achpr.org/mechanisms/human-rights-defenders/](http://www.achpr.org/mechanisms/human-rights-defenders/) (Accessed 03/03/17).

94 See the bibliography provided at the end of this study.

domestic standards. The process involves their grouping, and exploring the ways in which it might be incorporated into domestic legislation and, in particular, a country's public policies. This detail is particularly important because, as we have suggested, the focus on public policies provides an ideal framework for our objective.

A comparison of the public policy focus with the "agreed reduction" model of norm translation to the domestic level, permits certain parallels to be established between the two approaches:

**Step 1:** the translation of the norm into national discourse corresponds with the process by which the protection of HRDs is incorporated into the agenda of a government and how the problem or problems to be dealt with are defined.

**Step 2:** the reshaping of the international norm and its conversion into its domestic counterpart corresponds to the process of public policy design.

**Step 3:** the reshaping of the norm during implementation corresponds, in public policy terms, with gaps in implementation.

Building on these points of correspondence, it becomes easier to establish conceptual and operational connections between the process of translation of the international norm into the domestic frameworks examined here and the process of designing and implementing public policies that we examine below.

#### CONCLUSIONS AND RECOMMENDATIONS ON THE INCORPORATION OF THE UN DECLARATION ON HUMAN RIGHTS DEFENDERS INTO DOMESTIC NORMATIVE FRAMEWORKS:

- The dynamic nature of national discourses concerning the adoption of the international norm makes it easier to understand the changes to the norm that occur during the process of incorporation.
- A consequence of this notion is that, in order to improve the incorporation of the international framework covering the right to defend human rights, the discrepancy between the current approach to the problem and the problem in a broader sense must be examined. Particular attention should be paid to the evolution of the recommendations and standards covering the defence of human rights at international level, so that they fit better with the realities faced by HRDs in the contexts in which they work.
- The translation of the Declaration on Human Rights Defenders to domestic frameworks has been based on an agreed interpretation that dilutes its original spirit. It does this on the basis of an international discourse on the protection of HRDs that, in its origins, has not received input from any external points of reference.
- Currently, external points of reference exist, in the form of international standards, meaning that a critical review should be conducted of the translation of the international norm to the domestic framework, to ensure that public policies to guarantee the right to protect human rights are more effective.

## PART 2

### ANALYSIS OF THE EXISTING MECHANISMS FROM A PUBLIC POLICY PERSPECTIVE

In Part 1 we referred to the simultaneous existence of domestic protection mechanisms or programmes, and of laws. For this study we have chosen a public policy focus because we believe it offers a broad perspective from which to analyse the different normative frameworks and scenarios of action at national level. Furthermore, public policies have been extensively studied as a means of governance, above all as a way of approaching and resolving complex social questions. They are also susceptible to being examined and evaluated using a broad range of tools.

One of the many definitions of public policies describes them as:

*those courses of action and flows of information that are related to a defined political objective defined in democratic terms; they are developed by the public sector, frequently with the participation of the community and the private sector. A high quality public policy will involve approaches or contents, instruments or mechanisms, institutional definitions or modifications and the anticipation of results (Lahera: 2002, 15-16).*

Programmes, laws and public policies are complementary instruments that have a degree of overlap and one or another of which may at any given time, or in certain circumstances, be more appropriate or more practicable to use. Although some authors tend to equate public programmes and public policy, Cardozo quotes Kessler et al. to make the following distinction: programmes tend to have more operational objectives and more concrete, defined, plans, while a public policy “constitutes a complex arrangement of programmes, procedures and regulations that come together in a single overall objective” (Kessler et al.: 1998, 1, quoted by Cardozo: 2006, 25).

The existing laws in Mexico and Honduras and, similarly, the Colombian and Brazilian programmes all provide a framework that identifies the right to defend human rights, the beneficiary population, how to determine whether an HRDs is at risk, what protection measures may be applied, etc. These laws and programmes have similar objectives, but also some significant differences.

A law is (usually) approved by the legislature with the expectation that it will be implemented by future governments. It therefore requires a longer, more complex, process for it to be created and approved. But once promulgated it generates rights (in this case, for HRDs) and obligations for the state and for everybody else. It may have greater scope and offer more continuity, but it is also more difficult to modify. This is a good basis on which to establish a policy capable of lasting beyond a single term of government.

A protection mechanism or programme, on the other hand, is approved and implemented by a government that has the will and capacity to do so. This provides more flexibility but also greater variation. It may be easier to adopt, but it has a shorter trajectory and less depth than is provided by a law. Furthermore, it only creates obligations for those officials who are responsible for its implementation and, as was mentioned above, can easily be revoked by successor governments.

Our argument is that public policy is the most effective way for the state to guarantee the right to defend human rights and, specifically, to protect the need for recognition, support and protection that persons who defend human rights in any given country require. Cardozo (2006: 25-26) indicates that public policy is made concrete through decisions to act but also through decisions not to act, these latter being of particular importance to this study.

From the perspective of our study, existing protection laws frame and fix important aspects of protection for HRDs. But as we shall see, they also leave out aspects that are of great significance when it comes to guaranteeing the right to defend human rights. A possible strategy for improving protection of this right would be to develop better, more complete, laws. For this purpose, the ISHR has produced a Model Law as a guide to be used in other countries.<sup>95</sup> But our view is that it is the area of public policy that is most appropriate for interpreting, designing, coordinating, implementing and evaluating the set of existing actions (and omissions) tasked with guaranteeing the right to defend human rights.

## 2.1. The protection of Human Rights Defenders: political will, a public policy perspective on participation, and governance in protection programmes

*In this chapter, we examine two fundamental aspects of public policies: how best to understand the matter of political will with respect to our object of study and the closely related question of who defines the problem the public policies will be designed to address, and how.*

### On the necessary presence of political will, and beyond...

The notion of “political will” cropped up on repeated occasions during the research for this study. Critics blame a lack of political will for the poor results of current protection measures, while governments use the existence of programmes as evidence that it is present. In general, it is believed that the absence or presence of will on the part of governments is the key factor determining whether policies are to have positive results. However, this is not necessarily the case, as will become clear below. We conduct a brief survey of the existing literature on the matter and apply it critically to current HRD protection policies.

Experts also frequently refer to the idea that the very concept of political will is vague and difficult to define. Post, Raile and Raile (2010, 659) argue that it may be understood as “the extent of committed support among key decision makers for a particular policy solution to a particular problem”. This view holds that the extent of committed support refers to the distribution of preferences by different actors, and highlights the importance of power elites who may reject or support a particular policy.

Table 2 provides a list of four components proposed by these authors that can be used to check whether political will is present, and applies them to examine existing HRD protection mechanisms:

<sup>95</sup> International Service for Human Rights. Available at: [www.ishr.ch/news/groundbreaking-model-law-recognise-and-protect-human-rights-defenders](http://www.ishr.ch/news/groundbreaking-model-law-recognise-and-protect-human-rights-defenders) (Accessed 12/12/16).

TABLE 2: KEYS TO DETERMINING THE PRESENCE OF POLITICAL WILL

| KEY OR COMPONENT OF POLITICAL WILL  | DOES IT APPLY TO HRD PROTECTION PROGRAMMES?  |
|---|--|
| <p><b>1. A sufficient set of decision makers.</b><br/>If political will is to be generated, a sufficient set of decision makers must be involved, including individuals and institutions that are capable of approving, implementing and enforcing a given public policy in a country, as long as other key players, who are also decision makers, do not oppose the policy (thus becoming what some authors have called “veto players”).<sup>94</sup></p>  | <p>Current HRD protection mechanisms have been incorporated into governmental structures, and seem to reflect the existence of political will. But it would be more difficult to argue that a “sufficient” set of key players is involved.<br/>In the case of Mexico, it is frequently argued that the country’s federal nature complicates the application of the protection programme, because key players occupying positions of authority in certain states might become veto players, since they are not subject to the authority of the Federal Government.<br/>The same occurs in Colombia, as the protection programme is managed by the NPU, a dependency of the Interior Ministry, but local municipal authorities play an important role in its implementation.</p> |
| <p><b>2. The existence of a common understanding of the problems to be dealt with.</b><br/>Political will also increases among decision makers when there is a common understanding of the problems to be addressed: what they are, and what obligations decision-makers are under to deal with them.</p>   | <p>A logical question is: What is the purpose of political will...? In the second part of this chapter we shall see that this shared understanding of the problems to be dealt with is not generally present.<br/>In short, is it a question of protecting a group of individuals or, more broadly, of protecting the right to defend human rights?</p>  |
| <p><b>3. The existence of a commitment on the part of key decision-makers to provide support.</b><br/>This commitment is close to the core of political will and, perhaps for that reason, is also the most difficult to evaluate. Pole et al. propose a set of indicators, including: the allocation of sufficient resources, willingness to identify incentives and apply sanctions, the existence of other players who may be capable of exerting pressure in favour of the policy, the existence of accountability mechanisms, etc.</p> | <p>A brief overview of the existing programmes fails to offer a particularly positive balance concerning this aspect of political will.<br/>In some cases, such as the Colombian, the budget is considerable. In every case actors exist, such as human rights organisations, the UN and its Special Mechanisms, and some embassies, who apply pressure in support of the programme. But other indicators, such as willingness to impose punishment, or to ensure accountability concerning results, are notable for their absence.</p>  |
| <p><b>4. The solutions proposed by the public policy should be considered effective by decision-makers.</b><br/>This means that other affected players accept that the solutions proposed by the government are adequate to the task.</p>   | <p>An almost uniform complaint made by HRDs<sup>97</sup> concerning the existing mechanisms is that they fail to deal with the underlying causes of the problem, focusing only on some of its manifestations. HRDs argue that the mechanisms have a short-term perspective, that they are reactive, and have limited means. Thus, in this study we argue that the approaches currently being proposed for these policies are neither effective nor efficient. We hope in this way to avoid the circulation of simple “ad hoc solutions” to problems that are far too complex for this kind of response.</p>  |

Source: Post et al. (op. cit.) adapted by the authors

96 On the concept of veto players, see: Tsebelis (2002) and López (2012).

97 For example, in the interviews carried out during the research for this study and in the majority of reports produced on the matter by human rights organisations.

It is generally agreed that political will is a necessary but insufficient condition for a public policy to have positive results. Other factors need to be taken into account, such as the following:

- Results also depend on factors other than political will.
- Political will and capacity to act are different concepts.
- Political will is frequently assigned to an individual (a leader), but is also associated with decisions made by a government team or by representatives of different levels of authority.
- Political will depends on the preferences of powerful groups – and in particular of elites – concerning the desired results of a policy.
- The assessment of political will depends greatly on context, on cultural factors, and on the problems being approached, etc.

As a fruit of this analysis, we have arrived at an open inconclusive result that requires further investigation, but that does nevertheless provide enough basis on which to act: political will can be constructed jointly by different state actors. In other words, a government that decides to establish a public policy for the protection of HRDs should include in its plans any steps that might be required to construct the political will that is required for its success.

Taking these considerations into account, the results of programmes cannot be analysed merely in terms of whether or not political will is present. This is an argument that we return to throughout the study. However, on the basis of our analyses and of the testimonies gathered during the preparation of the study, we feel confident to confirm that in an area as complex as the right to defend human rights, if a public policy is to be successful it does need to be backed by a clear expression of political will.

#### RECOMMENDATIONS

- Given that political will is a necessary but insufficient condition for producing effective protection programmes, they must be constructed with the involvement representatives of the state, in a process led by the government.
- These governmental actions should be directed at involving all the key authorities and players in the construction of a shared recognition of the problems to be dealt with, in seeking their support and in convincing them of effectiveness of the solutions contained in the public policy.
- More research is required on this matter and the results incorporated into public policies for the protection of HRDs.

## 2.2 Participation and governance

*This chapter provides an analysis of the different levels of participation of HRDs and other actors in the design and governance of existing programmes. The results of this analysis form the basis of a set of recommendations on what might be the best governance structure for a public policy for the protection of HRDs.*

Many experts indicate that the management of policies on complex matters (such as, in our case, the protection of HRDs) needs to place great emphasis on integrating the different actors involved. That is, it is important to recognise the existence of a **process** in which different

sectors and institutions interact, though not necessarily in an agreed manner or according to the same goals.

### Citizen participation in public policies

There is a considerable number of international documents and standards on citizen participation in public policies. The *Carta Iberoamericana de Participación Ciudadana en la Gestión Pública* (Ibero-American Charter for Citizen Participation in Public Administration) is one of the most authoritative standards.<sup>98</sup> Approved by the Ibero-American Ministers of Public Administration and Heads of Delegation in 2009, its preamble refers to the “right to citizen participation in public administration” and highlights the importance of the participation of the “most vulnerable sectors” of society. The Charter defines citizen participation as:

*the contribution of citizens to the socially-oriented public administration of government policies that, consistently with the interests of democratic society, channels, responds to or expands the economic, social, cultural and civil rights of the people, the rights of the organisations or groups to which they belong and of indigenous communities and peoples.*

### The participation of Human Rights Defenders and other actors in existing programmes

The participation, in particular, of HRDs and of other actors, is of fundamental importance if policies are to be designed that respond adequately to the need to guarantee the right to defend human rights. It is of equal importance to the continued application of the policies, regardless of changes to government and altered circumstances, and despite the very difficult situations faced by individuals who are engaged in defending rights in the country.

While the programmes in Colombia, Brazil, Mexico and Honduras<sup>99</sup> have passed (and continue to pass) through numerous moments of crisis associated, for example, with worsening acts of aggression against HRDs or corruption scandals involving the body responsible for providing protection, the mere fact that HRDs have engaged in dialogue with the government in representation of their sector has enabled the programmes to continue. By way of example, note that on several occasions in Colombia, in circumstances involving continuing acts of aggression and murder targeting HRDs, beneficiaries of the programme have on occasion publicly renounced the precarious protection measures offered them by the state (a mobile phone for example, or a bullet-proof vest). Similarly, the fact that HRDs participate in the committee that takes decisions on the protection measures offered to threatened HRDs is fundamental to ensuring that these decisions respond appropriately to the needs of a group as diverse as the community of HRDs. If HRDs were not engaged in these acts of rapprochement and negotiation, it would be difficult to imagine that a protection programme would be able to adapt to, understand, and properly deal with, the difficult social, working and personal circumstances of HRDs, or the risks they face.

98 See <http://old.clad.org/documentos/declaraciones/carta-iberoamericana-de-participacion-ciudadana/view> (Accessed 02/12/16). For more on this topic, see Chac (2010).

99 The Honduran programme was beginning to be implemented when this study was being finalised.

It is also crucially important that this participation should be meaningful and provide coverage for all the HRDs in a given country, ensuring adequate responses to their different needs. This participation must, then, be effective: for example in terms of gender, for marginalised groups and victims of discrimination and for rural or isolated communities. For the same reasons, other actors occupying positions of responsibility within the policy - such as different state bodies or local political authorities - should also be involved.

In addition, the participation of international experts in the design of these policies is very helpful, as they can offer useful advice and also play a role promoting technical solutions to aspects of protection that might otherwise stagnate because of heated discussion between participants. In the case of Brazil, for example, national civil society organisations and international experts were involved in designing the programme’s normative framework. In another example, the Mexican government sought the advice of the Mexican Office of the UN High Commissioner for Human Rights when it was designing its protection programme.<sup>100</sup> Interventions of this kind can be very useful when a programme is being created, in particular because of the opportunity they provide to share experiences and good practices in countries that have not previously been required to deal with the problem.

We end this section on a critical note: participation does not on its own guarantee the inclusion of all the different groups of HRDs operating in a country but, rather, opens up a new avenue of social struggle: no longer in order to participate but for it to be possible to do so. In other words: who is considered to be a potential participant in the process, who actually can participate, who cannot and, even, who does not wish to. It is a question, then, of promoting inclusion in participation processes, or of not imposing limits or barriers on those who wish to take part. This inclusion has to do with enabling individuals who face obstacles to their participation, but also with the freedom to decide, because HRDs cannot be forced to participate in a public policy if, as a result, they would lose their right to defend human rights.

#### GOOD PRACTICE / RECOMMENDATION

- Participation in the design process of protection policies must be real, effective, and voluntary, and involve all the different kinds of HRDs in a country. Attention should be given to factors such as gender, marginalised status, discrimination, and membership of rural or isolated communities, etc.
- The participation of other actors involved in the policy can also enrich the process

### The governance of public policy

There are several different definitions of governance in the field of public policy. We follow Renate Mayntz in saying that “governance [... indicates...] a new mode of governing, different from the old hierarchical model, and marked by a greater degree of cooperation and where state and non-state actors participate in mixed public/private policy networks”.<sup>101</sup> Note that by “private” we refer to civil society groups, excluding professional associations and businesses

100 Protection International worked with the OHCHR providing advice and training on these topics for a period of two years to officials at the *Secretaría de Gobernación, Fiscalía, Procuraduría, Comisión Nacional de Derechos Humanos* and to civil society organisations.

101 Quoted in Chac (2010, 21).

Different actors interact with each other in the existing protection programmes, including, as a minimum, the following:

- The target population. That is, HRDs (and communications professionals when they are also covered by the programme). As we have already suggested, and as will be explained in more detail below, the involvement and participation of these groups is crucial.
- Parts of the executive branch that participate in the existing mechanisms, such as the Interior Ministry in Colombia and Mexico or the Ministries of Human Rights and Justice and of Security in Honduras.
- Other government ministries with responsibilities for the programmes (of Justice, Foreign Relations, etc.).
- The police and security forces.
- Investigating bodies (the *Fiscalías* or, in Mexico, the *Procuraduría General de la República*) and, by extension, the judicial system as a whole.
- Other state institutions (the Human Rights Ombudsman, for example).

TABLE 3: PARTICIPATION AND DECISION-MAKING IN THE MECHANISMS

|   | COLOMBIA  | BRAZIL   | MEXICO                                     | HONDURAS   |
|---|---|--|--|--|
| Governing body                                      | <i>Consejo Directivo</i> (Management Board) of the National Protection Unit | <i>Conselho Deliberativo</i> (Decision-making Council) of the HRD Protection Programme | <i>Junta de Gobierno</i> (Governing Board) | <i>Consejo Nacional de Protección</i> (National Protection Council)                            |
| Location  | Interior Ministry   | Ministry for Women, Racial Equality, Youth and Human Rights Defenders                  | Interior Ministry                          | Departments of Human Rights, Justice, Government and Decentralisation in the Ministry of State |
| Participation of HRDs and/or journalists            | ⊗   | ⊗  | ✓  | ✓  |
| Participation of other government and state sectors | ✓   | ✓  | ✓  | ✓  |
| Participation of security forces                    | ✓   | ⊗  | ✓  | ✓  |
| Participation of international bodies               | ⊗   | ⊗  | ✓  | ✓  |

(Source: compiled by the authors)

The interactions between such a large number of actors are very complex, leading us to suggest that two modes of governance operate in the current policies (and that there is another, intermediate, mode that lies somewhere between the two):

**Centralised public policy (or a policy that is managed in a centralised manner) from within the executive:** conceived, planned and implemented vertically, or hierarchically, by a ministry, as in Colombia and Brazil. These programmes are designed by the government, with a greater or lesser degree of optional consultation with the affected parties, and are implemented directly. Note that HRDs have generally been taken into account in the design of certain aspects of the programmes, but that the process of consultation is not regulated, depends on the views of the individual(s) in charge of the programme at any given time, and that HRDs frequently complain that their views are not taken into account.

**Collaborative governance, either through networks or in decision-making procedures, as in the law governing the Mexican mechanism:** in theoretical terms, this mode of governance is more advanced. It opens up the possibility of different sectors participating in the mechanism's governance structures— specifically in its Governing Board. Because this model is of particular interest we examine it in more detail below.

**Intermediate model:** the new Honduran law could be described as representing an intermediate model, as the programme is managed by the *Dirección Nacional del Sistema de Protección* (National Directorate of the Protection System), which operates under the auspices of the Interior Ministry's Department of Human Rights, Justice, Governance and Decentralisation. The law also creates the *Consejo Nacional de Protección* (National Protection Council), in which civil society and other groups participate alongside representatives of bodies such as the *Procuraduría* (Attorney General's Office) and the legal authorities. The Council is a deliberative and advisory body, but is also responsible for the "supervision, control, monitoring and evaluation of the National Protection System".<sup>102</sup> It is yet to be seen how this hybrid structure will work.

#### GOOD PRACTICE / RECOMMENDATION

- Protection policies should ensure the participation of implicated sectors in their implementation (starting with the HRDs themselves).

#### Networked governance as an advanced model for protection policies

Collaborative, or networked, governance is a potentially advanced model that could be usefully employed in public protection policies, because it is informed by the fact that the conscious exercise of power requires responses to be agreed with the social sectors and institutions they affect.<sup>103</sup> This does not mean that governments abdicate their duty or their authority to govern. Therefore, deliberative public engagement is constructed on the basis of interactions and negotiations between the different actors in a process that is government-led but that seeks a level of agreement and a shared goal.<sup>104</sup>

<sup>102</sup> Article 24 of the Honduran law.

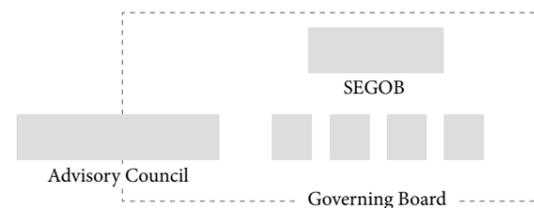
<sup>103</sup> See, among others, the research of Colebatch (2009, 58-67) and Dodge (2010, 384-404).

<sup>104</sup> Other examples of complex problems that networked governance can help deal with effectively include gender-based violence and the son el de violencia de género o el del abordaje del SIDA.

The federal mechanism's Advisory Council and the Governance Board proposed in the Mexican protection law are a theoretically advanced approach to collaborative governance for the protection of HRDs:

The Advisory Council “is the Governing Board's consultative body, and shall be made up of nine advisors [...] for a period of two years[,] and shall be elected by simple majority of the members of the Council[...]. Efforts shall be made to ensure that membership of the Council is balanced between experts in the defence of human rights and in the exercise of freedom of expression and journalism”.<sup>105</sup> Four representatives of the Council participate as members of the mechanism's Governing Board, with full voting rights.<sup>106</sup>

FIGURE 2: PROGRAMME GOVERNANCE BODIES



- The Governing Board “is the highest authority of the mechanism and principal decision-making body for the prevention of abuses and protection of Human Rights Defenders and Journalists”.<sup>107</sup> In addition to the four representatives of the Advisory Council on the Board, which is chaired by the government, there are also five permanent invited members: one each from the OHCHR, the *Conferencia Nacional de Gobernadores* (National Conference of [state] Governors),<sup>108</sup> the National Federal Police, the Senate Human Rights Commission and the presidency of the Chamber of Deputies' Human Rights Commission<sup>109</sup> (see Figure 2).

Because of Mexico's federal nature, the Governing Board takes decisions and orders measures, but the bodies responsible for their implementation tend to be the governments and institutions of the federal states.

In theoretical terms, the governance system that comes together in the Governing Board would reflect some of the principal characteristics of networked governance, which, because of their importance, we describe below:

**Horizontal (or quasi horizontal) interactions between interdependent actors (because each depends on others if they are to be able to act) but that operate with autonomy (because they are independent, albeit constantly aware of what others are doing).** In fact, the actors who interact in networked governance structures must demonstrate their competence in

the matters they are dealing with as well as be able to make their own contribution to the required actions. There are clear asymmetries of power between participants, so some are more influential than others. However, in the meetings of the Board, relations tend to be based more on exchange than on hierarchy. Furthermore, although the Board is governed by a formal set of a rules, being chaired by the Interior Ministry, the power of the authorities represented in it tends to be similar to that of the other participants.

**Participants interact using a combination of hard negotiation and more reflective techniques.** Each participant must negotiate the distribution of resources and their own actions in order to maximise the quality of the results, but also to maintain the minimum level of confidence that is required if deliberative processes are to facilitate understanding and joint activities. This means that negotiations tend to result in somewhat unsatisfactory agreements, that fail to take complaints and disagreements properly into account. However, these limited examples of consensus do produce a degree of commitment to any agreements that *are* entered into.

**The negotiations conducted within the Board do not take place in an institutional vacuum.** The participants in the network interact together, and negotiate their decisions within the constraints of an imposed normative framework (laws, regulations and protocols, and all the legal and institutional complexities inherent to a federal state). This restricts the scope of the decisions taken by the Board. But to an extent a cognitive and imagined framework also plays a part, as the actions of the Board create its own narrative of action, and its own codes, its specialised knowledge, varied identities and visions – more or less shared by all participants – of the overall process.

**These systems, in which multiple actors take part, create their own spheres of self-government and self-regulation.** Participants decide on their own actions, though these are always conditioned by the corresponding externally imposed hierarchies and norms. In other words, they may develop their own perspectives on what is covered by the public policy, and at times disagreements or even confrontation may occur with other institutions or political actors who are not a part of the network. This is especially the case when other actors complicate (or oppose) the implementation of decisions taken by the board.

In summary, networked governance is the result of the interactions between participants and their different individual or organisational characteristics. Participants develop their own shared vision as a result – a vision that changes and evolves, creating different meanings that in turn contribute to achieving the hoped-for results of the public policy.

At this point it is important to review the advantages and disadvantages to protection policies of networked governance

The **advantages** offered by the system include the following:

- **Decisions taken are consistent with the real experiences of HRDs:** the active participation of representatives from affected groups – in this case, HRDs and communications professionals – permits them to influence important Board decisions, making them more likely to respond to the needs of HRDs, that key concepts of protection will be reformulated, and that the needs and diversity of affected groups are understood better.
- **Open channels of communication:** participation helps all actors understand the details of the different processes and organisational cultures of the others involved. This is useful given the generally conflictual nature of the relation between HRDs and the state.

<sup>105</sup> Article 9 of the Law.

<sup>106</sup> Article 5.VI of the Law.

<sup>107</sup> Article 4 of the Law.

<sup>108</sup> See [www.conago.org.mx/](http://www.conago.org.mx/) (Accessed 24/02/17).

<sup>109</sup> See [www.gob.mx/segob/articulos/que-es-el-mecanismo-de-proteccion-para-personas-defensoras-de-derechos-humanos-y-periodistas](http://www.gob.mx/segob/articulos/que-es-el-mecanismo-de-proteccion-para-personas-defensoras-de-derechos-humanos-y-periodistas) (Accessed 24/02/17).

- **Greater transparency and accountability:** the participation of HRDs in the bodies responsible for implementing protection policies favours the transparency and accountability that are required if the policies are to be maintained in the long term.

The **difficulties** include, at the least, the following:

- **The risk of a growing disconnection between context and reality:** a structure with its own dynamics, such as the Governing Board, may for different reasons become disconnected from institutional reality and policy might lose contact with its context. For example, the institutions responsible for implementing the decisions of the Board might fail to do so adequately; or other actors might complicate their task or act as an impediment. In this sense, the Board should not be allowed to become a “bubble” for its participants, sat comfortably in the capital city. Nor should the government be allowed to lose the executive “muscle” that is needed if the Board’s decisions are going to achieve the desired results.
- **Horizontal relations are lost outside the central structure:** the greater horizontality of the relationships between participants in the Board disappear outside it, because those – such as the government – with greater power tend to implement decisions according to their own interests, even going so far as to seek to influence the internal dynamics of the Board from outside, a factor that is likely to lead to resentment.
- **The emergence of bottlenecks that affect the processes:** a governance structure of this kind has to delegate tasks to structures that are capable of implementing them effectively. If this were to be achieved the deliberative nature of the Board would no longer act as a bottleneck to programme processes.
- **The need for an organised civil society:** it should not be forgotten that in societies with less-structured civil society sectors than Mexico it might be difficult to promote networked governance with such a high degree of civil society participation.
- **Belief that organisations might take on the responsibilities of others:** it could be felt (though it is not the case) that in arrangements such as these HRDs might end up taking on responsibilities that are not theirs, as it is the responsibility of states to guarantee the right to defend human rights.

### Towards structures of broadly participatory networked governance in public policies for the protection of Human Rights Defenders

In conclusion, an examination of the levels of integration and participation in the governance of public policies by HRDs<sup>110</sup> and others, might lead to the view that the most advanced and effective standard is that of establishing a broadly participatory networked governance system, which involves HRDs, communications professionals and other institutions. Full participation of HRDs and others in the design of the system should be ensured.

From our perspective, it is clear that the incorporation of a range of actors in the networked governance of these public policies generates challenges, but for many experts in the field of public policy no choice is involved – it is just a matter of necessity if palpable progress is to be made in the face of complex social problems such as the one examined here. Despite all its limitations and weaknesses, the structure of the Mexican programme’s Governing Board is,

at present, the best example we have come across of how to design a networked governance structure for a public policy for the protection of HRDs. However, there is ample room for improvement to many of its aspects, as is indicated at different points in this document.

That being said, the logical recommendation applies to the programmes in Colombia and Brazil or to others yet to be created, which might be able to improve their governance structures if they were to move towards increased levels of participation, in particular of HRDs.

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#### GOOD PRACTICE

- Effective networked governance opens up spaces for participation that help the different actors take part in and influence HRD protection policies.
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## 2.3. Protection programmes and the *securitisation* of human rights defence: a restricted and state-centric focus on HRD security

*This chapter examines the ways in which the focus of current protection programmes is reduced to providing physical protection for certain HRDs and why this approach should be broadened in order to establish public policies that respond to the wider objective of creating secure environments for the defence of human rights.*

In order to comprehend the chronic insecurity in which HRDs operate, it is important to understand the exclusive focus of existing programmes on the physical protection of only some of their number. We look at five different aspects of this matter in order to examine the conceptual reduction it implies:

- How are the problems a public policy for protection will deal with chosen?
- Human Rights Defenders as objects of protection: rational, autonomous individuals with power to act
- The insecurity faced by HRDs: direct physical violence and structural violence
- A critique of the categorisation of HRDs in terms of risk
- Where is the perpetrator? How are acts of aggression against HRDs constructed?

### How are the problems a public policy for protection will deal with chosen?

As we have seen, public policies respond to complex social problems – in our case factors limiting the right to defend human rights. How does this problem come to be included in the agenda of a particular government? Who defines the dimensions of the problem and how is this done? How are the aspects that are to be included in a public policy for the defence of human rights chosen?

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110 Communications professionals and other sectors are included in some of the programmes.

Firstly, the question of protection has been placed on the public agenda by the HRDs themselves, lending support to the argument of some experts that citizen participation in public policies is favoured by the interaction between at least three factors (Platt: 2008):

- A **clearly threatening context**, marked by escalating acts of aggression against HRDs, at times involving actions serious enough to trigger powerful domestic and international reactions.
- **The existence of networks** (either formal or informal, involving HRD organisations), allowing postures and consensus positions to be developed for use in negotiations with a government and that can be maintained over time, given that these processes may last for several years. It may be said of all the cases examined thus far that the protection programmes have been created in response to ceaseless complaints and social and political pressure exerted by human rights organisations, and that this has been the work of many years. Indeed, the first of these programmes – the Colombian – was inaugurated following the establishment of a “non-governmental protection programme” by the HRDs themselves.<sup>111</sup> In other words, the organised and sustained pressure of the networks in which HRD organisations participate has been fundamental to the initiation of these programmes.
- **HRD access to policymakers.** That is, the degree of openness displayed by the government of the day. It is very important to take into account the political context existing at the point at which a government finally decides to take action and at which it becomes capable of responding to the complexities and peculiarities inherent to the protection of HRDs, who – as will become apparent – require an approach that is very different from the one public officials are accustomed to using when security matters are at stake. It was the Inter-American System for the Protection of Human Rights, for example, that obliged the governments of Honduras and Guatemala to take their first steps towards creating policies.

A broadly chronological review of the matter demonstrates that in Colombia the first government decrees promulgated with the intention of designing a programme were developed in consultation with the *Comité Ad Hoc para la Protección de Defensores de Derechos Humanos* (Ad-Hoc Committee for the Protection of Human Rights Defenders), which had been created by four human rights organisations in 1999.<sup>112</sup> One detonator of the process was the powerful social reaction provoked by the murder of the HRDs Mario Calderón and Eva Alvarado.<sup>113</sup> In Mexico, domestic and international pressure for an investigation into the murder of the WHRD Digna Ochoa,<sup>114</sup> together with subsequent threats against high-profile HRDs and a change in government in 2000,<sup>115</sup> led to a situation in which the levels of violence against HRDs came to occupy an important place on the policy agenda. Human rights organisations took advantage of this scenario to demand the creation of a protection mechanism, initially

111 The so-called *Programa No Gubernamental de Protección a Defensores de Derechos Humanos en Colombia* (Non-Governmental Protection Programme for Human Rights Defenders in Colombia). See Martín and Eguren (2011).

112 The four organisations in question were Benposta, CINEP, la Comisión Colombiana de Juristas and Minga. See [www.somosdefensores.org/index.php/quienes-somos](http://www.somosdefensores.org/index.php/quienes-somos) (Accessed 9/01/17).

113 “Asesinados investigadores del CINEP”. *El Tiempo* (20 de mayo de 1997). Available at: [www.eltiempo.com/archivo/documento/MAM-572380](http://www.eltiempo.com/archivo/documento/MAM-572380) (Accessed 8/01/17).

114 “Asesinan a la Human Rights Defendera de human rights Digna Ochoa en su oficina”. *La Jornada* (20 de octubre de 2001). Available at: [www.jornada.unam.mx/2001/10/20/043n1cap.html](http://www.jornada.unam.mx/2001/10/20/043n1cap.html) (Accessed 8/01/01).

115 In these national elections the *Partido Revolucionario Institucional* (PRI) was defeated for the first time since 1946, by the *Partido de Acción Nacional* (PAN).

achieving the creation of the Interior Ministry’s Human Rights Unit<sup>116</sup> and, subsequently, the first HRD protection law in the Americas. Similar processes of political pressure and HRD demands were also observed, with varying degrees of success, in Brazil, Honduras and Guatemala.

These cases provide an example, then, of the spiral model of collaboration described by Risse et al. (1999, 18). The organisations themselves brought the problem of attacks on HRDs to the attention of the public. Different domestic and international bodies added their voices. As a result of these campaigns and other forms of pressure exerted over the years, the governments in question accepted that a problem existed and that a state response was required. It is worthwhile briefly to analyse the ways in which the different actors defined the problem and the assumptions and logical processes underlying each of these perspectives.

Early on in these processes it was in no way clear what results the incipient debates on the domestic protection mechanisms might end up having, because they evolved without the benefit of external points of reference, though drawing inspiration from the 1998 UN Resolution that had first recognised the right to defend human rights.

For their part, the states began by limiting the problem to acts of physical aggression and, as a result, established reactive programmes that were dominated by the provision of immediate physical protection to at-risk HRDs, in imitation of witness and victim protection programmes that already existed in some countries. Beyond the scope of these severely limited programmes, governments seem to have assumed that other state bodies would take on responsibility for investigating and punishing the acts of aggression, refusing thereby to recognise both the prevailing levels of impunity and the frequency with which state agents were the aggressors.

With the passage of time, and as they gained experience, HRD organisations and the regional and international human rights bodies have come to argue for a broader, rights-based focus on protection. For example: adequate investigation into the acts of violence perpetrated against HRDs and the punishment of those responsible; recognition of the work carried out by HRDs and public backing for their activities; action against high-ranking officials who accuse HRDs of being “defenders of guerrilla groups”, “terrorists”, “criminals” or, even, of actually being the things they are accused of defending, of creating “ungovernable areas”, of being “enemies of development” or, in the case of those who defend women’s rights or sexual diversity, of “attacking traditional values, the family or conventional morality”, etc.<sup>117</sup>

In summary, we may say that up to now states have been able to impose their own reductionist views of the problem, focusing on the fact they recognise that threats and acts of aggression against some HRDs do indeed occur. On the basis of this recognition, they offer individual physical protection, according to a logic that is limited to providing simple security measures to at-risk HRDs. That is, these opposing viewpoints have, in general, been settled by implementing a politically and conceptually limited approach to protecting the right to defend human rights.

This limitation has led to markedly dissimilar forms of implementation. For example, four years after its creation by statute, Mexico’s federal programme provided protection to only 316

116 See Martín and Eguren (2011, 40).

117 For more information, see Martín (2015).

HRDs (that is, two HRDs for every million inhabitants of a country with extremely serious problems of multiple forms of violence). At the other extreme, in Colombia the protection programme covers several thousand HRDs, and had a budget of US\$23 million in 2015, with hundreds of private bodyguards under contract.

Whilst bodyguards and bullet-proof vehicles may be added without cease to a protection mechanism, is this the best approach? If the aim is to guarantee the right to defend human rights, is it really feasible, for example, to provide armed protection to thousands of HRDs, 24 hours a day? What is the sustainable limit if acts of aggression against HRDs in Colombia continue to grow, as the most recent SIADDH Report (Somos Defensores: 2015) suggested they would? Furthermore, it is worth mentioning the contradictions that mark the actions of the state. For example, on occasion the police officers deployed as bodyguards belong to the same institution as individuals responsible for the attacks on HRDs, or police protection may be provided to HRDs at the same time as they are being defamed and stigmatised by other public servants.

Thus, the laws and the existing mechanisms have been limited to providing physical protection to HRDs at risk and, in general, do not include a broader set of potential measures designed to guarantee the right to defend human rights. We describe this approach as being fundamentally reductionist because the protection provided is posited on a reduced, self-contained, problem whose management requires only a single, simple, intervention by the state.

Looked at critically: is this the problem that needs to be dealt with, and if it is, is the provision of physical protection the correct way to go about it? Already the IACHR, in its 2011 Report on Human Rights Defenders indicated to member states of the Organisation of American States that they should go beyond “simply provid[ing] security to defenders who are in danger, but do[ing] nothing to investigate the source of the threats made against them”.<sup>118</sup> The same report refers to the need for a “global policy of protection”.<sup>119</sup> Similarly, in her 2013 report the then UN Special Rapporteur for HRDs, Margaret Sekaggya, urged “states to develop and put in place comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women Human Rights Defenders”,<sup>120</sup> and these words were echoed by the UN General Assembly in late 2015.

It is precisely this absence of broader policies that lies behind the criticisms made by HRD organisations of the way states attempt to reduce the pressure to which they are subjected, while failing to offer effective responses to the acts of aggression or to prevent them from occurring (Martín and Eguren: 2011, IV). In other words, it appears that some governments wish merely to reduce and “administer” the damage caused by serious acts of aggression against HRDs.

But the persistence and systematic nature of attacks on HRDs indicate that the problem at hand is much larger: **a multi-faceted violation of the right to defend human rights is occurring, which in many situations points to the involvement of organised crime and to links with powerful economic sectors, and suggests the co-optation and capture of the**

**state by these elements rather than the existence of simple, isolated, acts of corruption.**

The definition of the problem should, therefore, include the systematic nature of the attacks and the underlying problems in which they are rooted. If this is not done, then policies will only ever attempt to deal with the serious symptoms of the problem, and will fail to achieve results because they leave the underlying causes untreated. This question is explored further in Chapter 4.

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#### RECOMMENDATIONS

- In addition to physical risk, the persistence and systematic nature of the acts of aggression committed against HRDs should provide the motivation for, and also condition, the process by which strategies to guarantee the right to defend human rights are defined.
  - It is very important to avoid reductionist approaches when defining the problem of acts of aggression committed against HRDs.
  - In the most serious scenarios, the process of defining the problems to be dealt with should include an analysis of the breeding grounds of attacks on HRDs, such as organised crime, economically powerful sectors and the co-optation and capture of the state.
  - The state should involve HRDs and other state and non-state actors when defining the problems to be dealt with and, as a result, guarantee the right to defend human rights.
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#### Human Rights Defenders as objects of protection: rational, autonomous individuals with power to act

The conceptualisation of what constitutes an HRD has been expanded to include a number of new aspects. This section provides a critical reflection on the concept and on current narratives, discourse and identities that have developed in relation to it.

“Human Rights Defender” is an abstract term applied to a person who is a subject of rights and a citizen, but who may also be - for example - a woman, a peasant farmer, educated or illiterate, young or old, live in an isolated rural area or close to a city, the owner of a mobile phone or with no access at all to any kind of telephone. These examples help to differentiate between the varied situations and realities that condition the experiences of all HRDs.

We have said that the term “Human Rights Defender” is *granted* to an individual, because it has been coined by actors who are external to them, or who have the ability to accept them as such so long as they abide by certain conditions, such as abstaining from violence and recognising the universality of human rights.<sup>121</sup> It is doubtless positive that the concept of the Human Rights Defender helps to connect the language of social and political struggles to that of human rights and, as a result, inspires and facilitates (overall) communication. But too abstract a concept may have other collateral effects: it is very important to ask how the concept meshes with the identities of the individual and with the imagination of the different social actors who also enter into contact with them. Does the concept of “being a human rights defender” always refer to an individual or can it include groups? Is it a fixed concept,

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118 IACHR (2011), *Report on Human Rights Defenders* par. 472.

119 *ibid.* par. 472 and ff.

120 *op cit.* A/RES/68/181

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121 For a discussion of these conditions, see Eguren and Patel (2015).

or can it evolve over time? All in all, this is a question of the need to question any reductive conceptualisation of HRDs. Let us examine a few examples:

### Men and Women Human Rights Defenders: gender and intersectionality

The violence faced by WHRDs has a gender component that is manifested in multiple ways, ranging from serious threats of sexual violence to structural discrimination, and including other phenomena, such as campaigns designed to damage their reputation. In the words of Martín, “not only are they attacked because of the work they carry out in defence of human rights, but also because they do it as women” (Martín (2016, 11). According to IM-Defensoras:

*Through the incorporation of a gender perspective it is possible to overcome the androcentrism that has meant that in this area too universality is understood to mean equating all individual characteristics to the male (adult, rich, descendant of Europeans, heterosexual and without visible disabilities). This viewpoint fails to take into account that the universality of human rights requires the differences between human beings to be made clear....<sup>122</sup>*

As we shall see later, the mechanisms examined in this report formally mention and recognise the importance of a gender focus in the protection of WHRDs,<sup>123</sup> including in the evaluation of risk and when protection measures are assigned. However, the concrete implementation of a gender or *intersectional* focus that also takes into account other factors – such as class or membership of marginalised social groups – is far from adequate.<sup>124</sup>

### Human Rights Defenders: a concept with multiple interpretations

Different social actors relate to HRDs in various ways, and some of them from different positions of power. These actors may include members of NGOs, diplomats attempting to apply the EU Guidelines on HRDs, UN officials, or members of international donor agencies, for example. But they might also be government employees, perpetrators of acts of aggression, etc.

Each actor also entertains different ideas about the concept of Human Rights Defender and which individuals may be afforded the title. It would be interesting, for example, to ask a diplomat to decide which of the following should be afforded the status: a lawyer who works in a city for an organisation that defends the rights of children, or a female peasant leader who shouts slogans with her fist defiantly held in the air during a demonstration against a transnational corporation. The challenge in terms of public policy, then, is to determine whether the abstraction implicit in the concept of the Human Rights Defender necessarily and unequivocally covers both the lawyer and the peasant leader. Lack of clarity on the matter should be taken explicitly into account during the implementation of any protection programme.

<sup>122</sup> IM-Defensores. “Agresiones contra Human Rights Defenders en Mesoamérica”. *Informe 2012-2014*, quoted by Martín (2016, 15).

<sup>123</sup> For a more detailed analysis see Martín (2016).

<sup>124</sup> To explore the question of gender and the defence of human rights in more depth, see Martín (2016). Advances in applying an intersectionality focus in public policies are a recent phenomenon. See, for example, Hankivsky et al. (2014) and Palencia, Malmusi and Borrell (2014).

### Human Rights Defenders: identities in conflict?

Like many other actors in society, HRDs require a community of reference that gives meaning to their actions. Many HRDs have diverse identities among which that of Human Rights Defender is not always the dominant one. This might be the case, for example, with HRDs who are also trade unionists, peasant farmers, or defenders of the rights of indigenous peoples. At times, these identities enter into conflict. For example, a WHRD might respect the internal leadership of her organisation but, as a woman, reject the idea that all authority figures within it should be men, who exclude her from decision-making on important matters. When an individual adds the idea that they are an HRD to their sense of self, they may experience a crisis of identity. If public policies deal with an individual only as an HRD, without taking into account their other identities, it can contribute to prising the two apart, or to their fellow HRDs perceiving this to be the case.

#### AN EXAMPLE OF CONFLICTING IDENTITIES

Community leaders involved in the struggle for land rights might feel that they will only be able to obtain funding for a project if they present themselves as HRDs, because the donor in question ‘prefers’ this discourse. It is positive that the concept of HRDs should open up the opportunity for different kinds of campaign to receive support, but this approach by donors might also represent pressure to downplay other identities (such as peasant, or member of an agricultural union) if they enter into conflict with the funding priorities. The problem is that it may be precisely these identities that provide other, less visible, ways of ensuring protection, such as peer networks, community support or non-formal economic structures. This abandonment of identities may be very damaging when the support received because they are HRDs ends (when funding for a particular project finishes for example), and the former connections of identity have been lost. How should they be rebuilt?

It is therefore important when designing a policy on HRDs to add or construct identities, so that the individual can embrace this part of themselves without it becoming an obstacle to their other identities. In practice, though, as will become clear in the next paragraph, this does not always happen.

### For example, does the concept of Human Rights Defender include the many thousands of environmental activists?

Finally, all these reflections come together if we replace a passive approach to the concept of the HRD with a dynamic one. The promulgation of the Declaration on Human Rights Defenders in 1998 represented the first step in establishing the concept. However, space had to be created for it to evolve. In 1998, the qualitative and quantitative changes to the extractive industries and the environment in many regions around the world were yet to occur but they are now creating different forms of social resistance which are simultaneously generating new actions in defence of human rights.<sup>125</sup>

<sup>125</sup> In March 2016, the UN Human Rights Council approved a resolution on the protection of HRDs promote Economic, Social and Cultural Rights (HRC: 2016). This resolution was supported by a significant number of NGOs. See [www.ishr.ch/news/human-rights-council-adopt-resolution-human-rights-defenders-and-reject-hostile-amendments](http://www.ishr.ch/news/human-rights-council-adopt-resolution-human-rights-defenders-and-reject-hostile-amendments). However, it is paradoxical that that in their public discourse many of the states that rejected the resolution are outspoken critics of del neo-liberalism.

The same might be said of the growing phenomenon of the criminalisation of HRDs. Do the tens of thousands of activists from communities displaced as a result of aggressive mining projects conform to the abstract, static, conceptualisation of HRDs? Do the thousands of HRDs who have been criminalised for exercising their rights fit within the definition? These questions must be answered when public policies intended to protect HRDs are being developed.

To sum up, all reductionist definitions of HRDs must be questioned and the concept afforded the complexity it deserves.

#### RECOMMENDATIONS

- The conceptualisation of HRDs is vulnerable to simplification, and a positive tension should always be maintained that is capable of expanding the concept to ensure it always includes the different identities of the people and organisations working to defend human rights.
- It should not be forgotten that the defence of human rights is a collective endeavour that involves standing up to many forms of power (including power exercised by forces that cooperate with HRDs) and that it is an activity that must evolve over time if it is to respond to different and emerging social struggles.

### The security threats faced by Human Rights Defenders: physical and structural violence

The concept of violence is broad, and may be understood in many different ways. The World Health Organisation (WHO) defines it as the “intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation” (WHO: 2002, 3). This definition includes not only interpersonal physical violence but also threats and intimidation, as well as the equally numerous consequences of violent behaviour - frequently less apparent - such as psychological damage, privation and deficiencies in service provision that compromise individual, family and community welfare (ibid). This conception of violence corresponds to what Galtung (1969, 171) describes as direct violence, that is, violence that is visible because it is an act committed by someone. This is the violence that occurs every time a perpetrator threatens or attacks an HRD.

But direct violence is incapable of explaining the complex insecurity experienced by HRDs: although they suffer many acts of aggression, their insecurity is rooted in another form of violence - the structural. This is described by Galtung as the form of violence that, in contrast to its physical counterpart, does not involve a direct relationship between subject and object, but instead emanates from social, economic and political structures within which, in the case at hand, HRDs and perpetrators interact.<sup>126</sup>

It might be argued that it is to this structural violence that the UN Human Rights Council’s 2013 Resolution on Human Rights Defenders refers when it recognises the “systemic and

structural discrimination and violence faced by women Human Rights Defenders”, and “calls upon States to integrate a gender perspective in their efforts to create a safe and enabling environment for the defence of human rights” (HRC: 22, par.12). The same “systemic and structural discrimination and violence” is referred to again in the 2015 UN General Assembly Resolution on Human Rights Defenders (UN General Assembly: 2015, par.13), and there is a further reference to power inequalities in another General Assembly Resolution, from 2013, this time on the protection of WHRDs (UN General Assembly: 2013, 2-3) which says,

*... historical and structural inequalities in power relations and discrimination against women, as well as various forms of extremism, have direct implications for the status and treatment of women, and that some women Human Rights Defenders’ rights are violated and their work stigmatized owing to discriminatory practices and social norms that serve to condone violence against women or perpetuate practices involving such violence...*

and adds:

*... all forms of discrimination, including racism, racial discrimination, xenophobia and related intolerance, can lead to the targeting or vulnerability to violence of women Human Rights Defenders, who are prone to multiple, intersecting or aggravated forms of discrimination and disadvantage.*

The allusion to these historical and structural inequalities in power relations, and the social discrimination affecting WHRDs, can also be applied to other excluded social groups such as poor rural communities, ethnic minorities, etc. and also, of course, to certain groups of HRDs. When acts of aggression against HRDs working on land rights occur, they remain unremarked and languish always in impunity because they are not investigated. It is therefore possible to speak of structural violence, because it is not exercised directly but affects HRDs in that it underlies the social structures and the inequalities that burden the poor and excluded peasant farmer population.

Structural violence tends to be invisible and is not always recognised as violence by HRDs themselves (because they are subordinated to it, and conditioned by its effects), nor by other social actors who are concerned about HRDs. What is more, direct and structural violence are woven together and reinforce each other mutually. It is very important not to lose sight of the fact that both are a means to an end: the exertion of domination and exclusion by powerful actors in order to impose their interests and silence the voice of HRDs.

Indeed, before speaking of protection, it is necessary to analyse the ways in which the insecurity of HRDs is produced through convergent processes involving powerful actors who want to protect their interests. These processes are expressed relationally (through direct assertions of power) and involve the exclusion or inclusion of HRDs in political, legal, social and cultural discourses with the effect that, structurally, they are converted into objects of domination (because limits are marked out for them in terms of what topics it is possible to work on and what actions are acceptable) and of exclusion (because action will be taken against them if they cross the line). This is a matter of social and historical processes that have been consolidated over a period of many years. In this manner, the power of a defined set of actors limits the agency of HRDs, or even comes to commit acts of aggression against them.

<sup>126</sup> “Violence without this relation is structural, built into structure. Thus, when one husband beats his wife, there is a clear case of personal violence, but when one million husbands keep one million wives in ignorance there is structural violence” (Galtung: 1969, 171).

It is clear from this analysis that all public policies should take the multiple forms of structural violence affecting HRDs extremely seriously. On the one hand, public policies should employ an *intersectional* approach that takes these asymmetries of power into account. And on the other, they should avoid contributing to this structural violence, albeit inadvertently, because they are implemented by institutions with power. For example, threatened activists might be forced to adapt to the space offered them by the public policy in question, perhaps shifting towards a more conformist approach to their work, or, at the least, a more limited one. If, in the name of security, a bodyguard stops an HRD visiting the marginal neighbourhoods where the victims they work with reside, how does this affect their security? If victims are obliged to travel to a city centre office that is watched over by members of the police, will they continue to trust the HRD and agree to serve as witnesses in an forthcoming trial?

#### RECOMMENDATIONS

- The protection of HRDs requires the structural violence they face to be approached using an intersectional approach that takes into account matters including class, economic and gender power and the effects of historical discrimination.

### A critique of the categorisation of Human Rights Defenders according to level of risk

Existing protection programmes invest energy in categorising, reducing and simplifying the world of the HRDs they have been created to attend to. This section examines some of these simplifications and exclusions.

#### An exclusive focus on Human Rights Defenders and on risk: “exceptional” situations in an overall context of “normality”

The existing mechanisms focus on HRDs and, in this manner, reduce the overall problem of the insecurity they face to the circumstances and characteristics of a limited cross section of their number: those who are classified as being *at risk*. This process involves an analytical reduction of the situation of HRDs that presents a simplified panorama, portraying their daily experience as something unusual and turning acts of aggression into exceptions to a supposed “secure normality”. In turn, this secure normality is projected as the reassuring backdrop to the work of defending human rights, diverting attention from a broader, more comprehensive view of the structures of power that seek to silence the voice of HRDs. Thus, attacks on HRDs are held to occur on the margins of these structures of power and peripherally to entrenched interests, as if they were exceptional occurrences, rather than the most visible and serious manifestations of structural violence. The impression given is that the victims of domination, or the excluded, are seen as such only because they are HRDs, and the significance of their other identities – as peasant farmer, member of an indigenous community, woman – is entirely ignored.

An exclusive focus on HRDs as “individuals with the capacity to protect themselves” also leads to the adoption of a certain methodological individualism: the measures being provided for the “individual enjoyment” of the HRD they benefit, for example, when generally the defence of human rights is a group or collective activity. The characteristics of HRDs in general are foregrounded (with stress on their vulnerabilities and their capacities) with the result

that individuals are portrayed in a way that isolates them from their context. In addition, the “illusion of the capacity to act” is projected onto them inasmuch as it is assumed that the protection response depends to a large extent on the (limited) agency of the HRDs themselves, rather than focusing on the perpetrator’s (more than probable) capacity to act. This being the case, the mechanisms offer “self-protection guides” that recommend that suggest HRDs should “walk the wrong way up a one way street”, so they can see who is getting out of a vehicle to attack them or to “alter their routines”, as if changing the details of the school run or the time you get to work might prevent the attack you fear.

This approach treats the protection of HRDs as a physical and individual matter, and for that reason it is clothed with certain limited security measures (sometimes literally so, as in the case of bullet-proof vests), but with no focus on actions to deal with the power structures and relations that affect them and, in fact, establish the dimensions of their insecurity. The protection programmes do not consider the possibility of reducing the level of risk<sup>127</sup> and, in a kind of implicit apportioning of responsibilities, assign the taking of political action or issuing of public denunciations of abuse to HRDs or to the organisations that support them.

#### Categorising and classifying HRDs

The protection mechanisms seek to identify which individuals from among the larger somewhat ill-defined group of HRDs “are at risk” (ill-defined, because according to the UN anybody who acts in defence of human rights may be considered an HRD). In fact, only some HRDs actually end up approaching a mechanism. Once they have done so, they are generally offered limited protection measures on the assumption that these will reduce the levels of risk felt by the HRD to a level acceptable to them, to the state and to society as a whole. According to the one-dimensional logic of this approach, if more HRDs are at risk, more measures are granted (or, alternatively, the threshold of risk that must be reached before the measures can be granted is raised so that the number of beneficiaries does not in fact have to be increased). If the cryptic systems of risk assessment used to examine cases conclude that the level of risk has fallen, the measures afforded a particular HRD are reduced or withdrawn. In this way, the mechanisms create a dividing line between two categories of HRD: those who are “inside” the programme (acts of aggression as exceptions) and those who are “outside” it. This latter group is excluded from the discourse on protection because they seem not to need it (that is, they live within a context of apparent normality). There is a limited amount of exchange between these two categories, consisting of those HRDs who leave a programme and those who join it.

In theory, this dividing line is drawn to identify which HRDs face “medium or high” levels of risk, but the distinction is far from clear given the difficulty of examining the matter of risk objectively<sup>128</sup> and the fact that the test is applied only to HRDs who seek protection from the programme, and not to all of those who might be considered to be at risk. That is: everybody who might potentially be admitted to a programme. The dividing line therefore becomes a symbolic frontier that serves as a political justification of why some HRDs are able to access certain resources and others are not. Furthermore, the profile of some of those who fall on the protected side of the line is actively raised, helping to mask the limited access to these benefits

<sup>127</sup> According to a well-known equation according to which risk is proportional to threats and vulnerabilities ( $R=A \times V / C$ ), if threats are not reduced there can be little real reduction in risk. See Eguren and Caraj (2013).

<sup>128</sup> Risk is examined in more depth below.

enjoyed by others. For example, the lack of real access to protection measures enjoyed by rural HRDs is hidden because *some* of them become very visible. The same might be said of HRDs working in the field of sexual diversity: the visibility of some draws a veil over the involuntary absence of others.

This categorisation process raises the question of whether HRDs gain access to the programme under different terms of citizenship. For example, the Colombian programme converts HRDs into objects of protection by applying legislation that, thanks to the “extraordinary” risk they face, converts them into a differentiated and manageable category, subject to different rules. They are unable to go to certain public places because they face “unacceptable risk”, and if they contravene the rules laid down by their bodyguards, they may lose their protection because they have flouted the programme’s rules.<sup>129</sup> In turn, these different rules create new identities within the overall concept of the HRD, such as the “Human Rights Defender with a bodyguard and a bullet-proof vehicle” versus the “Human Rights Defender who only gets a bullet-proof vest”. These identities condition different kinds of praxis in the defence of human rights, as in the following situations, which illustrate a far more complex reality than that catered for by the mechanisms:

- Take the real-life case of an at-risk peasant leader who has a bodyguard.<sup>130</sup> During an incident in which a group of armed guards (belonging to a private security firm) enters a farm (from which the peasants have been evicted), the leader is unable to intervene and speak with the head of the armed group, because his bodyguard is not prepared to take the risk. In the meantime, the leader’s fellow HRDs, who do not have bodyguards, would have been able to speak to the commander of the armed guards, but they refrain from doing so because they are waiting for their leader to do so. The leader has to leave the area and, eventually, the other HRDs *do* speak with the group from the private security firm, taking on new immediate risks that have not been contemplated under the logic of the protection programme. (And in fact, several members of the group of peasant farmers were injured that day). A tension therefore emerges between one category, that of “Human Rights Defender”, and another, “Human Rights Defender protected by the state”, which interferes directly with the actions of both in a situation of heightened tension.

In a single dangerous situation, there may be HRDs present who have been granted active protection measures alongside others whose requests have been denied, and yet more whose applications have been successful but who are still awaiting implementation of the requisite measures. An HRD’s experience of time is affected by the *tempo* of a protection programme (timescales, dates, etc.) and seems to run parallel to real time, leading to confusion and uncertainty.

It appears that for the programme, the term “at-risk HRD” is a category that emerges *after* an individual becomes a “Human Rights Defender”, and *before* they become a “Human Rights Defender protected by the state”, apparently in ignorance of the fact that these *categories* of Human Rights Defender are likely to be present simultaneously in any given situation. None of these categories respond to questions that we have heard posed on many

occasions,<sup>131</sup> such as, “if we’re all at risk, why does the state protect some of us and not others?” and “if my measures are urgent because of my high level of risk, why do I have to wait five months before I can use them?”

### What about the perpetrators? How are acts of aggression against HRDs constructed?

The existing policies are focused on the individual HRD, in isolation from other social actors. No mention is made, for example, of the perpetrator, who remains “out of focus” as an actor (other than as the hitman, or *sicario*, visualised according to a strict criterion of physical security). In order to understand the matter of HRD security better the viewpoint and actions of the perpetrator must be examined analytically. We carry out this analysis in two differentiated phases. First, we reflect on the reasons why a perpetrator might view an act of aggression as a valid option to silence someone who opposes their interests. We then explore the ways in which they are in the end able to do this. Both moments must be examined in order to understand better how to respond to actions of perpetrators.

### Why might a perpetrator view an act of aggression as a valid option to silence someone who opposes their interests

On many occasions HRDs are not threatened or attacked uniquely because of the work they carry out in defence of human rights, but because they are an “insolent peasant who wants more land than he has already”, “an ignorant Indian who still bears a grudge against his colonisers”, “a meddling lawyer who pokes his nose in where it’s not wanted”, “a whore who ignores her family so she can hang out with other hookers”, or “a pervert flaunting his unnatural desires”. We have already argued, in the first place, that acts of aggression against HRDs cannot be understood in isolation from the social and historical contexts in which they function: as powerful actors operating within a historical framework of structural violence, which sees peasants as subalterns, indigenous people as devoid of rights, women as objects of possession and domination, and homosexuals as people who must hide their identity if they are to survive. In the past, these powerful actors have repressed the processes of resistance and opposition advanced by their subalterns. These views, and this prior knowledge, contribute to the pre-formed belief of the perpetrator, created by these social and historical realities, so that a discourse of protection based on the abstract concept of “Human Rights Defender” is either not understood or has no meaning for the aggressor. This is why it is so important that attempts to provide security for HRDs should take into account the stereotypes and structures of violence that weigh down on the lives of peasants, indigenous people, lawyers and homosexuals who dare to operate beyond the spaces assigned them by certain powerful interests.

### How is it, in the end, that perpetrators are able to carry out acts of aggression against Human Rights Defenders?

Aggression, as an expression of physical violence, responds to a logic that combines direct violence with the conditions offered by structural violence. When acts of aggression are analysed in depth it is frequently apparent that they represent the turning point in a conflict

129 Article 103 of the Regulation of the Law. See [www.derechoshumanos.gob.mx/work/models/Derechos\\_Humanos/Resource/182/1/images/Regulations.pdf](http://www.derechoshumanos.gob.mx/work/models/Derechos_Humanos/Resource/182/1/images/Regulations.pdf) pdf (Accessed 25/05/16).

130 Interview with community leaders. Colombia, 20 August 2014.

131 In many of the interviews carried out during research for this study.

or dispute whose development may be traced a long way back in time and in which different actors are involved.

Initially it might be argued that acts of aggression committed against HRDs are the product of at least three interacting factors:<sup>132</sup>

- The belief that violent action is both desirable and useful:

Some past and present situations lead the aggressor to consider that the use of violence is a desirable option. People who attack HRDs consider their actions to be a "useful" way of achieving their objective of "resolving the problem", either because they believe their actions will remain unpunished, or because they are prepared to assume the political cost, "because it's worth it".

Before the attack, aggressors may analyse their options and take certain decisions. They have to decide whether to attack leaders or grassroots activists, and also whether this should be a one-off action (against a key person, often very well known, in which case the political cost of the action might be increased) or in a series of aggressions (against less well-known members of the same organisation). But although the acts of aggression against HRDs are frequently the product of a degree of calculation on the part of the perpetrator, they are not always rational. Frequently they respond to impulses that are linked to power, to political or moral convictions or, even, to habitual practices or "customs".

The motivation and the logic informing the decision, and the *modus operandi* of the perpetrator differ from case to case: if the HRD is a lawyer working on land rights issues, a landowner might seek to arrange acts of brazen or lower-profile aggression, or perhaps pursue a strategy of criminalisation; if the HRD is a woman defending the rights of women, then sexism and hatred fulfil an important role at the moment the aggressor determines their action, which they may in this case make more public, in order to leave the nature of the hegemonic moral code very clear.

- The existence of a favourable scenario:

A favourable set of physical and social circumstances is required, enabling the perpetrator to carry out the act of aggression, or that at least does not prove an obstacle to its completion. HRDs must see that they are vulnerable in the environment in which they operate, vulnerable because of their ideas, and vulnerable when they are out and about. Perpetrators will recognise opportunities to act. Furthermore, the perception of immediate and mediate impunity is fundamental, as this tends to be linked to factors associated with structural violence ("who's going to complain just because another peasant gets killed?") and to prior knowledge about the way impunity actually operates (victims will know beforehand that there will be a minimal response from the police or the judicial system), etc.

- The existence of resources that are available for committing the act of aggression:

Perpetrators must have access to means and resources if they are to exercise violence. Historically, these have been available to powerful sectors that have counted with intelligence on the targeted HRD, the means to carry out an attack or to contract someone else to do so, etc. It is not always a simple matter to attack an HRD. In the case of physical attacks, the target must be kept under surveillance in order to ascertain their movements and decide

on the best place to act. It is, furthermore, necessary to know how to get close to the target and to escape quickly or, if that is not possible, to contract a third party to carry out the act (requiring, for example, contacts with organised crime or with corrupt members of the security forces).

According to this reasoning, the risk of aggression might be reduced if changes are produced in the three aspects described: the capacity of the potential aggressor to orchestrate the action, their attitude towards the acceptability of an attack, and how probable it is that it will go unpunished. Thus, current protection mechanisms, whose focus is limited to direct physical violence, contribute to rendering structural violence invisible and even to providing a *de facto* regulation of the domination and exclusion of HRDs.

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#### RECOMMENDATIONS

- The views of perpetrators should be included in any analysis of acts of aggression against HRDs, noting how they are considered to be a subaltern population group against which action should be taken if they affect the perpetrator's interests. This approach would permit protection policies to take informed decisions about how to prevent these criminal acts.
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#### By way of conclusion: Human Rights Defenders as subjects (of rights) and not just as objects (of protection)

In conclusion, it is fundamentally important to recognise that security for HRDs is a complex, deep-seated and cross-cutting matter, and that it is also important to protect the right to defend human rights. These programmes should "open up" the concept of security they use, recognising that all security actions are actually political actions, and examining the way in which perceptions of security are constructed in every context and everywhere by different actors, including the HRDs themselves.

In the light of the reductionist approach described above, we believe that the existing programmes conceive of at-risk HRDs as candidates to be considered "objects of protection" rather than subjects of rights. It is important to bear in mind that HRDs frequently operate in extremely precarious circumstances, with scant access to information, and are often obliged to take decisions on their own. It is therefore important to recognise them as social subjects in construction. However, within this *state-centric* focus on security, the passage from subject to object begins when HRDs are (briefly and metaphorically) extracted from their environment and when it is decided more or less arbitrarily that they are at risk and efforts are made (sometimes literally as in the case of bullet-proof vests) to clothe them with certain protection measures before they are returned thus-clothed to their original environments. Ultimately, insecurity, uncertainty and the corseting to which they are subjected by the protection programme can push HRDs towards renouncing other identities that perhaps do not fit easily into this narrow framing of the problem of protection. Thus, the subject becomes merely a "Human Rights Defender" and not a left-wing trade unionist, a revolutionary peasant farmer or a woman who openly rejects the patriarchy. The measures can also mean that HRDs are no longer able to aspire to exercise their rights or to contribute to social change or that, by contrast, that they are able to expand their horizons as political subjects working in defence of human rights.

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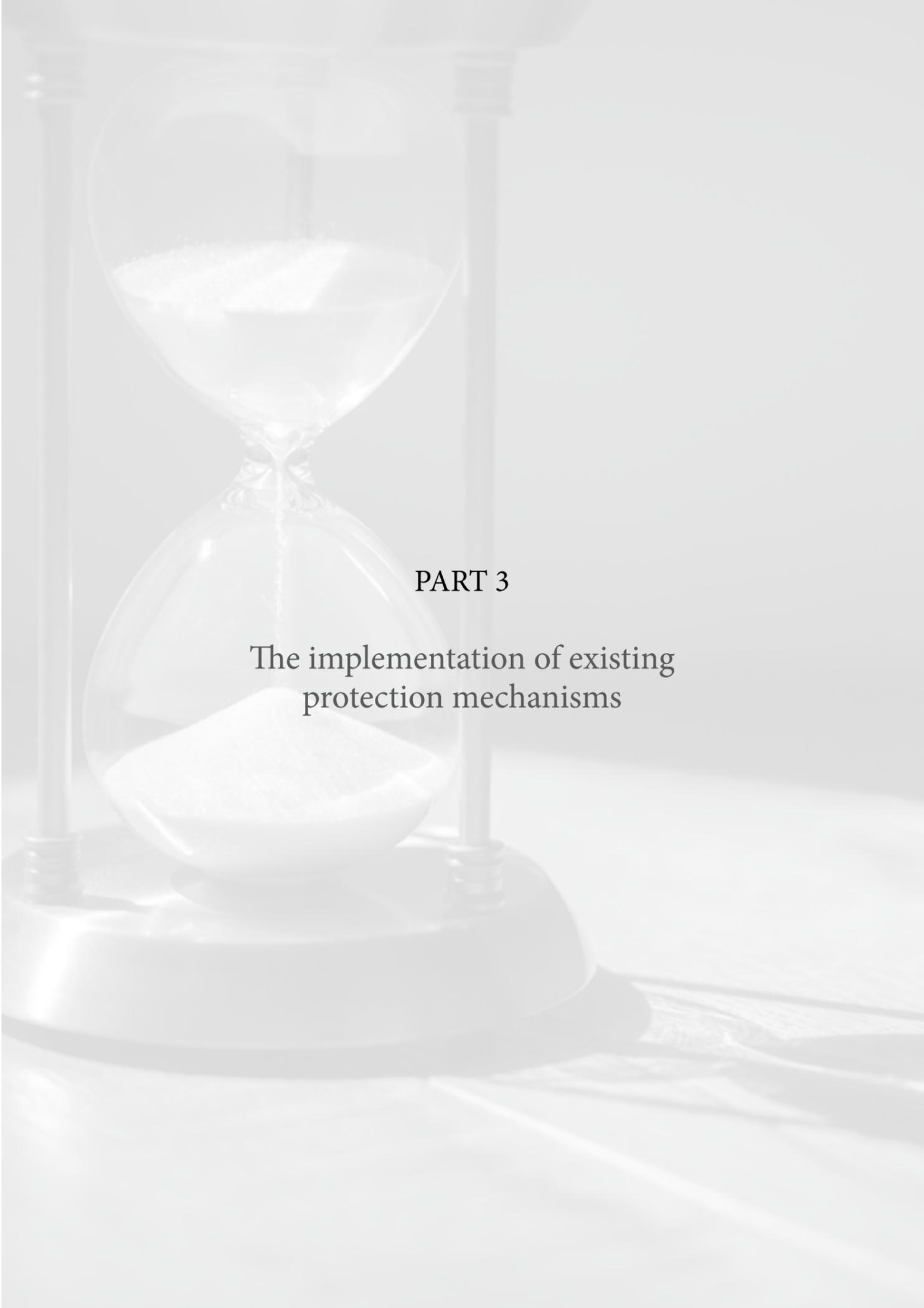
132 Adapted from Eguren and Caraj (2013, 1.5).

The incorporation of this focus on security and rights into public protection policies should be carried out by government bodies (and promoted by HRDs or other sectors) by way of political decision-making, discussions within the executive branch, consultations and events, joint analytical exercises, advocacy, social mobilisation, etc.

#### RECOMMENDATIONS

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- Broadly speaking security for HRDs should be a key objective of all public protection policies.
  - Recognise that the problem of security for HRDs is complex, deeply-rooted and cross-cutting, and that it is vital to protect the right to defend human rights.
  - Frequently, HRDs operate in precarious circumstances, with scant access to information, and they often have to take decisions on their own. They should be recognised as social agents in construction, who possess and exercise rights. They are, therefore, subjects of rights and not objects of protection.
  - The incorporation of this focus on security and rights into public protection policies should be carried out by government bodies (and promoted by HRDs or other sectors) by way of political decision-making, discussions within the executive branch, consultations and events, joint analytical exercises, advocacy, social mobilisation, etc.
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## PART 3

### The implementation of existing protection mechanisms

### 3.1. Routines and procedures in existing mechanisms

*This chapter describes some important aspects of the procedures and routines most frequently contained in current mechanisms; it analyses and compares the different processes they have followed, in order to suggest Good Practice and make Recommendations for improvement.*

#### The target population and its access to public protection policies

##### Human Rights Defenders as the target population. Standard criteria for access to the programme

An essential element of any public policy is the definition of who shall be included among its target population. It is worthy of note that all the programmes examined in this study adopt the definition of HRDs found in the UN Declaration (see Chapter 1). But other elements of good practice exist which we indicate below.

##### GOOD PRACTICE WHEN DEFINING THE TARGET POPULATION OF THE POLICY

- Adoption of the UN definition of who is and who is not an HRD: if the UN definition is adopted, then the question of whether or not someone should be considered an HRD is determined by their actions. Accordingly, the ideal prima facie parameter for evaluating whether someone should be accepted by the programme is a description of their activities. It is therefore irrelevant whether a person belongs to a civil society organisation, defends a certain kind of rights or, indeed, whether or not they consider themselves to be HRDs.
- Inclusion of the social milieu of HRDs in the protection programme: members of the close social milieu of at-risk HRDs should be included as beneficiaries of the protection programmes. That is: family members or any other person, community or organisation that is at risk because of their direct link with the threatened HRD.
- Establish criteria that are shared by all participating bodies: all bodies that play a role in the implementation of the programme should share a single definition of the target population, in particular when the programme includes other at-risk groups such as communications professionals.

In order for a person or group to accede for the first time to a protection programme, the existing standard is that beneficiaries should fulfil two principal criteria (see Table 4):

TABLE 4: STANDARD CRITERIA FOR GAINING ACCESS TO PROTECTION PROGRAMMES

| CRITERION 1: THE HRD BELONGS TO THE PROGRAMME'S TARGET POPULATION   | + | CRITERION 2: THE SITUATION OF RISK IS A CONSEQUENCE OF THE HRD'S ACTIVITY IN DEFENCE OF HUMAN RIGHTS. <sup>133</sup>   |
|---|---|--|
| Whether or not a person is a member of the target population is usually determined by their own affirmation that they are an HRD. Sometimes support for the claim or a reference is requested from other people or organisations. |   | This causal relation is generally established when the HRD states it to be the case (or when relevant, other persons or organisations confirm it to be so). As this is only a requirement for an individual to access a programme and not a recognition of the level of risk involved, good practice requires all such applicants to be included in the programme. |

*(Prepared by the authors)*

133 Or of their activities as journalists or communications professionals in programmes that also cover this sector of the population.

##### GOOD PRACTICE

- Ensure there are standard, open, criteria for admission to the programme.
- Ensure HRDs give their informed written consent to entering the programme.

#### The inclusion of public servants in an HRD protection programme

Public servants may also be considered to be HRDs, but the nature of their employment means the status of their activities in defence of human rights is distinctive: when threats or acts of aggression are directed against public employees because of the work they do, the state is capable of taking appropriate decisions on the work in question in order to provide its employees with protection, using existing resources to do so, promoting the necessary levels of coordination between bodies, and calling on other officials to provide support, etc. By contrast, in the case of civil society HRDs, the state cannot perform these functions.

It is also very important to bear in mind that officials operating within the justice system - whose work relies on the guarantee of separation from the executive branch - cannot rely on governmental protection programmes because this might compromise their independence. For this reason, unlike the programmes examined here, protection mechanisms for judicial employees should be the responsibility of the legal authorities.

We therefore consider it to be crucial to maintain a separation between HRD protection policies and programmes aimed at other public officials. We believe also that it can be argued that the inclusion of public servants in the programmes should not be allowed to divert resources from the protection of civil society HRDs, though in practice this principle might be very difficult to establish.

##### RECOMMENDATIONS

- The protection of public servants should not divert resources from the protection of civil society HRDs.

#### What happens when a request for inclusion in a programme is rejected?

Protection programmes reject a percentage of applications, but there is little transparency about the criteria applied to do so. A study of 59 cases in Mexico found that eight requests (some 14%) were rejected, though three of these were subsequently admitted on appeal (OSC: 2015, 49-50). The same source indicates that the reasons given for refusal included administrative errors, such as missing signatures, refusal to accept that the individual in question worked as an HRD or that the acts of aggression to which they were subject resulted from their activities as a journalist. A specific study of the same question in Colombia determined that between January 2012 and June 2014 a total of 3,216 applications were "rejected or declared to be without risk (or of ordinary risk as defined by the decrees)", with the result that "56% of requests for protection made by HRDs in this period were rejected by the government" (Somos Defensores: 2014, 8). It is not possible to use this data to distinguish between applications that were rejected and those considered not to be at risk. For this reason, the concerns expressed by the Somos Defensores programme about what it calls "the limbo of the unprotected" remain relevant:

*To date, no investigation or examination has been carried out by the NPU or by any other government or state institution, into the question of whether these Human Rights Defenders were murdered or displaced again from their homes and places of work as a result of the threats, harassment and/or acts of aggression about which they had complained and that led them to seek state protection in the first place. In addition, the SIADDHH has been unable to monitor these cases, as the NPU argues that the information is confidential.*

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#### GOOD PRACTICE

- In cases where applicants are not admitted to a programme they should receive a clear (written and verbal) explanation of the reasons their request was refused.
- Procedures should be in place (for example, an appeals process) to enable applicants to question decisions.

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#### RECOMMENDATIONS

- Increase the levels of transparency concerning the percentage of applications that are rejected, and why.
- Monitor rejected applications (and those considered to be low risk) in order to determine whether errors or changes to the situation have occurred that might require existing decisions to be re-examined.

### Should HRDs be required to lodge a complaint before applying?

This question merits particular attention, as it has been the subject of debate during the regulation phase of some protection programmes, for instance in Mexico. Discussion tends to revolve around the question of whether applicants should be required to have lodged a prior legal complaint in order for a programme to offer protection. Such a requirement would pose several problems.

First, it would affect the rapid response principle that should govern the adoption of protection measures, above all in urgent situations. Second, it should be borne in mind that, frequently, the threats levelled against HRDs are intended to stop them lodging complaints and that were they to do so it might lead to a worsening of the attacks against them. Furthermore, threats may originate from the authorities themselves, (for example, from the police or from justice operators) and this inhibits HRDs from formalising complaints. Finally, a resistance to making complaints may also derive from a lack of confidence in the investigating bodies because of past negligence or high levels of impunity. We therefore argue that establishing a requirement for applicants to have lodged a prior complaint can negatively affect the usefulness of protection policies.

In any case, when serious crimes have been committed the authorities have the obligation to act immediately, to initiate the necessary investigations, and to use all the resources at their disposal for the purpose. In other situations, when the threat is not considered grave under criminal law – that is, when an action can only be brought by the allegedly injured party – the relevant authorities should coordinate their actions. For example, the protection programme should maintain fluid channels of communication with the judicial authorities so that it can advise HRDs of the steps they might take and assess their potential consequences so they can

decide on the best course of action. HRDs should always provide consent if a complaint is to be lodged.

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#### GOOD PRACTICE

- It is not necessary for a prior complaint to have been lodged in order to gain access to a protection programme.

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#### RECOMMENDATIONS

- The protection programme and the judicial authorities should maintain open channels of communication so that they can provide information to HRDs and advise them on the progress of each case.
- The authorisation of the affected HRD should always be obtained if a formal complaint is to be lodged.

### Initial contact between Human Rights Defenders and the programme.

Initial contact with any of the institutions responsible for providing some form of protection may occur in one of several ways:

- HRDs contact the programme directly.
- HRDs make contact with the programme through an intermediary (an organisation, a church, etc.).<sup>134</sup>
- Programme officials contact the HRD or an intermediary directly when informed of a situation.

Each of these modes of contact is examined below:

**HRDs contact the programme directly.** Access routes should be as flexible as possible, while ensuring the minimum requirements of any public policy are met. It is therefore advisable to allow applications to be received in different ways: for example, in person, by telephone, or using an established email addresses. However, requests that are not made in writing should subsequently be confirmed by the applicant in written form, ensuring there is a dated record of the application, and that the consent of the HRD to enter the programme is registered.

**HRDs make contact with the programme through an intermediary.** As HRDs do not always know of the existence of protection programmes, or might not initially have confidence in them, some form of **intermediation** might be offered, for example from an organisation, a religious institution or other persons. The programme should be open to intermediation of this kind, or the provision of good offices, and seek immediate contact with the HRD, recognising them as rights holders and as potential beneficiaries of the programme. There are in fact indications that more HRDs are accepted by protection programmes when their applications are supported by civil society organisations.<sup>135</sup> It is important in this process of intermediation that HRDs should consent to entering into contact with the

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<sup>134</sup> There are numerous examples showing that it can, for example, be difficult to gain access to the Mexican mechanism without external accompaniment (WOLA-PBI: 2016, 3).

<sup>135</sup> See the case studies in OSC: 2015, 47-49.

programme, as they may not be aware of the process or might, even, have expressed their reluctance to the intermediary, who has decided to contact the programme anyway. In any case, the programme should have sufficient room for manoeuvre to be able to respond to any approaches that are made, but also to suspend the process if an HRD clearly expresses their unwillingness to remain in contact with the programme.

**Programme officials contact the HRD directly when they become aware of a situation,** because the state has a duty to inform itself proactively of the situations of risk that might be faced by HRDs (the state having monitored the situation, conducted research, or received information from third parties). The IACtHR has established that the duty to prevent is activated at the moment the state becomes aware of a situation of risk.<sup>136</sup> That is, as soon as any public servant receives information about threats or acts of aggression affecting an HRD (whether or not the acts are potential crimes) they are obliged to act *ex officio* and to inform the relevant authorities (even if a protection programme is not in place). Likewise, the authorities have the immediate duty to cooperate in order to guarantee protection. In this sense, protective actions need not depend only on any investigations that might be initiated.

#### GOOD PRACTICE

- Programmes should be flexible about the ways in which HRDs can make contact with them.
- Programmes should have regulations in place covering the potential facilitation of contacts with HRDs, ensuring that the rights of HRDs are guaranteed.
- Public policies should explicitly recognise the role that can be played by intermediaries, such as human rights organisations or religious institutions, in order to ensure that HRDs can benefit from the protection provided by the programme.
- Recommendation:
  - When necessary, protection programme should initiate contact with HRDs.

#### Obstacles to accessing the programmes

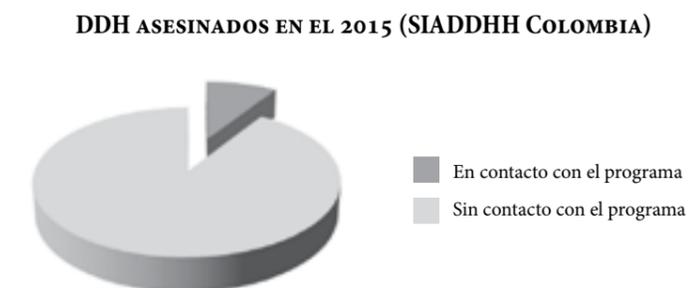
Public policies for the protection of HRDs should be realistic: there are multiple obstacles in the way of effective access to the programmes, which seem to be based on the idea that HRDs know themselves to be at risk and that all they have to do is contact a telephone number that is “available 24 hours a day”. But this abstract idea does not bear much relation to reality, which is much more complex. This reality shows that the majority of murdered HRDs have not made contact with the protection programme. For example, the data on the 63 HRDs murdered in Colombia in 2015 (Somos Defensores: 2015, 28) suggests that 91% had had no contact with the protection programme (see Figure 3).

<sup>136</sup> The IACtHR has established the responsibility of the state to act when it learns of a dangerous situation that might be faced by an HRD. In its judgment on the case of Human Rights Defender et al. v. Guatemala (28 August 2014, par. 155) “the Court recalls that State authorities who are aware of a situation of special risk have a responsibility to decide or determine whether the person being threatened or harassed requires protection measures, or to refer the matter to the competent authority for that purpose and to offer the person at risk timely information on the measures Available. The assessment of whether or not a person requires protection measures and what those measures should be, is the State’s obligation, and should not be limited to requiring the victim to apply to “the competent authorities”, without knowing exactly which authority is best able to address his situation, since it is the State’s responsibility to establish measures of coordination between its institutions and officials for that purpose”.

It is, therefore, imperative to conduct research aimed at understanding why HRDs fail to contact a programme. A non-exhaustive list of the barriers to effective access might include the following:

- A lack of effective publicity for the programmes, as information on them should be available to a wide range of HRDs working in very different circumstances.
- A perception that the bodies responsible for implementing the public policy are partial in their outlook, in that they attend only to specific groups or persons, or fail effectively to recognise certain groups of HRDs.
- A lack of confidence in the policy, or its results, especially in circumstances where there is significant conflict between institutions (or the government) and the HRDs.
- An absence of measures to deal with the exclusion of groups because of linguistic, cultural, economic or geographical barriers (in the case of rural areas with poor communications infrastructure or in large), or for any other form discrimination (based on gender, sexual orientation, age, etc.).

FIGURE 3: MURDERS OF HRDs WHO HAD BEEN IN CONTACT WITH THE COLOMBIAN PROTECTION PROGRAMME



A non-exhaustive list of factors that might favour HRD access to protection programmes would, as a minimum, include the following aspects:

- **Legitimacy:** whether the institutions with responsibility for implementing the public policy are considered to be legitimate by the population at large will depend on whether its judicial or official framework is solid, is accepted by the community of HRDs, or is believed to be concerned about the welfare of its beneficiaries, etc.
- **Decentralisation:** this aspect of a policy is a function of the physical proximity of the programme’s network of offices around the country (or its satellites or contact points) to HRDs and of whether its officials travel to zones distant from the capital city, where HRDs carry out most of their activities. Decentralisation is important not only in order to facilitate access to the institutions for all, but also to ensure that the measures taken are effective, because the closer officials are to the realities the beneficiaries face, the easier it is to understand them.
- **An open organisational culture and a broad mandate:** HRDs should feel welcomed and be confident that their protection needs will be taken seriously.

- **Integrity, quality and diversity of officials:** the quality of the programme's work depends in large part on its officials. Criteria should therefore be in place to ensure that staff are selected on merit, helping to ensure that all employees are independent professionals. In addition, if they are to be open and accessible, the bodies responsible for implementing the policies must ensure that their staff are representative of the social, ethnic and linguistic composition of society and that there is equal genders representation.
- **Efficient, timely and respectful procedures:** if the actions taken to provide protection are to be effective, procedures must be simple, accessible and rapid.
- **Efficiency:** when HRDs go to national-level institutions they expect them to have the authority to intervene with the bodies responsible for providing protection. It is also very important that programmes monitor the recommendations they make and, in general, reduce their response times when protection has been requested or, when needed, that they provide an immediate response.

#### RECOMMENDATIONS

- All policies should have quality improvement procedures in place to detect and minimise barriers to access and facilitate effective access for the target population.
- Research is required in order to improve understanding of why the vast majority of at-risk HRDs do not access existing protection programmes and to the measures required to improve access.

### The response of protection policies: procedures and timescales

Once a programme has accepted an HRD, procedures are initiated in order to analyse the situation, threats or difficulties they face and their level of risk and, if required, implement a protection plan. Generally speaking, a distinction is made between **ordinary** and **extraordinary** procedures (the latter being reserved for situations of risk that might require an immediate response).

#### Ordinary procedures

Ordinary procedures generally involve the following steps:

- Receipt of a written request presented either in person by the HRD or by a third party.
- Analysis and confirmation that the applicant belongs to the target group and of the other criteria used by each programme, such as the existence of causality, the continued presence of risk and their current or permanent location, etc. When necessary, a personal interview may be conducted with the applicant in the hope of increasing the availability of relevant information.
- Analysis and determination of the level of risk by the appropriate body.
- Presentation of the analyses and plans to the body responsible for taking decisions on risk and on protection plans, which then agrees on a final decision (preferably with the participation of the HRD, as in the Mexican programme). The entire process is documented in writing.
- Implementation of the measures: protection plan and monitoring.

Table 5 provides a comparison of the response times of different procedures, when specified, for the different programmes.

TABLE 5: COMPARISON OF RESPONSE TIMES BY PROCEDURE

| COMPARISON OF TIMESCALES<br>[---] = NO TIMESCALES ESTABLISHED] | COLOMBIA                                     | BRAZIL | MEXICO                               | HONDURAS     |
|--|--|--------|--------------------------------------|--------------|
| <b>Ordinary procedures</b>                                     |  |        |                                      |              |
| Following application by HRD                                   | Interview by official: report within 10 days | ----   | ----                                 |              |
| Evaluation of risk   | Following prior report: 2 weeks              | ----   | 10 days                              | 2 to 4 weeks |
| Decision on protection measures                                | ----   | ----   | Monthly (in Governing Board meeting) |              |
| Implementation of protection measures                          | -----  | ----   | 30 days                              | 48 hours     |
| <b>Extraordinary or urgent procedures</b>                      |  |        |                                      |              |
| Measures announced   |  | ----   | 3 hours                              | ----         |
| Implementation of measures                                     |  | ----   | 9 hours                              | 8 hours      |

The frequency with which the decision-making bodies meet is important (the Mexican Governing Board meets once a month, for example),<sup>137</sup> because if meetings are too infrequent bottlenecks may be created. It is therefore recommended to establish the highest level of coordination possible, specifying the decision-making bodies, timescales, and procedural flowcharts, in order to avoid delays or stagnation.

#### RECOMMENDATIONS

- Quality control measures should be established for protection procedures, so that processes operate properly and bottlenecks do not occur.

#### Extraordinary procedures

Extraordinary procedures are intended to be applied in urgent cases, but it is not easy to decide when a case is urgent. The Mexican programme is probably the fastest to respond,<sup>138</sup> because the urgency is triggered when applicants declare, with evidence, that their lives or physical integrity are in immediate danger during the next 24 or 48 hours. In these cases, a programme is obliged to grant measures, without a requirement to carry out a detailed evaluation of risk. The body responsible for risk evaluation is informed of the measures that have been taken as soon as possible, so that definitive measures can be ordered under the ordinary procedure. In any case, a memorandum (or similar document) should be prepared detailing the measures agreed with the HRD or – if appropriate – with the organisation providing them with advice. This memorandum might be a document signed in person, a fax or an email or, even, a recording of a telephone conversation, in which the emergency measures are agreed (the recording can be authorised verbally during the phone call itself).

<sup>137</sup> According to the mechanism's own Activities Report for 2015 the Governing Board met three times (Subsecretaría de Derechos Humanos, 2015), 5. In order to analyse the cases its members decided to split into four groups, the entire Board only reviewing cases in which the group that examined it first could not reach consensus.

<sup>138</sup> On paper at least the draft regulations for the Honduran law (which was being debated when this study was being written) recognise the same standards.

It is important to clarify that the granting of emergency protection measures should not necessarily condition subsequent actions decided upon once the risk has been evaluated and more informed decisions can be taken. That is, it might be the case that immediate responses are ordered, such as the initial evacuation of an at-risk HRD, but that these are subsequently understood to be inappropriate with the result that the protected person returns home. Alternatively, it might be decided that the initial measures taken were insufficient.

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#### GOOD PRACTICE:

- A specific procedure should be established to deal with extraordinary risks.
  - The response ordered by the extraordinary procedure should be based on a declaration made by the HRD, which itself should be supported by evidence.
  - The procedure should ensure that the protection provided to the HRD is transferred from extraordinary to ordinary procedures at the earliest possible opportunity, as the latter tend to be more tightly regulated and can be extended if necessary.
  - HRDs facing extraordinary risk and who request help should be informed of the kind of emergency measures available.
  - Because of the intrinsic complexity of situations of extraordinary risk, the response should respond to clear guidelines.
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#### Concerning the documentation required to open and to support a case

Documentary evidence is needed so that applications can be analysed, and informed decisions taken. However, its absence should not be a barrier to the initiation of protection measures, especially in high-risk cases or when HRDs have had to be evacuated from where they live.

Only evidence related directly to the case should be requested, and reasonable timescales established for it to be produced.

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#### RECOMMENDATIONS

- The amount of information required to support a request for protection should be kept to a minimum.
- 

#### On the veracity of the information provided by HRDs

All the programmes examine the information provided by HRDs on their situations of risk. Usually, there are no clear established guidelines. In general, experience shows that HRDs request protection measures appropriately and in good faith. There have, however, been some very isolated cases when applications have been made to the programmes for personal reasons (in order to leave a region, for example). On other occasions, HRDs might be driven by fear to interpret events incorrectly or to gild available information in order to be accepted by a programme.

The few proven cases of abuse of a protection system receive extensive coverage, possibly creating the erroneous view that such practices are frequent, generating suspicion about HRDs, and undermining the levels of confidence that are required between all the parties involved in providing protection.

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#### RECOMMENDATIONS

- Any enquiries that might be required to evaluate the risk faced by HRDs should be carried out according to clear guidelines and should not turn into police investigations.
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#### The risk that HRDs might be re-victimised because of their association with the programme

There is a risk that HRDs might be re-victimised as they pass through the different stages of the programme (and after they have left it), above all because of the requirement to provide statements or to submit themselves to repeated interviews. These moments of vulnerability include, for example:<sup>139</sup>

- The point of entry into the protection programme.
- The evaluation of risk (involving other bodies, such as the police).
- Declarations to other bodies (other state bodies, the judicial system, international organisations, etc.).

The possibility of re-victimisation might be avoided by implementing measures such as the following:

- Stipulating the minimum number of interviews required, both internally to the programme and with its habitual collaborators.
- Agreeing processes to be followed both within the programme and with other bodies.
- Training staff in how to treat victims.
- Accompanying HRDs during the reception process and evaluation of the case.
- Designating a named official who will accompany the HRD throughout the entire process, including procedures involving other institutions.
- Offering specialised psychosocial support for HRDs from the start.
- Foreseeing, and dealing with, language and cultural differences.

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#### RECOMMENDATIONS

- Monitor and reduce the risk of re-victimisation in cases when appropriate.
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#### The trust required between those with a duty to protect and those with a right to be protected

Frequently, the work of HRDs brings them into confrontation with powerful players, including state actors. Therefore, permanent efforts should be made to build confidence between them and protection programmes. Such efforts are essential if joint work is to be possible to established. Relations will inevitably be accompanied by tension, conflicts of interest and power struggles. This must be borne very much in mind if a protection programme is to last beyond the short term.

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<sup>139</sup> Adapted from Martín and Eguren (2011, 76).

### Obtaining informed consent from HRDs included in the protection programme

It is a basic principle that any state action that directly affects individuals requires them to provide informed consent. Protection programmes should be no exception. There are critical moments when informed consent must be requested from HRDs, for example if information is required to carry out a risk evaluation, when they accept the proposed protection plan, or at the point when protection measures are actually provided. Consent must be informed. That is, HRDs should understand the implications of the proposed actions and should be able to consult with people they trust before agreeing to them. Furthermore, both the official(s) involved and HRDs should maintain strict confidentiality.

#### GOOD PRACTICE

- Informed consent is a basic principle of a protection programme.
- HRDs who are included in a programme should be asked to reiterate their consent at critical moments during its implementation.

### The interface between HRDs and public servants

The HRDs involved in protection programmes tend to bear a heavy emotional burden because of the situation of risk they face. For this reason, officials must work closely with them, and display empathy, if their response is to be adequate to the different needs for attention and protection, and honour the spirit and the letter of the programme.

On occasion during the lifetime of the programme, officials and HRDs alike will express distrust. It should not be forgotten that the public servants involved in implementing programmes are taking part in an exercise of power that allows them to interpret and reinterpret the norms, regardless of whether they are motivated by prejudice, have been instructed to limit access to the programme or to the protection measures themselves, or, even, are openly hostile to some sectors of HRDs.

#### RECOMMENDATIONS

- Programmes should encourage their staff to create spaces for reflexive practice, enabling them to develop open, empathetic and collaborative relations with the HRDs included in the protection programme.

### The commitments expected of the HRDs included in protection programmes

In order to encourage the proper use of protection measures, it is good practice to formalise the commitments entered into by HRD beneficiaries of the programme. This is usually achieved by requiring them to sign a memorandum specifying the commitments they have entered into. These will include the expressed consent of the HRD and set out – always within reasonable limits - terms establishing the acceptable and unacceptable use of the protection measures agreed. For cases requiring urgent protection, temporary alternatives to signing the memorandum may be sought, pending formalisation of the agreement.

#### GOOD PRACTICE

- Commitments entered into by HRDs concerning the implementation of the programme should be formalised.

### Systems for monitoring and analysing the security situation of Human Rights Defenders

A protection programme should have a system to monitor and analyse the security situation of HRDs. In Mexico, the law ordered the creation of a *Unidad de Prevención, Seguimiento y Análisis* (Prevention, Monitoring and Analysis Unit), and in Honduras, a *Unidad de Prevención y Análisis de Contexto* (Unit for Prevention and Context Analysis). Both units share the objective of monitoring acts of aggression at national level in order to collect and systematise disaggregated information in a database, produce monthly reports, identify the patterns of aggression and prepare risk maps, etc. The Mexican unit was the last to be established (it remained on paper until 2016), while in Honduras, given the fact that the law has only been implemented for a short period, it is too early to be able gauge the role it will play in the future.

Mention should also be made of Guatemala's Unit for the Analysis of Attacks against Human Rights Defenders,<sup>140</sup> which was established to analyse the patterns of violence committed against HRDs. Perhaps the most significant aspect of this body's work is the participation of the different state bodies with investigative responsibility, namely the General Directorate of Civil Intelligence, the Prosecuting Authorities and the National Civilian Police plus – as “invited” members – three representatives of human rights NGOs, two national, and one international. On some occasions the Unit has permitted a degree of coordination in investigative activities and some concrete actions to protect at-risk HRDs. However, civil society organisations have recently ceased to participate in the Unit on the grounds that it no longer functions adequately.

The most significant current initiatives dedicated to compiling and analysing acts of aggression against HRDs are being produced by civil society organisations (and the OHCHR in the case of Mexico).<sup>141</sup> Systems for gathering, monitoring and analysing information should include the following:

- **The compilation of statistical information on acts of aggression against HRDs**  
This information should include statistics on the number and kinds of aggressions suffered, where they occurred, the focus of the work carried out by the affected HRDs the problems they dealt with, and possible patterns of aggression.
- **Analytical information derived from these statistics: tendencies and patterns**  
Statistics of this kind may be used to analyse the trends and patterns of acts of aggression, which is fundamental to improving the effectiveness and efficiency of protection policies. For example, analysis of patterns and trends has shown how, at certain times in Guatemala the majority of attacks have been against HRDs linked with land struggles, a situation that in recent years has been echoed in Colombia.<sup>142</sup>

<sup>140</sup> This body was created on 10 January 2008 by *Acuerdo Ministerial No. 103- 2008*.

<sup>141</sup> By way of example, we cite the the regular analyses and reports produced by the *Unidad de Defensores y Defensoras de Derechos Humanos de Guatemala* (<http://udefegua.org/documentacion/informes-anales>), or those of the *Sistema de Información de Agresiones contra DDH en Colombia (SIADDHH)*, [www.somosdefensores.org/index.php/en/](http://www.somosdefensores.org/index.php/en/)) or *Acción Urgente para Defensores en México* ([www.acuddeh.org/](http://www.acuddeh.org/)). *The Office of the UN High Commissioner for Human Rights in Mexico has also published regular reports* ([www.hchr.org.mx](http://www.hchr.org.mx)).

<sup>142</sup> See [www.udefegua.org](http://www.udefegua.org) and [www.somosdefensores.org/index.php/en/](http://www.somosdefensores.org/index.php/en/)

- **Early warning and response systems based on statistical and analytical information.**

The Mexican programme includes *Sistemas de Alerta Temprana* (Early Warning Systems),<sup>143</sup> that compile and analyse information on acts of aggression committed against HRDs in order to predict protection crises and determine the need to take preventive measures to avoid or limit negative consequences.<sup>144</sup> We believe that protection programmes should always include Early Warning Systems,<sup>145</sup> although their concrete role in protection is yet to be proven.

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#### GOOD PRACTICE / RECOMMENDATIONS

- A public policy for protection should include an information system to monitor and analyse the tendencies and patterns of acts of violence against HRDs.<sup>146</sup>
  - Protection policies should include Early Warning Systems.
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### Security and access to information concerning the HRDs included in a programme

The question of access to, and security of, information on programme users should be dealt with by all public protection policies. As a general rule, any information concerning applicants or beneficiaries should be treated as sensitive. Policies should therefore be in place to determine what information may be shared or published beyond the mechanism, and how.

In addition, security procedures should be developed governing contacts with HRDs and the storing and transmission of information on cases to third parties.

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#### NOTES ON THE SECURE MANAGEMENT OF INFORMATION

##### TAKE CARE TO ENSURE INFORMATION ON CONTACTS BETWEEN APPLICANTS AND BENEFICIARIES IS ALWAYS SECURE.

- Any proposed contact should be acceptable to applicants or beneficiaries, and if they are in danger, sufficient protection measures should be taken.
  - Steps should be taken to prevent third parties from gaining access to any information shared in meetings (be they face to face or by telephone) that might prejudice the security of the protected HRD.
  - The public servants involved in these contacts should look after the information they possess properly when transporting it from place to place. It is best not to take detailed notes of sensitive information such as addresses, telephone numbers or new appointments. If there is a need to do so, the information should be encrypted and stored electronically (on a USB or portable computer).
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<sup>143</sup> Article 43 of the Mexican Law, and articles 20 and 71 of its Regulations.

<sup>144</sup> It has only been used twice: once in 2015 and the other in 2016. See section 3.3.1 of this document.

<sup>145</sup> Though there are Early Warning Systems in related areas, for example the Human Rights Rights Early Warning System run by the Colombian *Defensoría del Pueblo*. See [www.defensoria.gov.co/es/public/atencionciudadanoa/1469/Sistema-de-alertas-tempranas---SAT.htm](http://www.defensoria.gov.co/es/public/atencionciudadanoa/1469/Sistema-de-alertas-tempranas---SAT.htm) (Accessed 4/12/16).

<sup>146</sup> Article 23 of the Mexican Law.

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#### WHEN INFORMATION IS STORED.

Security standards must be adhered to when information is stored. For example, a single secure server might be used, with encryption provided by a simple but secure programme and strong passwords, etc. The same applies to portable computers.

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#### WHEN INFORMATION IS TRANSMITTED AND SHARED.

- Information should only be shared within the mechanism or with the institutions authorised or stipulated for the purpose by the law. It should never be shared with unauthorised third parties.
  - E-mail use should adhere to the normal security standards: work e-mails should be used to send security-sensitive information using some form of encryption and protection (e.g. SSL).
  - Preferably, sensitive information on specific cases, or cases in general, should not be printed but a secure digital method used instead. If sensitive information is printed, particular care should be taken of the printed copy, which should be destroyed after use, or stored in a secure place.
- 

#### WHEN INFORMATION IS SHARED PUBLICLY (IF NECESSARY).

- In general, when information needs to be made public it should be done according to clear criteria and with the consent of the beneficiary. For example, once a case is in the public domain, when information needs to be clarified, or when there is a need to report on the results of the mechanism.
  - In addition to these criteria, all information that is intended for public consumption should be carefully reviewed before release.
- 

As argued above, it is important that HRDs should express their consent for information to be used by the programme, and for it to be clear what this use will be. Channels of communication should be kept open between the programme and HRDs in order to evaluate what information can be shared and what cannot. In any case, as a general rule the use of confidential information should be restricted, and there should be clear reasons defining cases where it *can* be shared (for example, with a body operating in the judicial system, in which case the process will also be covered by rules of confidentiality).<sup>147</sup>

Programmes should therefore establish filters to control the flow of information contained in case files and third parties. When a political institution requests information on a case, a confidentiality agreement should always be signed.<sup>148</sup> Communications with third parties, for example during risk evaluations, might infringe confidentiality and it is important to know what can and cannot be said to others, after clarifying precisely what is being investigated and gaining consent from the HRD. The protocol covering information management must include the obligation to investigate any problems that may emerge in relation to it, and agreement concerning punishment for officials who commit irregularities.<sup>149</sup>

In addition, a commitment to protecting the security of information must not compromise the accountability that protection programmes have a duty to ensure – a duty that must comply with current legislation on the freedom and transparency of public information.

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<sup>147</sup> Article 75 of the Regulations of the Mexican Law.

<sup>148</sup> Article 50 of Decree 1740 (2010) en Colombia.

<sup>149</sup> Articles 63 to 67 of the Mexican Law, and articles 20, 34 and 75 of its Regulations; article 50 Decree 1740 (2010) in Colombia; and articles 60 and 61 of the Honduran Law.

## GOOD PRACTICE

- Public policies should establish clear criteria and protocols covering the management of information on HRDs included in the programme, defining what information can be made public and what should remain confidential, and establishing security procedures governing information-sharing and appropriate sanctions.
- It is important to take freedom of information and transparency laws into account, if they exist, in order to ensure the protection policy is compliant with them.<sup>150</sup>

## RECOMMENDATIONS

- Public policies should establish operational security criteria covering the management of information.
- HRDs should express their consent concerning key aspects of information-use.
  - The secure management of information should be compatible with the transparency and accountability required of any public policy.

## 3.2. The Evaluation of Risk

*This chapter provides an analysis of a key instrument of protection policies: risk evaluation. We examine its scope and its limitations, identifying Good Practice and making Recommendations for improvement.*

### The focus on risk in protection programmes

Many decisions taken as part of an HRD protection policy pivot around the concept of risk,<sup>151</sup> which for its part has its origins in the social theory of risk. From an operational perspective, risk refers to events that, though uncertain, might cause damage. Initially, the social theory of risk focused among other things on the business world and marketing, being applied later to the management of natural disasters and the security of humanitarian agencies in armed conflicts. Protection International pioneered research into the application of the theory of risk to the protection of HRDs,<sup>152</sup> an approach that has subsequently been used extensively in the field.

The tackling of risk is an attempt to deal with a potential threatening event in the future, in the hope of taking decisions about how to proceed in the situation of uncertainty. HRDs might feel that they face danger or may be afraid, etc., but from the point at which they are declared to be “at risk”, their situation starts to be interpreted in social, political and cultural terms, and a way is opened up for the authorities and for HRDs to act. That is to say, dealing with risk allows decisions concerning it to be taken or - looked at from a different perspective – to reduce the probability that something might happen to be reduced or, if it does occur, to minimise the damage it causes.

<sup>150</sup> Article 64 of the Mexican Law and article 20 of the Regulations; article 61 of the Honduran Law.

<sup>151</sup> See, for example, the studies by Tulloch and Lupton (2005), and Zinn (2008).

<sup>152</sup> PI (at that time the European Office of PBI) began to develop workshops with HRDs using the approach in 2000, and published its first manual in 2005.

The risk evaluation should begin with the context in which the events in question occurred. That is, the circumstances that might potentially imply risk for an HRD must be located in time and space. The interests and relationships of relevant local, domestic and international players, and their capacity to carry out or impede acts of aggression must also be ascertained.<sup>153</sup> Similarly, it is advisable for existing protection measures implemented by the authorities, and those adopted by HRDs to be examined.

### *Risk evaluation: differentiating between analysing risk and determining its severity*

It is important to differentiate between i) analysing risk, that is, determining the factors that constitute existing risk; and ii) determining its severity, or how high it is.

#### **Risk analysis**<sup>154</sup>

Risk is composed of three principal factors:

- **Threats against HRDs:** a threat is a preparedness, express or not, on the part of a perpetrator to act against an HRD.
- **Vulnerabilities and capacities of HRDs:** vulnerabilities represent the weak points in the security of an HRD, because of which they will suffer more damage if they receive a threat. For example, if an individual does not possess a security backup of all the telephone numbers they call frequently, they will be much more vulnerable if their mobile phone is stolen. Capacities are the inverse of vulnerabilities. In the same example, capacity would be reflected in the fact that the HRD *did* have a security copy of the numbers.

Thus, an equation<sup>155</sup> is widely used in the field of risk evaluation that represents risk as a function of threats and vulnerabilities/capacities:

$$\text{Risk (to an HRD)} = \frac{\text{Threats} \times \text{Vulnerabilities}}{\text{Capacities}}$$

The equation states that risk increases with increased threat and vulnerability, and diminishes with increased capacities. Accordingly, the risks faced by HRDs can be reduced with a decline in the number of threats and vulnerabilities and with an increase in the capacity to confront them.

It should be understood that the terms “capacities” and “vulnerabilities” refer to factors that are associated with HRDs, and that working to affect them will only have a limited impact on the reduction of risk. Therefore, it is important to incorporate the actions of the perpetrator into the analysis, by examining the nature of the threats, which should be explored in detail if the analysis is to be trusted.

<sup>153</sup> Factors that should be taken into account include: 1. Whether the work carried out by the applicant could have a negative impact on the interests of some actor in the region; 2. Whether they possess information that might affect some state official or criminal group; 3. Whether their activity is carried out in areas of confrontation between groups, or where previous attacks had been carried out against HRDs or journalists; 4. Whether the applicant is working at a critical moment for the issues they are working on; or, 5. Whether they belong to some organisation or group that has previously been harassed, threatened or attacked.

<sup>154</sup> This topic is examined in more detail in Protection International (2009, 1.2).

<sup>155</sup> This is not in truth a mathematical equation, but merely presents the relation between the components of risk.

At this point, it is worth reflecting on whether such an analysis is sufficient to understand the risk HRDs face. That is, the first stage of an evaluation of risk involves understanding which threats, vulnerabilities and capacities constitute the risk that is being faced. This provides the initial information that is required if actions are to be taken to reduce it. However, a fundamental aspect is missing, namely the determination of the **level (or severity)** of the risk.

### Determining the level of risk

Although there are different ways of determining the level of risk, in general it is a question of deciding whether it is “high, medium or low”. Two variables are used for the purpose: the **probability** an aggression will occur and the **impact** it would have (on the life and integrity of the affected persons, on valuable possessions, on the image of the HRD and on the continuity of their work) were it to be realised. The higher the probability and impact, the greater the level of risk, and vice versa. For example, a “very high” level of risk would correspond to a “very probable” attack, that would “place the HRD’s life in danger” (an attempted murder for example). A very low risk would correspond to an “unlikely” threat, that would produce, for example, “pressure” or “verbal harassment”.<sup>156</sup> Once again, the actions of the perpetrator are included in this analysis, as to a great extent it is they that determine the probability and impact of the act of aggression.

### When should risk be evaluated?

Risk is **circumstantial** (because it depends on context and circumstances) and **changeable** (because it changes when relevant factors, such as new threat or a change in the vulnerabilities of an HRD, occur). That is to say, the risk evaluation is not a frozen image. This reflection leads to the next question, namely: “When should risk be evaluated? In this case, the answer is simple: before designing the protection plan; before withdrawing protection measures (following a period in which no threats or incidents have occurred); regularly (during the period without threats or incidents); and, in general, when new threats or vulnerabilities arise that may make it necessary. Let us examine these moments one by one:

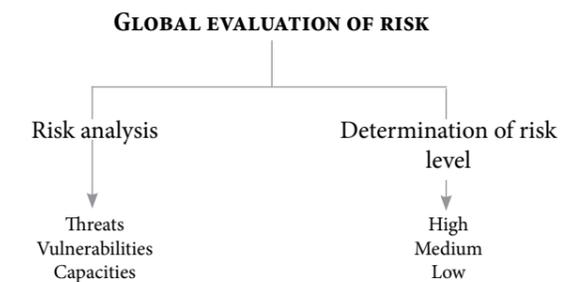
- **Before designing the protection plan:** as we have seen, the evaluation of risk is fundamental to the design of the protection plan and the measures it offers.
- **Before withdrawing protection measures:** when an agreed period of time has passed without any threats or incidents occurring, a new evaluation of risk should be carried out before initiating the structured withdrawal of the protection measures.

#### EXAMPLE: RISK ANALYSIS OF AN ILLEGAL RAID OF AN HRD’S OFFICE

If the office of a human rights organisation is raided illegally, important information might be lost, fear provoked among the HRDs, etc., all of which might curtail their work in defence of human rights. If the risk associated with the raid is to be reduced then action must be taken on the threat (in order to dissuade the perpetrator), and on vulnerabilities and capacities (guarding the office, preventing access to undesirable persons, systems to ensure security backups of documents are made, etc.), so that if a raid is still carried out, the damage it causes will be minimised. In this way, the risk associated with a raid is reduced.

- **When new threats or vulnerabilities arise that make it necessary:** new threats received, or increased vulnerabilities, can increase risk (although this is not always the case). Changed circumstances require a fresh evaluation (though despite this, there have been examples in Mexico where an HRD has been attacked and neither the level of risk faced nor their protection measures have been re-evaluated).<sup>157</sup>

FIGURA 4: GLOBAL EVALUATION OF RISK



### Why is the evaluation of risk important for Human Rights Defenders?

There are several reasons why risk evaluations are important to the protection of HRDs.

In the first place, evaluation marks a transition from the notion of *danger* to the concept of *risk*. This makes it possible, a) to seek an objectivity that, though not fully achievable, is at least converted into an intersubjectivity, by bringing together the criteria used by the different people involved in conducting the analysis; b) to come to an agreement that can be explained to third parties, thereby creating consistency and transparency in the process; c) to ensure more equitable access to protection programmes (in response to an evaluation of risk and not merely to the social influence wielded by a particular HRD); and, ultimately, d) to generate greater acceptance on the part of members of the HRD community, who will understand how the evaluation of the risks they face is carried out.

The evaluation of risk permits the factors exerting an influence on the risk (threats, vulnerabilities and capacities) to be determined, thereby enriching the evaluation and suggesting ways to develop mitigating actions, making it possible in other words to reach agreement on the actions that need to be taken.

Of particular relevance to this philosophical-legal approach to risk and HRDs, is the recognition given by the Colombian Constitutional Court to the obligations of the state concerning the risks that its citizens (that is, in this case, HRDs) should *not* be obliged to face. The Court labels these “extraordinary” risks that result from their work in defence of human rights (as opposed to the “ordinary” risk faced by any other citizen).<sup>158</sup> This position has taken firm root, and has been incorporated in the decrees creating the Colombian and Brazilian protection programmes and in the protection laws in Mexico and Honduras.

<sup>157</sup> See WOLA-PBI (2016, 3).

<sup>158</sup> Colombian Constitutional Court. *Sentencia T-719 de 2003*. In [www.corteconstitucional.gov.co/relatoria/2003/T-719-03.htm](http://www.corteconstitucional.gov.co/relatoria/2003/T-719-03.htm) (Accessed 03/03/17).

<sup>156</sup> See Martín and Eguren (2011, 93-102) for a more complete explanation of how to determine the level of risk.

For all these reasons, the evaluation of risk is a central element of any protection policy, not only at the moment when risk levels are determined or re-evaluated at some point after the initial threat, but also when it is decided whether a protection plan is required, or decisions are made about whether existing measures should be kept in place. (This matter is dealt with in more detail below).

### What are the limitations inherent to applying the theory of risk to the protection of human rights defenders?

In spite of its undoubted usefulness, there are significant limitations and challenges associated with risk evaluations, such as:

#### Cognitive limitations

The evaluation of risk assumes that there are “experts” who have the ability to examine all the information required and to analyse the risk correctly. This evaluation is held to be an “objective and rational” process that produces a result capable of being communicated to, and shared with, a series of different actors (whether or not they have been affected by the risk currently under examination). This view of the process is flawed because it leaves out the subjectivity inherent to the process, the absence of complete information, the ways in which emotions and different points of view affect perceptions, etc.

#### Limitations to implementation

The individuals who carry out the evaluations of risk should be well trained in the appropriate techniques. If the evaluation is of poor quality, and incapable of discerning the potential outcome of the situation at hand, it will commonly conclude that the risk is of “medium level”, concluding the presence of an undifferentiated selection of “medium risks” that do not help to decide on the most appropriate protection measures.

#### Limitations associated with different perceptions of risk

Risk is subjective, because every individual or organisation might perceive it differently. In other words, the risk run by an individual HRD cannot be “measured” objectively and, therefore, consensus or agreement must be reached on the level of risk.

One challenge lies in the need to **imbue the process with an intersectional focus**, which takes gender, discrimination, membership of social and ethnic minorities, social class, poverty, and other conditions into account. Different groups of HRDs face different risks. WHRDs, for example, face similar threats to their male counterparts but suffer others in addition, linked to their gender, such as discrimination or sexual violence. They also have different vulnerabilities and capacities from men. Other minorities that are victims of discrimination or excluded socially or for reasons of poverty will also have their own particular experiences of risk (which are of course also gendered). Evaluations of risk should therefore employ an *intersectional* focus, and take into account the factors that affect each context in which HRDs operate.

Another challenge is posed by the need to deal with the **collective dimension of risk evaluation**: the process of risk evaluation is generally seen as an individual matter (concerning a single threatened HRD), at times extended to the family and working environment, as is logical. However, approaches to collective risk continue to focus on a collection of individual

evaluations. But in the case of a community of HRDs (or a community many of whose members are HRDs), it is not possible to carry out an evaluation of the risk faced by each individual, and much less to assume that only some people (board members for example) are at risk. In this case, the challenge involves carrying out an evaluation of risk with a collective focus and also proposing appropriate collective protection measures.

All these limitations and challenges are an invitation to recognise the evaluation of risk as a useful and important tool, but that its results cannot be understood as the absolute truth, and should be interpreted collectively, in a process involving all the entities involved. However, this is far from usually the case, as will become apparent in the next section.

### How is the focus on risk implemented in existing protection programmes?

Existing protection programmes possess a structure,<sup>159</sup> composed of members of the police or specialised officials, that is responsible for evaluating the risk of the HRDs included in it. The results are sent to another body that makes a decision, based on the information received, on whether to assign protection measures or not. HRDs and journalists frequently express their disagreement and dissatisfaction with this process, as officials frequently demonstrate ignorance of their working realities or because it is biased towards the police point of view.<sup>160</sup>

#### The evaluation of risk includes family members and other people who are closely associated with the work of HRDs

It is important that, as occurs at least in the Mexican and Colombian programmes, the risks faced by family members living in the same place as the HRD or dependents, or in general anyone directly associated with their activities, should also be evaluated. Experience shows that threats or acts of aggression frequently include family members or people who are close to the at-risk HRD.

#### Disagreement with the risk evaluation

- In some of the existing mechanisms, HRDs can challenge the results of the risk evaluation: In the Mexican mechanism, beneficiaries are able to express their disagreement with the results of the evaluation and request a second one be carried out, by independent experts<sup>161</sup> However, it seems that this option is not frequently taken up. A study of 59 cases of HRDs who were accepted by the mechanism and counted with the accompaniment of civil society organisations showed that in 15 cases the applicants disagreed with the results, but a new evaluation was performed in only five of them (Espacio OSC: 2015, 52). Several factors that discourage a second evaluation should be taken into account. Namely: risk evaluations are complex processes that submit HRDs to numerous questions and enquiries; they might

<sup>159</sup> The *Unidad de Evaluación de Riesgo in Mexico, and the Comité de Evaluación de Riesgo y Recomendación de Medidas* in Colombia.

<sup>160</sup> This, along with the government’s refusal to accept their requests, led, for example, to the *Fundación para la Libertad de Prensa* (Foundation for Press Freedom, FLIP) deciding, in February 2017, to withdraw from the *Comité de Evaluación de Riesgo y Recomendación de Medidas*. See “La FLIP decide salir del comité de risk evaluation a journalists”. Available at: <http://flip.org.co/es/content/la-flip-decide-salir-del-comit%C3%A9-de-evaluaci%C3%B3n-de-risk-journalists> (Accessed 8/02/17).

<sup>161</sup> This independent analysis would, furthermore, be assigned to the Consejo Asesor, made up of civil society organisations and financed by the mechanism’s fund (articles 16, 49 and 58 of the Mexican Law).

lead to re-victimisation; and – at least until 2015 – they were subject to major delays. The Espacio OSC report found that more than half of the 59 cases examined were passed to the Governing Board between two and eleven months after the initial risk evaluation was carried out (ibid., 52), although these figures seem to have improved since 2015.

- In Colombia, the right to challenge a decision is not contained in the decrees creating the programme, challenges having to be made in the form of an *acción de tutela*, which can be lodged in generic terms at different points during the process. The NPU acknowledges that 395 *acciones de tutela*<sup>162</sup> were presented by its users in 2015. If in that year the 1,810 Human Rights Defenders included in the programme constituted 15% of the overall number of beneficiaries, then theoretically about 60 of the 395 complaints would have been lodged by HRDs, though not all would have been about their risk evaluation. Many other complaints would no doubt also have been related to protection measures, but we have not found any differentiated data on this matter. In any case, it would appear that challenges to the evaluation of risk are not common in Colombia either.

### Delays and bottlenecks in risk evaluations

Regarding response times of risk evaluations, two problems stand out:

- **The workload of those responsible for evaluating risk:** risk evaluations generate a considerable amount of work for protection programmes. In Colombia, for example, of the 6,456 risk analyses reported by the NPU in 2015, almost 1,000 would, theoretically, have been carried out in relation to the 1,810 HRDs included in the programme (15% of the overall total). In Mexico, 274 risk analyses were carried out for the 254 cases accepted by the programme<sup>163</sup> (of which 150 were reviews of existing cases).
- **Delays in processing the results of the risk evaluations:** once the risk evaluation has been completed, the results must be evaluated in order to take decisions on the basis of its findings. Bottlenecks are frequent at this stage. In Mexico, the centralised structure of the Governing Board and the relatively infrequent (monthly) meetings created significant delays in processing risk analyses that had already been conducted. In its first two years of operation a little more than three cases were examined in each meeting, but from 2014 onwards, following changes to procedures, the average rose to between 13 and 14 per meeting. Even so, this would suggest a ceiling of only 170 cases a year if 12 monthly meetings of the Board were held (Espacio OSC: 2015, 41-42).

### The lack of distinction between evaluation of risk and determination of the level of risk

The risk analyses carried out by the Colombian and Mexican programmes<sup>164</sup> made no distinction between evaluation of risk and determination of the level of risk. However, it

should be recalled that an evaluation of risk (which looks at the threats, vulnerabilities and capacities of HRDs or their organisations) differs from an exercise to determine the *level* of risk (that is, how high or how low that risk is).

Our view is that the existing programmes fail to include a fundamental factor in their evaluations of risk, namely the actions of the perpetrator, despite the fact that it is they and what they do that constitute the threats and that best explain both the likelihood an act of aggression will be carried out, and its impact.

### An attempt at ensuring objectivity in the risk evaluation? Mathematical calculations

In Colombia and Mexico, the evaluations of risk are carried out using a quasi-mathematical exercise that employs spreadsheets (not unlike Excel) to assign numeric values to a series of situations that supposedly influence risk. This analysis leads to a numerical score being assigned each level of risk,<sup>165</sup> which is then used as the basis of subsequent protection decisions.

We believe that this way of evaluating risk reduces the reliability of the entire process, for the following reasons:

- **Arbitrary factors are assigned to circumstances that are believed to influence the level of risk.** In one of the analytical tools to which we have had access,<sup>166</sup> the circumstance "prior attacks against HRDs or journalists in the region" is assigned a factor of 11%, and a "weighted relative value" of 3.85. However, there is no explanation of why this particular factor was assigned to this circumstance. Other similarly arbitrary factors are applied more than 20 times in successive rows of the spreadsheet, until a "final risk value" is obtained. But the question remains the same: what evidence lies behind the calculation? Which studies indicate that these factors (and not others) are important (and important in this way, not another)? We believe, instead, that this process responds to an interest in "quantifying" the risk. That is: on the one hand to assign a supposed mathematical value to it, and on the other to streamline and standardise risk analyses (which are frequently carried out by the programmes). However, these interests ignore the fact that social reality and, therefore, risk, are complex, subjective and open to interpretation. That is, they are difficult to quantify.
- **Obstacles are created, and there is a lack of transparency, making it difficult both to understand, and to challenge, the results of the risk evaluation.** This intricate, quasi-mathematical, process imparts an apparent objectivity to these evaluations of risk and, above all, impedes many HRD from understanding the evaluation process, making it much more difficult to challenge its results. If an HRD's level of risk is set at exactly 38%, how can that score be challenged? Is the process used to determine the level of risk in any way transparent?

### HRD access to the information contained in their risk evaluation

One of the debates that has taken place in the programmes examined here concerns whether HRDs can access their own risk evaluations (rather than merely the conclusions);

<sup>162</sup> The mechanism foreseen by article 86 of the Colombian Political Constitution in order to protect the constitutional and fundamental rights of individuals which they feel they "may be jeopardized or threatened by the action or omission of any public authority" is called the *acción de tutela* (amparo action). The mechanism is used by individuals when, for example, no suitable alternative mechanism exists to protect their fundamental rights. See (only in Spanish): [https://es.wikipedia.org/wiki/Acci%C3%B3n\\_de\\_tutela](https://es.wikipedia.org/wiki/Acci%C3%B3n_de_tutela) (Accessed 01/12/16).

<sup>163</sup> These figures, obtained from SDH (2015), 19, do not seem to add up.

<sup>164</sup> The Mexican mechanism was the only that from the start established two different processes to analyse risk and determine its level, with clear procedures established for both. PI advised the process to design, approve and implement as part of an agreement with the Office of the UN High Commissioner for Human Rights in Mexico and the Interior Ministry. This process was ended by the Interior Ministry a year after it began, and replaced a

different system similar to the one operating in Colombia, which combines the two approaches, and for which the organisation Freedom House acts as advisor.

<sup>165</sup> In Colombia, the following classification is used: ordinario (fewer than 50 points in the risk calculation tool), extraordinary (50 to 80 points) or extreme (81 to 100 points); it only looks at extraordinary and extreme risks.

<sup>166</sup> This information was confidential, and we are therefore unable to name the source.

those responsible for implementing the programmes have tended to be against the practice. However, such attitudes might be in breach of *habeas data* legislation (the right of individuals to have access to the information held on them by the authorities) if such laws exist in a country. We believe, in principle, that risk evaluations should not contain information to which the HRDs that are their subject have no access, and that they should therefore be available for them to read.

### Gender analysis in risk evaluations

At least on paper, pressure from the HRD community, judicial bodies, and others, has led to attempts to incorporate a gender perspective into the risk evaluation process in the programmes examined here. In Colombia, for example, in 2008, the Constitutional Court identified “ten gender risks”<sup>167</sup> (see Table “X”) and listed threats or acts of violence,<sup>168</sup> along with 18 “gender facets [*facetas*]”<sup>169</sup> that affect women experiencing forced displacement. These “facets” were adopted by the NPU, which is also responsible for dealing with the displaced population.<sup>170</sup> In 2012, the NPU finally approved the inclusion of a gender perspective in the protection it provides.<sup>171</sup> But the Gender Mainstreaming Committee created to incorporate the focus in the evaluation process (in a “mainstreamed and effective” manner) did not begin to operate until 2014.<sup>172</sup> Subsequently, in October 2015, Resolution 0680<sup>173</sup> was published, changing the composition and functioning of the Committee. At the time this report was being prepared it was still too early to attempt an evaluation of the impact of these attempts to incorporate a gender perspective in the Colombian programme.

In Colombia and in Mexico alike the risk evaluations operate a different protocol for women. However, there are multiple failings in their application, which continues to be marked by prejudice, including the limited participation of women in the design of the protocols used to guide the analyses; frequent allusions to “crimes of passion” or “hysteria”; a lack of focus on questions of sexual violence; differential impacts on women; family responsibilities; social and environmental surroundings; and the frequent re-victimisation that occurs during the period of analysis (Martín: 2016, 37-43).

### COLOMBIA CONSTITUTIONAL COURT: LIST OF GENDER RISKS:

1. the risk of sexual violence, exploitation or abuse occurring within the context of the armed conflict;
2. the risk of exploitation or enslavement at the hands of illegal armed actors for the purpose of carrying out domestic tasks and roles considered to be female in a society with patriarchal characteristics;

<sup>167</sup> See “Auto 092/08” by the Constitutional Court, in [www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm](http://www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm) (Accessed 14/09/16).

<sup>168</sup> These acts are also referred to – we believe erroneously – as “vulnerability factors”, “Auto 092/08”, *op.cit.*, under “*Síntesis*”, part “c”.

<sup>169</sup> See “Auto 092/08”, *op.cit.*, under “*Síntesis*” part “d”.

<sup>170</sup> Resolution 0639 of 2014. Available at: [www.upn.gov.co/normatividad/Documents/Resoluci%C3%B3n%20639-2014%20creacion%20comite%20transseesality%20de%20genero.pdf](http://www.upn.gov.co/normatividad/Documents/Resoluci%C3%B3n%20639-2014%20creacion%20comite%20transseesality%20de%20genero.pdf)

<sup>171</sup> Resolution 0805 of 14 May 2012. Available at: [www.upn.gov.co/Resoluciones-circulares](http://www.upn.gov.co/Resoluciones-circulares)

<sup>172</sup> Decree 0639 of 25 November 2014. *op.cit.*, see *supra*.

<sup>173</sup> Resolución 0680 of 9 October 2015. Available at: [www.upn.gov.co/normatividad/Documents/RES%20%200680%20Octubre%20de%202015.pdf](http://www.upn.gov.co/normatividad/Documents/RES%20%200680%20Octubre%20de%202015.pdf)

3. the risk of forced recruitment of their sons and daughters by illegal armed actors or of other kinds of threats against them, which are even more serious when the women is head of household;
4. the risks deriving from contacts or family or personal relationships – be they voluntary, accidental or presumed – with members of one of the illegal armed groups that operate in the country or with members of the Armed Forces, principally as a result of smears or retaliations carried out *a posteriori* by illegal enemy groups;
5. the risks deriving from their membership of women’s social, community or political organisations or the leadership or promotional roles they play in human rights in regions affected by the armed conflict;
6. the risk of persecution and murder as a result of strategies of coercive control over the public and private behaviour of persons that are imposed by the illegal armed groups in extensive areas of the national territory;
7. the risk of the murder or disappearance of their economic provider or of the disintegration of their families and material and social support networks;
8. the risk of being more easily deprived of their lands and property by illegal armed groups because of their historical relation to property, especially in the case of rural buildings;
9. the risks deriving from the marked situation of discrimination and vulnerability of indigenous and Afro-descendant women;
10. the risk that they will lose their partner or economic provider during a process of displacement.

### The collective evaluation of risk (or analyses for groups such as communities)

In late 2016 both the Colombian and the Mexican programmes claimed to count with tools for the evaluation of collective risk. Since the collective focuses have generally examined collective risk and collective measures simultaneously, we consider it most appropriate to look at both aspects together, in the section dealing with measures in the following chapter.<sup>174</sup>

#### GOOD PRACTICE AND RECOMMENDATIONS CONCERNING RISK EVALUATIONS

##### GOOD PRACTICE IN RISK EVALUATION:

- Include family members and persons who are associated with the work carried out by the at-risk HRD.
- Ensure the analysis is conducted by experts in the protection of HRDs, (who may or may not be members of the police, though experience demonstrates that results tend to be better when the experts are independent) and, preferably, with backgrounds or experience in human rights or with socially-oriented work.
- Incorporate a gender and intersectional perspective in risk evaluations.
- Include a mechanism that enables HRDs to object to the results of the evaluation and to request an independent evaluation carried out by civil society experts.

##### RECOMMENDATIONS:

- Avoid conducting risk evaluations as if they were police investigations<sup>174</sup> (because they are not), or employing criteria that are more appropriate to the provision of armed bodyguards or the protection of threatened public figures than to HRDs.

<sup>174</sup> It is not a question of HRDs having to prove the truth of the answers they gave in the risk analysis interview, though the analyst must of course examine the information obtained and – without risking the confidentiality of the exercise, has a certain room for manoeuvre to weigh up the responses and come to conclusions.

- Involve HRDs in the preparation of their own risk evaluations, ensuring they are interviewed and, at the least, consulted in depth about the final determination of the level of risk.
- Carry out a risk evaluation using a qualitative approach that ensures transparency, discussion and the building of agreements on risk.
- Distinguish between the evaluation of risk and the determination of level of risk, and duly include the (potential) actions of the perpetrator in the analysis.
- Improve and fully incorporate a gender and intersectional approach in risk evaluations.
- Permit HRDs to access their own risk evaluations (and not only the conclusions).
- Ensure sufficient resources are made available to carry out timely, high quality, risk evaluations.

### 3.3. Protection measures and plans

*This chapter analyses a second key instrument of protection policies, namely: protection measures. It reviews the ways in which they are implemented and what may (or may not) be expected of them. The chapter ends with a proposal on protection plans.*

Protection measures comprise actions and resources (including objects and technology) that the programme assigns to its users in order to reduce their risk. Programmes generally maintain catalogues of these measures, which are kept open so that they can be added to if needed.

The programmes differentiate between what they call “prevention measures” and “protection and prevention measures”, though these descriptions are confusing. They are analysed below.

#### Prevention or “political” measures

In essence, prevention measures (frequently described as “political measures” by HRDs) are, according to the Colombian programme, “actions carried out by the state to fulfil its duty of prevention by promoting respect for, and guaranteeing, the human rights of the individuals protected by the programme”.<sup>175</sup> The Mexican law states that these measures are “directed against the factors of risk that favour acts of aggression, as well as combatting the causes that produce them and generating guarantees of non-repetition”.<sup>176</sup> Even though both programmes mention these measures, the Mexican regulations enter into more detail, and include:<sup>177</sup>

- I. *The dissemination of information on the mechanism at federal, state and municipal level and on the obligations of the authorities to protect HRDs and journalists.*
- II. *Training courses for federal agency officials on HRDs and on journalists, focusing on the law, regulations, risk evaluation and other documents produced under the auspices of the mechanism.*

<sup>175</sup> Article 3 of Decree 4912 of 2011. Available at: [www.mininterior.gov.co/la-institucion/normatividad/decreto-4912-de-2011](http://www.mininterior.gov.co/la-institucion/normatividad/decreto-4912-de-2011) (Accessed 03/03/17).

<sup>176</sup> Articles 41-45 of Law and 68-74 of the Regulations.

<sup>177</sup> Articles 68-74 of the Regulations.

III. *The dissemination of public statements by officials on the importance of the work of HRDs and journalists, domestic and international criteria on the matter, and other related documents.*

IV. *The creation of public awareness of the importance of the work carried out by HRDs and journalists, and of the relevant international instruments on the rights and responsibilities of the individuals, groups and bodies in society to promote and protect human rights and universally recognised fundamental freedoms.*

V. *Source, analyse and publish data on the acts of aggression to which beneficiaries are subject.*

The same regulations state that “early warning systems and contingency plans shall be encouraged, with the aim of preventing potential acts of aggression against HRDs and journalists”, and assign responsibility for prevention to “the federal authorities and federative entities according to their areas of responsibility”, with the cooperation of the mechanism’s Prevention, Monitoring and Analysis Unit (see box).

#### THE MEXICAN MECHANISM’S EARLY WARNING SYSTEM AND THE CONTINGENCY PLAN

The first time the Early Warning System was activated was in September 2015, in the state of Veracruz, and the second, in 2016, in Chihuahua. In both cases, journalists and HRDs had already been murdered and for this reason it would perhaps be more appropriate to call the system a Contingency Plan.

As a result, and with the support of the Prevention, Monitoring and Analysis Unit, a series of meetings was held with the state governments and other institutions in order to establish an action plan and ensure it was closely monitored. As has been seen, from a theoretical viewpoint this approach and its focus on the local level makes perfect sense for a public policy. However, at the time this study was being prepared we had not had access to any evaluations of the effectiveness of these Early Warning Systems/Contingency Plans.

Taken together, at least on paper, the prevention measures or policies represent a response to the persistent demands of the HRDs and to what successive UN Rapporteurs have called the creation of an enabling environment for the defence of human rights (Forst: 2016) that goes beyond merely tactical responses to acts of physical aggression.

However, the most recent reports and analyses produced by HRDs have repeatedly called for the prevention measures to be fulfilled, given that there is an almost total failure of implementation. The 2015 SIADDHH Annual Report on the situation in Colombia concludes that “everything leads to the conclusion that Colombia has no system to prevent acts of aggression against Human Rights

#### A DATABASE OF ACTS OF AGGRESSION COMMITTED AGAINST HRDs INCLUDED IN THE MEXICAN MECHANISM?

The Mexican mechanism assigns responsibility for “Seek[ing] out, analys[ing] and publish[ing] data on the acts of aggression suffered by beneficiaries” to the Prevention, Monitoring and Analysis Unit, which was only established in 2015. According to pages 27 and 28 of that year’s Activities Report, the Unit has developed a basic data base (using Access, a commercially available programme) and a system for monitoring information on aggressions against HRDs on the Internet (using Google Alerts). No results are available for this monitoring system, but at first sight it seems much weaker than the process already carried out by civil society organisations (such as Acción Urgente para los Defensores de los Derechos Humanos – Urgent Action for Human Rights Defenders – in Mexico, Somos Defensores in Colombia or UDEFEGUA in Guatemala). In any case, it is clearly inadequate to the task of monitoring and evaluating the trends of the acts of aggression carried out against HRDs in the country.

Defenders”. It speaks of the policy as a “dead letter”, and insists on asking “whether the government will continue to spend enormous amounts of money in the system of physical protection instead of investing in the implementation of real preventive mechanisms that reverse the causes of the risk”.<sup>178</sup>

## (Ordinary and urgent) protection measures

### Ordinary measures

Protection measures such as those contained in the table below<sup>179</sup> are representative of the measures habitually implemented by the programmes examined in this study.<sup>180</sup> As is apparent, one series of measures focuses on providing equipment to HRDs, others have to do with police protection and others with evacuation, while, finally, some focus on training and service-provision for HRDs.

### Urgent measures

The Colombian and Mexican programmes stipulate urgent protection measures in cases that are considered to be of extreme or very high risk. In these situations, when the act of aggression is potentially immediate, the measures it is possible to take are limited and must be energetic. In theory, the best way to reduce extreme risk is to guarantee effective protection – almost always armed – both of the individual and of the buildings they use, or in some cases evacuating the victim and transferring them elsewhere.

In cases in which an attack has caused damage to the physical integrity of an HRD, immediate medical treatment should also be provided. In a non-exhaustive list, the Mexican law, for example, mentions

| COMPILATION OF PROTECTION AND PREVENTIVE MEASURES INCLUDED IN THE COLOMBIAN AND MEXICAN PROGRAMMES |  |
|--|--|
| <b>Equipment</b>   | <ul style="list-style-type: none"> <li>• Mobile or satellite telephones or radios (for communication)</li> <li>• Panic button (installation of a device on a mobile phone that sends an alert message with a GPS location if activated by the HRD)</li> <li>• Installation of cameras, locks, lights or other protection measures in buildings</li> <li>• Bullet-proof vests</li> <li>• Metal detectors</li> <li>• Bullet-proof cars, conventional and other physical protection methods</li> <li>• Protection for buildings</li> <li>• Regular security or perimeter patrols</li> <li>• Drivers and bodyguards from specialised agencies</li> <li>• Temporary evacuation and relocation</li> <li>• The provision of shelter for beneficiaries and provision of support during the implementation of the measure (or support for temporary relocation)</li> <li>• Logistical and operational support: payment of transport costs and removal support</li> <li>• Handbooks and manuals</li> <li>• Self-protection courses</li> <li>• Psycho-social measures</li> <li>-Accompaniment provided by human rights observers and journalists</li> </ul> |

evaluation and temporary relocation, the provision of bodyguards by specialised agencies and the protection of buildings.<sup>181</sup>

It also stipulates that in cases where there is doubt about whether to adopt normal or urgent measures, the authorities should opt for the latter.<sup>182</sup>

Bearing this in mind, the 2015 analysis of the measures granted in cases of extraordinary risk, which according to the Mexican law should be agreed within nine hours of the establishment of that level of risk,<sup>183</sup> showed that only 5% of the measures involved the provision of bodyguards or some similar energetic response to imminent risk (Subsecretaría de Derechos Humanos, 2015, 43), even though the security situations in question were extreme. Note that the provision of bodyguards in 5% of cases is identical to the response for ordinary protection measures, suggesting the mechanism expends similarly low levels of energy on both kinds of risk, in spite of the distinction specified in the law.

This weak reaction in the face of potentially high-risk situations raises a series of questions: should these cases be examined in order to find out what has happened? If no HRDs are reported to have been murdered despite this limited reaction, should there be more reflection on when and why situations of extreme risk are declared, in order to improve the decision-making process? And, why are more adequate protection measures not ordered for this level of risk?

### Timescales and the duration of protection measures

Despite the timescales stipulated by the mechanisms, the granting - and especially the implementation - of protection measures may be delayed by several months.<sup>184</sup> These delays call into question the entire logic of a protection programme.

Once initiated, the protection measures remain in place for as long as the risks justifying them are still present and if there is no additional reason rendering them inadequate or

#### INTERVENTION PROCEDURES IN CASES OF EXTREME RISK

During emergency procedures, and precisely because of the lack of time available to evaluate risks and actions, errors might be committed that affect the programme and lead to collateral damage for HRDs.

For example, if the police raid the house of an HRD, neighbours might ask questions or even (once the crisis is over) other actors (such as organised criminals) might express their hostility. If an HRD is forced to leave at short notice their possibilities of returning can be affected.

In order to reduce the risk of errors being made, the following aspects should be borne in mind:

- HRDs should be informed that urgent measures capable of responding to such a serious risk need to be drastic. It must be made clear what the consequences of the response might be.
- Pre-established action protocols should be used that prioritise the “reduction of exposure” of HRDs to threats. Such protocols, which can be improved over time, allow the measures to be implemented in the secured possible way, for the benefit of their beneficiaries.

178 Somos Defensores. *Informe Anual SIADDH* (2015, 16-17).

179 In Colombia: articles 9 to 11 of Decree 4912 of 2011 and in Mexico: articles 32-34 of the Law and 57-74 of the Regulations.

180 The Mexican Law speaks of “preventive measures” (articles 63-64), but conceptually, it is very difficult to distinguish them from protection measures, and for this reason we have preferred to group them all under a single heading: protection measures.

181 Article 32 of the Law.

182 Article 61 of the Regulations.

183 The Honduran Law also applies a similar standard.

184 See, for example, for Colombia: Somos Defensores (2014 and 2015) and, for Mexico: Espacio OSC (2015).

unviable. Changes to the measures should only be made if justified by a further analysis and determination of the level of risk. Plans should be strengthened immediately if the level of risk increases. Potential reasons for suspending or reducing the measures might include the following:

- **Risk levels have fallen or almost completely disappeared.** Fundamentally, this occurs when the threat goes away for diverse reasons: because the HRD's activity has changed (always assuming no risks remain as a result of their previous activities in defence of human rights); because the activity that originally put them at risk has ended; or because they no longer live in the same location.
- **The inappropriate use of protection measures by HRDs or manipulation of the information they provide.** Such manipulation in support of an application may result in the suspension of measures.
- **Voluntary request for withdrawal of the measure.** By the beneficiary of the protection programme.

In addition, urgent protection measures are provisional in nature. The Mexican mechanism, for example, states that measures shall remain in force until it is possible to carry out a more adequate evaluation of the situation of risk, and the Governing Board takes a new decision on whether they should be continued, modified or suspended.<sup>185</sup>

However, experience shows that the number of HRDs included in protection programmes increases each year. Numbers have grown without interruption both in Colombia, where the programme includes many HRDs, but also in smaller programmes such as in Mexico where, for example, in 2015 only 58 HRDs were able to leave the programme – fewer than those who entered it (Subsecretaría de Derechos Humanos, 2015, 20).

### Obstacles to withdrawing from protection measures

Although everything said up until now concerning the withdrawal of protection measures might appear plausible, in practice it has been demonstrated that it can be very difficult to remove measures that are in place, both because the risk remains high and because of inertia, which tends to preserve the current situation.

Obstacles to withdrawing a protection plan when a competent evaluation of risk suggests a sustained reduction include the following:

- Concern or fear felt by Human Rights Defenders, who believe that their situation of risk merits continued protection.

In this case, open discussion is required if the level of risk is to be properly determined in a way that is acceptable to HRDs. Furthermore, following the gradual withdrawal of measures, the situation should be monitored for the subsequent four to six months, to ensure that any change in risk levels is detected and appropriate action taken in response. If a new scenario of risk emerges, the establishment of a “preferential reintegration” mechanism would permit the rapid re-establishment of the protection plan. In any case, HRDs should be confident that any decision that affects them has been taken collegiately by a technical

team that is committed to ensuring protection and that, if relevant, other HRDs should support the decision.

- Concern from within the programme that HRDs might be attacked after withdrawing from the protection plan.

This eventuality requires a process similar to the one outlined above, established in advance and accepted as a procedure by all parties.

An assumption, either on the part of the programme or of HRDs, that the protection measures were granted to an individual and not in response to their level of risk.

This is a frequent error: people may feel that the head of an organisation might require protection measures not because of the risk they face but the role they play: in other words, that risk is inherent to the job. This is a common assumption in protection schemes designed for officials and high profile public figures but is entirely inappropriate for most HRDs. One consequence of the view is the association of certain protection measures – such as a bullet-proof car or a bodyguard – with greater social status, and with the exercise of power. One way of overcoming this barrier is the rigorous application of the criterion of risk when protection plans and measures are granted, in order to ensure transparency and equal access to protection.

In order to facilitate decision-making on the withdrawal of protection measures, programmes should possess:<sup>186</sup>

- A competent system capable of ensuring effective risk evaluations are carried out.
- Clear, consensual, pre-established criteria for deciding on measures (which should be based on risk evaluations). These reduce variability and arbitrariness, allow prior agreement to be arrived at between the parties and facilitate decision-making.
- Clear backing both from the HRD community and other appropriate bodies for the decisions taken by the programme.
- An *ad hoc* monitoring system that is kept in place for a period of several months following the withdrawal of measures. This would guarantee the existence of a specialised process of monitoring, allowing increases in risk levels to be detected and responses to made in a timely manner. Responsibility for this process might be given to the body running the programme but in order to optimise resources it could also be implemented by the HRD organisations or the communities with which they work.
- A flexible system allowing measures to be renewed if required. Once a definitive decision has been made to end the measures, they should be withdrawn gradually, ensuring that all necessary precautions and guarantees are in place to protect beneficiaries, alongside complete discretion (so that news of the withdrawal of measures is not leaked prematurely). We suggest that the most complex measures (bullet-proof vehicles, or armed bodyguards or protection for buildings) should be removed first. It is advisable to withdraw bodyguards in stages, as they also maintain scrutiny over the physical environment. Measures connected with communications capacity should be the last to be withdrawn, in order to ensure capacity is not lost in this area, to maintain a prevention focus, and to permit a rapid response to any further incidents should it be required.

185 Article 62 of the Regulations of the Law.

186 Adapted from Martín and Eguren (2011, 107).

## Analysis of protection measures

The acquisition, loan and maintenance of the equipment required to provide protection generates a heavy logistical workload for the programmes (that is frequently not carried out to the satisfaction of beneficiaries). But the process also seems to have created a screen that makes it difficult to look beyond the protection measures. The following sections examine this problem.

### Are these protection measures adequate? The case of armed bodyguards

The central objective of any protection programme is to allow HRDs to exercise their right to defend human rights in the most favourable circumstances possible. It is therefore appropriate to ask, in the first place, whether existing protection measures are adequate to fulfilling this goal. It is difficult to arrive at a single response to this question. On occasion, the protection measures offered can pose additional difficulties or even lead to situations of vulnerability. One of the measures that has caused the most problems has been the use of armed bodyguards provided by the police or by private security firms (the latter being the predominant method in Colombia). These difficulties include the following:

- **HRD distrust of the police:** it is a fact that, in many cases, the security forces are a source of threat for HRDs, or that they collaborate with the forces lying behind the threats. This, linked at times with the discredit with which they are seen by the affected population, means that HRDs frequently fail to believe in the protection offered by the police.
- **Victim distrust of the police:** it should not be forgotten that HRDs work with victims and social groups that, as well as sharing their distrust of the police, often suffer repression at its hands. Therefore, if an HRD arrives at a meeting of victims with a police bodyguard it is likely to compromise their activities in defence of human rights significantly.
- **Interference with their work:** often, HRDs live in, or visit, deprived neighbourhoods with a significant criminal presence in which it can be difficult for the police to maintain a presence, or that a police bodyguard might refuse to enter, with the result that the HRD is also unable to go there.
- **Bodyguards provided by private security companies:** in recent years the Colombian programme has resorted to contracting bodyguards from private security companies. HRDs have criticised this development on the grounds that the state should not delegate its essential responsibility to provide protection: a member of a private security firm is not the same as a member of the security forces. In addition, if a police force is investigating or carrying out intelligence activities on elements that are hostile to HRDs, it is easier for it to communicate the results to its own agents or bodyguards than to employees of a private security firm. Furthermore, it should not be forgotten that, in many countries, these private security companies employ former members of the security forces, who may be easily co-opted by aggressors to pursue their own goals.
- **The use of violence:** there are HRDs who argue that the use of violence (including state violence) is incompatible with human rights work, a factor that, added to their distrust of the state referred to above, has led them to refuse the armed bodyguards they have

been offered and, instead, to have recourse to alternative forms of protection, such as international accompaniment.<sup>187</sup>

For these reasons, while recognising that at times police protection may be useful and even necessary for HRDs, it is very important for states to consider other protection measures that may be more appropriate to the reality of the work carried out by HRDs. Without abandoning police surveillance activities, other actions such as perimeter patrols and security rounds, control of access routes to the homes and offices of HRDs and, in general, police measures designed to ensure that potential aggressors do not have access to their targets, could all be better. The quality of investigations into threats or acts of aggression should also be improved, and HRDs should be able to seek protection from security providers that are independent from the actors who might, in one way or another, be associated with the attacks to which they are subjected.

In some countries, such as Guatemala, the employment of agents with training in the protection of public figures has been proposed, while in Colombia, *escortas de confianza* have been used - that is, “trusted bodyguards” who have the confidence of the at-risk individual they are protecting, are licensed to carry weapons, have received specialised training, and are paid by the state. We have been unable to confirm whether or not an evaluation of this model of protection - which is no longer in use - has been conducted.

### Do these protection measures really provide protection?

This question, though apparently obvious, is fundamental. And while there is no definitive answer, there is some evidence that the effectiveness of the protection provided by them may be in doubt.

The measures included in the catalogues maintained by the programmes may be classified in different ways (see Table 6). They include, for example, mobile measures (that follow, or move around with, the HRDs they are designed to protect) and static ones (used in one place only). Some measures are more limited than others when examined purely in terms of security.

TABLE 6: PROTECTION MEASURES AND THEIR LIMITATIONS

| MEASURES  | LIMITATIONS   |  |
|---|---|--|
| <b>Mobile (that move around with the HRDs), permitting acts of aggression to be repelled.</b> |   |  |
| Dissuade potential acts by perpetrator and permit acts of aggression to be repelled directly  | Bodyguard, or armed protection <sup>188</sup> (of an HRD, or in a particular location). | Interfere with the work of the HRD.              |
| Capable of providing warnings, so that others can repel acts of aggression.                   | Mobile phone, radio, panic button, and police reaction.                                 | Depend on the speed and quality of the reaction. |

<sup>187</sup> Provided by international NGOs such as Peace Brigades International and others (as in examples known to the author of this study, for example involving Colombian NGOs such as CREDHOS in the Magdalena Medio region, and others).

<sup>188</sup> For a deeper analysis of this question of armed bodyguards and the protection of HRDs, see Martín and Eguren (2011, 111-117).

|  |                                  |   |
|--|----------------------------------|---|
| Reduce damage if an act of aggression is carried out.                            | Bullet-proof vest.               | Only useful if combined with the previous measures.                 |
| <b>Static (that provide protection in a fixed location)</b>                      |                                  |   |
| Barriers preventing access to a place (or informing of attempts to gain access). | Locks, bullet-proof doors, CCTV. | Displacement of the risk (to unprotected places).                   |
| Capable of dissuading perpetrators and of directly repelling acts of aggression. | Police patrols.                  | Depend on frequency and unpredictability.                           |
| <b>Reduce the exposure of HRDs</b>   |                                  |   |
| Remove HRDs from a specific place.   | Evacuation.                      | Impede HRDs from doing their work, and can be difficult to reverse. |

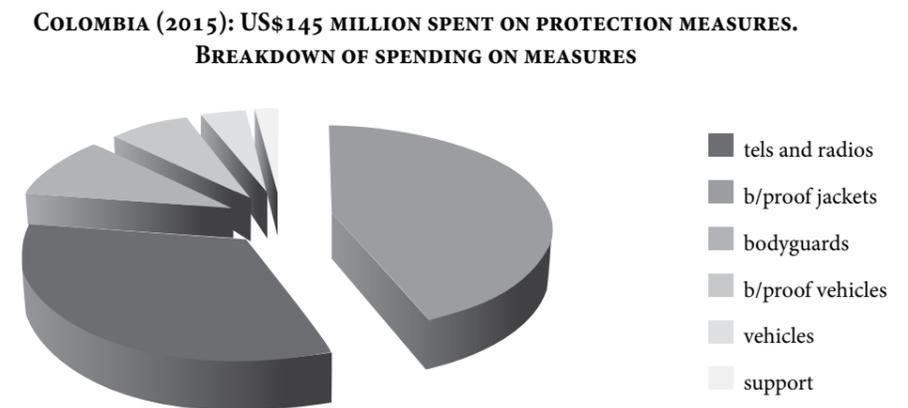
So, which measures are most likely to be granted? An examination of the limited data available on the protection measures granted by the Mexican programme (Subsecretaría de Derechos Humanos, 2015, 22-25) shows that of the total number of protection measures ordered since 2015, the most frequently granted (in 75% of cases) was the installation of a panic button and CCTV, or physical protection measures for the home or office. Adding telecommunications (and the 5% accounted for by vehicles and fuel) brings this figure up to 92% of overall measures. Thus, the overwhelming majority of the measures granted are technical, and their capacity to produce effective responses must be in serious doubt<sup>189</sup> in a country with high levels of crime and a poor record of police accountability. This is without mentioning the numerous rural zones where there is almost no police presence in the first place.

In fact, the effectiveness of the panic button - the star item in terms of the number of times it is granted - has not even been demonstrated. The study of 59 cases of HRDs in Mexico mentioned above reported that of 11 cases in which a panic button was used, acceptable responses were forthcoming only twice (Espacio OSC: 2015, 54-56), and there are numerous other references to their lack of effectiveness.<sup>190</sup> By contrast, the same source shows that bodyguards accounted for only 2% of the total number of measures (Subsecretaría de Derechos Humanos, 2015, 24). Although there are no precise figures, the situation in Colombia is different, measures involving bodyguards being much more common there, especially given the fact that the number of HRDs included in the programme for every 100,000 inhabitants is much higher there (3.8 in Colombia vs. 0.2 in Mexico).

189 In the expert opinión of the autor of this piece, but see also: WOLA-PBI (2016), 2.

190 See, for example, [www.animalpolitico.com/2015/07/mecanismo-protége-a-periodistas-y-activistas-con-botones-de-panico-inservibles-y-telefonos-donde-nadie-contesta/](http://www.animalpolitico.com/2015/07/mecanismo-protége-a-periodistas-y-activistas-con-botones-de-panico-inservibles-y-telefonos-donde-nadie-contesta/). In fact, (see Subsecretaría de Derechos Humanos, 2015, 30), there were plans to carry out an evaluation of this measure in early 2016. By early 2017 it appears that the mechanism was yet to publish any results.

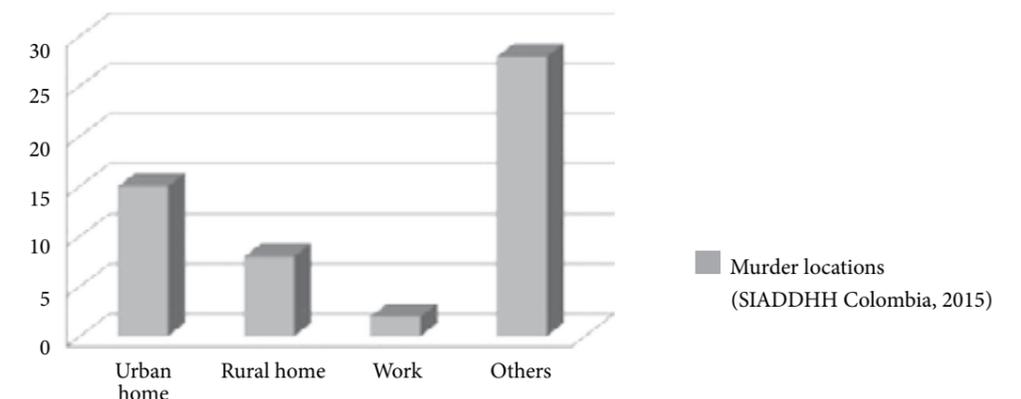
FIGURE 5: BREAKDOWN OF SPENDING ON PROTECTION MEASURES (COLOMBIA)



With the exception of panic buttons, most of the protection measures granted are static, and focused on the homes or workplaces of HRDs (CCTV, locks, bullet-proof doors, etc.). However, no detailed studies have been carried out into whether these are the places of greatest risk.

For example, the analysis of HRD murders committed in Colombia in 2015 (Somos Defensores: 2015, 28), presented in the attached Table shows that 41% of the 63 murders occurred in the homes of HRDs, but only 25% in urban dwellings, which are easier to protect using physical barriers and technological methods such as CCTV. In 60% of cases, the HRDs were murdered elsewhere (75% if rural dwellings are excluded).

FIGURE 6: LOCATIONS OF HRD MURDERS (COLOMBIA, 2015)



In conclusion, the fact that murders of HRDs tend to occur outside the home or in hard-to-protect rural dwellings conflicts with the decision to implement the majority of measures in the places where HRDs live. In addition, even if the home is protected, perpetrators are still able to plan their acts of aggression in other places (a phenomenon known as the displacement of risk), because the perpetrators in these cases are far from devoid of resources with which to act: not only do they have the ability to identify the homes and workplaces of HRDs, but the

analysis quoted above showed that 75% of murders were carried out using firearms, and that between three and eight bullets were used in each fatal attack (Somos Defensores: 2015, 28). Therefore, protection measures should cover other situations and contexts in which HRDs work, but they do not.

### On the limitations of using “technological objects” to provide protection

Currently, technological solutions are seen as almost omnipotent, and a high percentage of measures granted by the programmes consists of what might be called “technological objects”: mobile telephones, the “panic buttons” installed in smartphones mentioned above, etc. without denying the potential usefulness of these objects, there is growing concern that the faith deposited in them is coming to replace actual protection activities.

In theory, for example, it is enough just to press the panic button on a smartphone. But why do this, exactly? Despite the fact that this is one of the measures most frequently granted by the Mexican programme, the system has not been adequately tested in practice, and no conclusions have been drawn about its real usefulness (apparently, the evaluation the programme carried out of the measure has not been made public). The notion of a button that sends an instant alert is attractive, but what would really make the system useful would be the guarantee of a rapid and adequate reaction once the alert has been received. However, it seems that this guarantee is not in place. There is no doubt that the commitment and energy required to establish a response system is much greater than that needed to provide panic buttons. Indeed, the buttons might easily serve the purpose of hiding the principal weakness of the system. In other words, the problem is that a system or network of reaction appears to have been replaced by the technological object that should simply have set it in motion. And all of this seems to be expensive: each panic button granted by the Mexican programme costs some US\$215 a month.<sup>191</sup>

In summary, technological methods like panic buttons reduce the question of security to a single dimension, an aspect that is doubtless functional for programmes that focus almost exclusively on such measures. Indeed, consideration should be given to whether a reliance on technological means might result in a certain dependence or paralysis when HRDs trust their safety to technology to the exclusion of other responses that might be more effective. For example, the sense of security provided by panic buttons might result in HRDs failing to seek the support of their neighbours in detecting suspicious characters, or not bothering to locate safe havens they can use if they sense they are being followed by a stranger on their everyday movements around town.

### Conclusions on the effectiveness of technological objects as protection measures

It has not proved possible to ascertain whether any technical evaluation has been carried out of the effectiveness of these protection measures. There have been cases of HRDs who have been attacked or murdered while receiving protection from a programme,<sup>192</sup> but it is also clearly true that such cases will almost always be more visible than others in which the

same measures might in fact have offered protection or saved lives. We do not believe it is possible to draw firm conclusions about the effectiveness of these measures from the data currently available, although there are numerous indications of their lack of consistency and their arbitrariness. There are many HRDs who only count with a single panic button, or a bullet-proof vest, or a vehicle assigned for some - but not all - work trips. And if we examine the methods used by perpetrators to carry out their attacks on HRDs, we have no alternative but to question whether many of these technical protection measures are capable, on their own, of dissuading perpetrators from acting or of directly impeding an attack.

### Exploring other protection measures

Experience shows that the catalogue of current measures needs to be expanded to include others that might be more appropriate for the nature of human rights defence work and that do not necessarily imply increased programme costs. In other words, the challenge is to adopt the point of view of HRDs themselves and to identify other measures that might be more efficient and effective.

In addition, it can be argued that one of the greatest sources of protection available to HRDs is their social capital. That is, the collection of relations and connections that locate the work of HRDs in the heart of their communities. According to this perspective, programmes should consider measures with the potential to have a positive impact on the work of HRDs and of the networks in which they participate. These might include supporting (without interfering in) their work and communications networks, contributing to the safety of their movements by providing vehicles (not necessarily armoured), financial support to pay for taxis, or other appropriate measures. In the case of HRDs working in isolated areas, or in scattered communities, a programme could provide small scale financial support to cover the costs of meetings, advocacy activities or HRD-run early warning systems.

There is a significant absence of measures of a political nature, involving official recognition of the importance of the work carried out by HRDs. These measures, already discussed in this chapter, are of utmost importance.

Programmes could also make efforts to influence different actors (some of which form a part of the state apparatus), and to issue statements of support in an effort to contribute to the security of HRDs. This could take the form, for example, of *in situ* visits by the state supervisory bodies (such as the offices of the Attorney General, the Human Rights Ombudsman or the Comptroller General), or telephone calls or formal letters designed to ensure that authorities and other actors at local level are aware that their compliance with their duties is being monitored and to communicate an unequivocal message of support to those working to protect human rights.

### Collective protection measures

A repeated demand of HRDs is for programmes to provide collective, and not just individual, protection measures that may be applied to the organisation or the community in which they develop their human rights defence work.<sup>193</sup>

191 See [www.animalpolitico.com/2015/07/mechanism-protége-a-journalists-y-activistas-con-botones-de-panico-inservibles-y-telefonos-donde-nadie-contesta](http://www.animalpolitico.com/2015/07/mechanism-protége-a-journalists-y-activistas-con-botones-de-panico-inservibles-y-telefonos-donde-nadie-contesta) (Accessed 01/12/16), and WOLA-PBI (2016, 7).

192 For example, of the 63 HRDs murdered in Colombia in 2015, four were recipients of protection from the NPU, while measures had expired in the case of another, and had been denied to a sixth (Somos Defensores: 2015, 28).

193 To mention some recent examples, see: Justicia Global (2016, 31-32) for Brazil and Somos Defensores (2016, 9-12) for Colombia.

On several occasions the IACHR and the IACtHR have issued or ordered collective protection measures. Just in the case of Colombia, for example, at least 16 collective measures have been granted since 1996 for ethnic-territorial communities (14 for indigenous communities and peoples and two for Afro-descendant communities), but also, among others, to a human rights organisation (ASFADDES) and to a peasant farmer community (San José de Apartadó).<sup>194</sup> In the latter case, the IACtHR referred to “the collective definition of the beneficiaries of these provisional measures is based on their belonging to the Peace Community, their geographical location in the municipality of San José de Apartadó, and the situation of grave danger they are going through because they are members of said Community”.<sup>195</sup>

Similarly, there are several precedents, in particular in Colombia, of collective approaches to security having been offered by the state.<sup>196</sup> National legal systems have also produced jurisprudence on the matter. Continuing with the case of Colombia, which is particularly informative, several actions of the Constitutional Court and subsequent government responses over a period of some seven years,<sup>197</sup> finally led, in 2015, to the government publishing Resolution 1085, defining the NPU’s *Ruta de Protección Colectiva* (Roadmap for Collective Protection).<sup>198</sup> At the end of that year, the first meeting was held of the *Comité de Evaluación de Riesgo y Recomendación de Medidas* (Committee for Risk Evaluation and Recommendation of Measures) established to provide protection for groups. HRD organisations have recognised this resolution to create collective protection as an important step forwards, because it opens up access to the programme for organisations that are not legally constituted. It also establishes the practice of site visits by the mechanism, a method for ensuring collective consent to the carrying out of risk evaluations and measures, and proposes a mechanism for monitoring the process, etc. But its weaknesses have been pointed out too, including the fact that it imposes conditions on groups or communities (they must obtain social recognition), limits the active participation of the group and maintains a police perspective on protection.<sup>199</sup>

Despite these normative advances, the implementation and results of these collective protection measures remain very limited. Apart from matters such as political will, or the complexity of the situations involved, it is important to recognise that the concept of collective protection measures is not entirely clear, and in our opinion, more research into the matter is required. Some reflections on the issue are presented below.

- There is no established definition of collective protection measures, but in general terms they may be said to refer to all the measures that are available to be taken when the object of protection is not an individual but a group, organisation, community or entity whose

194 Pedraza and Massó (2016, 23-24).

195 See [www.corteidh.or.cr/docs/medidas/apartado\\_se\\_01.pdf](http://www.corteidh.or.cr/docs/medidas/apartado_se_01.pdf), cited in Pedraza and Massó (2016, 24). English version Available at: [http://www.corteidh.or.cr/docs/medidas/apartado\\_se\\_08\\_ing.pdf](http://www.corteidh.or.cr/docs/medidas/apartado_se_08_ing.pdf), par. 8.

196 In Colombia, for example, the *Programa de Defensores Comunitarios de la Defensoría Nacional*, the *Programa de Protección a Comunidades en Riesgo*, the *Zonas de Reserva Campesina*, etc., etc. (Pedraza and Massó: 2016, section 2.1).

197 For more details on this interesting process see (in Spanish only) *Auto 321* of the Constitutional Court. Available at: <http://www.corteconstitucional.gov.co/T-025-04/AUTOS%202015/Auto%20321%20del%203%20de%20agosto%20de%202015%20Proteccion%20Colectiva.pdf> (Accessed 09/01/17), and Pedraza and Massó (2016, 26-29).

198 See <https://www.unp.gov.co/normatividad/Documents/RESOLUCI%C3%93N%201085%20DE%202015%20MININTERIOR.pdf> (Accessed 09/01/17).

199 See *Somos Defensores* (2015, 9-12) and Pedraza and Massó (2016, 32-33).

members are at risk. Frequent examples are defenders of communities threatened by extractive activities or indigenous communities seeking to defend their territories.

- Collective measures are compatible with individual measures granted to specific members of the group, such as men or women who fulfil leadership roles, members of organising committees, etc. The difference lies in the fact that the usual practice is to grant only individual measures, without taking into account the fact that in specific situations it is the group that is at risk. Consequently, individual responses are barely effective in combating the collective threat. They may even be a source of conflict because of the sense of defencelessness that is likely to be felt by the other members of the group. Thus, individual measures may be shared by a relatively large group of persons, who would consequently share access to methods of communication, a vehicle, etc.

Beyond this shared use of individual measures, collective measures point to an integrated social and spatial response appropriate to a specific group or community. Two key dimensions of any group, then, must be borne in mind: the interaction-network dimension and the spatial-territorial:

- In the first place, the **interaction-network dimension** implies that the group is built on the basis of the interactions between its members, who construct a dense network of relations. Building on this central idea it is possible to argue that collective measures should be oriented towards reinforcing these interactions and relations both internally, within the group, and externally, with the outside world.

**Internally:** first, it might be assumed that if it is well enough structured and has sufficient density in the relations between its members, a network can generate protection capacity. That is, when its members meet to share information and, generally, interact with each with a degree of regularity. This provides a high level of internal cohesion (the “ties that bind” in the language of social capital).

**Externally:** although a network may have considerable internal coherence, this is of little use if it is unable to establish external connections. That is, it must be able to build instrumental relations with other networks and institutions that are capable of providing protection to its members (the “bridging connections” of social capital).

According to this interaction-network approach, the principal aim of collective protection measures would be to reinforce the network’s internal cohesion and strengthen relations between it and other networks or institutions that might be able to offer protection.

- Secondly, of the **spatial-territorial dimension** it might in general terms be said that the collective measures include a spatial, or territorial, dimension that goes beyond the provision of individual protection. This is the case not only because of the collective nature of the object of protection but also because many collective acts of aggression are related to disputes about access to, or exploitation of, spaces or territories, or to the protection of collective rights, frequently in isolated places. It is important to be clear that this is not just a question of the possession of land in legal terms, but more broadly: of places or spaces that are linked to the action of defending human rights.

What, then, might collective measures look like? The arguments presented thus far suggest that collective measures might involve attempts to prevent potential illegal actions being committed against HRDs by supporting networks or connectivity and by watching over

and caring for the territory or space associated with the defence of human rights. Armed with this definition, the following section examines eight possible combinations of collective measures<sup>200</sup> (which may be added to potential individual measures if needed):

### I. Increase connectivity between Human Rights Defenders

- Means of communication that work effectively in the area or areas in question (including permits for the use of radios, for example, if required, and establishing clear rules governing their use).
- Sustainable support to facilitate movement within and outside the communities, for example to attend national- or international-level meetings.
- A dedicated point of contact with the local authorities and security forces (empowered to take operational decisions on protection).

### II. Prevention (space and territory)

- If there is a risk of criminal acts being committed, dissuade and control potential perpetrators by employing perimeter surveillance of access routes to the territory or physical space or to the surrounding area, always with the prior agreement of the affected HRDs.<sup>201</sup> Regular reports of these surveillance activities should be provided, including to communities, so that they can be compared during *ad hoc* monitoring meetings with any information inhabitants may possess on what has been happening there (see point VI).
- In our experience, measures that help communities remain in their territories, or continue to enjoy freedom of movement, can be useful. Such measures might include provisional refuges (to prevent forced displacement if possible), support for constructing houses or provisional shelters, inputs for subsistence crops and helping community members travel within their territory (e.g., by providing horses and tack), etc.

### III. Individual protection measures applied collectively

- Individual protection measures should be compatible with a collective understanding of rights protection or communication. Thus, for example, individual protection measures may appropriately be rotated between whichever leader needs to travel outside the community to a city if the journey is a dangerous one.
- The key lesson is that protection measures should not necessarily be linked to a specific individual, but to a particular role or responsibility.

### IV. Expressions of interest, contacts, and visits by central authorities to local authorities

- A programme's national coordination structures might (by telephone or in a formal letter to the responsible local authorities) express interest in the evolution of a case, in order to encourage accountability.

<sup>200</sup> This list is based on a proposal made by the author of this study to Protection Desk Colombia, which was picked up on and adapted by Pedraza and Massó (2016).

<sup>201</sup> It is interesting to note that the IACtHR established provisional protection measures in favour of the Peace Community of San José de Apartadó (Colombia), ordering the Colombian Army to provide perimeter protection against paramilitary incursions, "to respect the position of the Peace Community". See *Resolution of the IACtHR 24 November 2000*, subsection 10.f. Available at: [http://www.corteidh.or.cr/docs/medidas/apartado\\_se\\_02\\_ing.pdf](http://www.corteidh.or.cr/docs/medidas/apartado_se_02_ing.pdf) (Accessed 10/02/17).

- The important thing is to create a logic of protection that both informs and favours accountability of the local level to central authority and, similarly, helps local authorities understand the spatial logic of communities, their networked relations, and their collective action when they are interacting with HRDs and communications professionals.

### V. Official investigations to analyse the collective dimension of acts of aggression

- In general, police or judicial investigations should take into account the possible collective dimensions of any threats or acts of aggression, especially at the point when the investigative hypothesis is first established.

### VI. Provide legal advice (or ensure it is provided)

- This aspect is important in cases involving property titles (to lands, for example) or in respect of the legality of actions concerning disputed territory or space, or in relation to third parties when these might be associated with acts of aggression against HRDs or communications professionals.

### VII. Preparation for an adequate response when circumstances require it

- The security forces or other authorities should establish an *in situ* presence as soon as possible in emergency situations, with the objectives and scope of the reaction having been established beforehand, in detail, in close consultation with HRDs.

### VIII. Regular monitoring of the protection situation

- A working group made up of central and local authorities, HRDs or communications experts with a specialisation in collective rights, and external observers might be asked to monitor the protection situation.
- This regular monitoring is fundamental if results are to be guaranteed in situations as complex as those described here. In addition, when monitoring is carried out regularly, by an established working group, it is a further expression that the collective subjects of protection are working in, or with, a network and of the effective functioning of social capital.

It should be stressed that it is difficult to offer general rules on collective measures, because they depend greatly on context. However, the measures discussed above, or others that might be thought of in the future, can be carefully adapted to each context and to the collective needs of communications professionals and HRDs.

### Protection plans: going beyond security measures

The catalogues of measures maintained by the programmes can be very useful for planning, budgeting and ensuring accountability for the coverage they provide in terms of the number of HRDs covered. However, the existence of these catalogues should not be taken to imply that the measures they contain will be automatically implemented, as the concrete situation of each HRD must be analysed if they are to be effective.

It is not enough to respond to the risk faced by an individual by offering isolated protection measures (such as a mobile phone or a bullet-proof vest). As we have seen, the response to the situation of risk requires the elaboration of a protection plan that is capable of responding to all the aspects of risk a victim faces (a protection plan, furthermore, that should be based among other things on a corresponding risk evaluation). The plan should be monitored and

evaluated periodically, in order to ensure that it responds to the level of risk faced by the beneficiary or beneficiaries. That is, the logic of protection requires, first, the preparation of a plan based on a previously completed risk evaluation and, second, that appropriate measures are chosen.

It is also important to bear in mind that not all measures are effective in all circumstances. For example, the provision of bullet-proof vests in places with very high temperatures is likely to mean that beneficiaries end up not using them; or a bullet-proof car can increase the vulnerability of a protected person as they might be attacked in an attempted hijack (an occurrence that the presence of an armed bodyguard will not necessarily preclude).

As Protection International has consistently argued, a protection plan, like any plan, should have clear objectives, activities, methods and evaluation processes.<sup>202</sup> The following factors should be taken into account during its preparation:

- Key aspects, such as working contexts, gender, ethnic or social identities, the economic circumstances of the protected persons and the specific ways in which they carry out their work in defence of human rights.
- Basing the approach on the results of the risk evaluation (carried out to understand the context, and the threats, vulnerabilities and capacities that require a response in each case) and on the determination of level of risk (to gauge whether it is high, medium or low).
- Discussing the plan with the HRD(s) in question, because, if they do not agree with it, implementation will be very difficult. However, it is advisable that discussion of the technical aspects of the plan should be the responsibility of experts or the appropriate technical body before it is subsequently explained to and negotiated with the HRD(s) it is intended to protect.
- Ensuring that HRDs are able to continue with their work whenever reasonably possible. If the levels of risk are very high and some change to their activities are required, it is reasonable to attempt to minimise the changes and to make sure they have only a short lifetime.
- Bearing in mind the networked and collective nature of the activities of HRDs. In other words, it is not a question of protecting individuals and their families, but people who work as HRDs alongside others. The networks of contacts and the relations maintained by people who defend human rights - that is, their social capital - constitute one of their principal sources of protection. This is of particular importance when it comes to defining the protection measures required in each case. On too many occasions programmes treat HRDs as isolated individuals requiring protection (the police frequently treat protection cases in the same way they approach the protection of public figures). To provide another

**“LEVEL 5” RISK: A BULLET-PROOF CAR AND FOUR BODYGUARDS?**

When the author asked a police commander in one of the countries examined in this report about how security schemes were designed, the response was “progressively”, according to the level of risk. The author asked, for example, what a “level 5”, meant and the answer was “a bullet-proof car and between four and six bodyguards”. Asked what would happen if the individual with a level 5 risk were a peasant leader in a mountainous rural area, the answer was ... an embarrassed silence.

example, drawn from real life: five illegal raids on the offices of human rights organisations working with the displaced population in small and medium sized cities involved the seizure of the CPUs from the office computers. These were not necessarily simply “five burglaries with forced entry”. An investigative (and protection) hypothesis might posit the existence of a single perpetrator behind all five incidents, who was attempting to obtain information on the activities of organisations working with the displaced population. This might seem like an obvious point, but such a conclusion is not always drawn.

**GOOD PRACTICE CONCERNING PROTECTION MEASURES**

- Maintain (open-ended) catalogues of measures and differentiate between the way they are applied in routine or in urgent circumstances.
- Enlarge the catalogue to include collective protection measures.
- Recommendations on protection measures:
- Bear explicitly in mind that the objective of an HRD protection policy is to enable HRDs to continue carrying out their activities.
- Ensure that the measures are appropriate to the level and kind of risk, and organise them in effective protection plans (taking into account all the necessary parameters, such as the kind of work carried out by the HRDs in question, their identities, the spaces where they work, their risk of displacement, etc.). These plans should be capable of adapting to changing circumstances.
- Ensure that the protection plans are implemented according to timescales that are appropriate to the current level of risk.
- Research and evaluate the efficiency and effectiveness of protection measures and plans, in order to select the most appropriate ones and guarantee maximum effectiveness in their implementation.
- Investigate and evaluate the effectiveness of the concept of “urgent or extreme risk”, and how to respond to it.
- Improve and fully incorporate a gender and intersectional focus in protection plans.
- Establish processes for the staged withdrawal of measures and for resolving barriers as they emerge, while always maintaining the security of HRDs as a priority.
- Investigate and evaluate procedures using armed bodyguards, in order to reduce mutual distrust and the suspicion intelligence information against might be used against HRDs, etc.

### 3.4. The allocation of resources

*This chapter attempts to identify adequate budget levels for a protection programme. It compares the resources available to existing programmes, and concludes that it is very difficult to define an adequate budget without reference to the arguments presented in the rest of this study.*

All protection policies should have dedicated budgets of adequate size. Commendably, this principle is made explicit in the laws governing the policies in Mexico and Honduras.<sup>203</sup> During the preparation of this report we have reflected on how large an adequate budget would be, but have been unable to arrive at a definitive answer.

<sup>202</sup> For more information on how to design a protection plan, see *New protection manual for human rights defenders*

<sup>203</sup> Articles 48 to 54 of the Mexican Law; article 65 of the Honduran Law.

It is obvious that, since public protection policies respond to serious problems, they should count with sufficient resources to ensure their implementation. As it is the state that is responsible for protecting HRDs, it has the duty to fulfil this obligation as effectively and efficiently as possible. To ensure **effective** protection, a policy must achieve its objective of providing protection to HRDs, while **efficiency** requires this objective to be met by making rational use of available resources.

Some programmes have foreseen the possibility of creating a fund (structured as a trust) capable of receiving funds from foreign donors.<sup>204</sup> It should be emphasized that such funds should not obviate the requirement for public policies to have their own dedicated budgets.

### Some general data on the programmes

It is very difficult to carry out a critical evaluation of the programmes examined in this study because two difficulties converge: on the one hand, the inadequacy of the budgets – particularly apparent in programmes with fewer beneficiaries such as in Mexico or Brazil – and, on the other, the poor results of much better resourced programmes such as the Colombian. Table 7 presents data on this matter.<sup>205</sup>

Table 7: Comparative data on programmes, US\$

|   | COLOMBIA                  | BRAZIL                   | MEXICO <sup>206</sup>    | HONDURAS            |
|---|---------------------------|--------------------------|--------------------------|---------------------|
| 2015 Budget   | 23 400 000 <sup>207</sup> | 1 114 000 <sup>208</sup> | 8 062 000 <sup>209</sup> |                     |
| No. of HRDs included in the programme                         | 1,810                     | 342                      | 316                      | 25                  |
| Budget per HRD included in the programme                      | 13,000                    | 2,771                    | 25,513                   |                     |
| No. of HRDs included in the programme per 100,000 inhabitants | 3,8                       | 0,2                      | 0,2                      | 0,3                 |
| HRDs murdered (2015 <sup>210</sup> )                          | 63                        | 72                       | 22                       | 12                  |
| Ratio of HRDs in programme: overall number of HRDs murdered   | 12                        | 5                        | 14                       | 2                   |
| Population in 2015 (millions)                                 | 48                        | 207                      | 127                      | 9                   |
| Intentional homicide per 100,000 inhabitants <sup>211</sup>   | 28                        | 25                       | 16                       | 75                  |
| Ratio of HRDs murdered : 100,000 inhabitants                  | 1.3                       | 0.3                      | 0.2                      | 1.3                 |
| HRDs murdered per 1,000 murders                               | 5 per 1,000 murders       | 1 per 1,000 murders      | 1 per 1,000 murders      | 2 per 1,000 murders |

<sup>206</sup> <sup>207</sup>

<sup>204</sup> In Mexico, the fund was created by the law creating the programme (articles 48-54) and operated as a trust. The Honduran Law includes a similar provision (article 66).

<sup>205</sup> The figures included in this part of the study have been obtained from different sources (official, reports prepared by HRDs or the media) and make no attempt to tell the entire truth, but to castlight on, and compare, different parameters.

<sup>206</sup> Data drawn only from the the Federal Programme.

<sup>207</sup> Rough calculations based on global figures from the NPU, bearing in mind that according to the 2015 Informe de

We used two reference criteria to determine adequate budget levels for public protection policies:

#### Analysis according to internal criteria: implementation of activities and direct comparison of the programmes

- Total budget and implementation of programmed activities
- Number of HRDs in the programme
- Number of HRDs in the programme per 100,000 inhabitants
- Budget for each HRD included in the programme
- Murdered HRDs
- Ratio of HRDs in programme to number of HRDs murdered

#### Analysis according to external criteria: comparison between programmes in terms of external points of reference

- Number of intentional homicides in the country
- Ratio of HRDs murdered compared to number of intentional homicides in the country.

### Analysis and comparison of the implementation of programmes

We begin with an analysis of the total resources assigned to each protection programme.

#### Total budget and the implementation of programmed actions

The analyses carried out by HRD organisations have repeatedly complained about the lack of resources available to existing programmes. An example is provided by the Mexican mechanism:<sup>212</sup> the staff assigned to the units has been minimal and officials work under a great deal of stress, leading to high levels of staff turnover.<sup>213</sup> Indeed, it has taken years to recruit the full complement of staff. Another example is provided by the fact that towards the end of the financial year officials are forced to cover their transport costs from their own pockets (with the costs being reimbursed at the start of the following year).

Rendición de Cuentas, 15% of the beneficiary population (1,810 people from a total of 11,888) could be considered HRDs. According to the same source, in 2015 NPU had a budget of 490,781 million pesos, and the total cost of protection measures was 454,144 million pesos. On 31 December 2015 the peso : US dollar Exchange rate was 3,146 : 1. Throughout 2015 the Exchange fluctuated considerably, a factor that might affect the calculations made in the study). See the figures available at: [www.unp.gov.co/planeacion/Documents/Balance%20y%20notas%20a%20los%20estados%20financieros%20a%20C3%B1o%202015.pdf](http://www.unp.gov.co/planeacion/Documents/Balance%20y%20notas%20a%20los%20estados%20financieros%20a%20C3%B1o%202015.pdf) (Accessed 9/01/17).

<sup>208</sup> Secretaria de Derechos Humanos, Informe 2015.

<sup>209</sup> See [www.apartados.hacienda.gob.mx/presupuesto/temas/pef/2015/docs/04/r04\\_ppcer.pdf](http://www.apartados.hacienda.gob.mx/presupuesto/temas/pef/2015/docs/04/r04_ppcer.pdf) (Accessed 5/12/16).

<sup>210</sup> Country reports for 2015 (see Bibliography).

<sup>211</sup> World Bank data, 2014. See <https://data.worldbank.org/indicator/VC.IHR.PSRC.P5> (Accessed 5/12/16). The data have been calculated per 100,000 inhabitants. Note that the global average was 5 per 100,000 inhabitants, compared with 23 in Latin America and the Caribbean.

<sup>212</sup> *Diagnóstico del mecanismo* (2015, 38) and WOLA-PBI (2016), 9. For example, these units have been understaffed and at times there have been delays of years in the recruitment process. In another example, at the end of the financial year officials are obliged to pay for their travel costs from their own pockets, which are then reimbursed at the start of the following year.

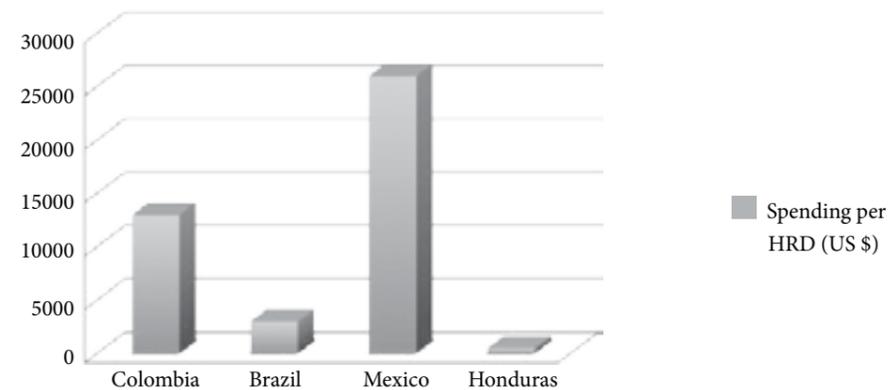
<sup>213</sup> First hand information from the autor. See also WOLA-PBI (2016), 8.

**Overall budget, the number of HRDs and projected spend per HRD**

The Mexican programme assigns almost twice as much money per HRD as its Colombian counterpart, while spending per HRD by the Brazilian programme is almost ten times lower. However, we have had access only to the federal and not to the state budgets, with the result that the total spend per HRD is no doubt in fact higher:

|                       | COLOMBIA | BRAZIL | MEXICO <sup>214</sup> | HONDURAS |
|-----------------------|----------|--------|-----------------------|----------|
| Budget per HRD (US\$) | 13,000   | 2,771  | 25,513                |          |

FIGURE 7: SPENDING PER HRD (US\$)



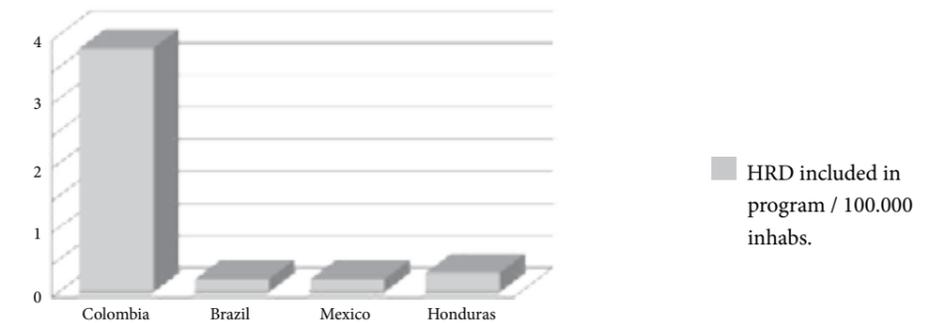
In terms of coverage, the Colombian programme deals with the highest absolute number of HRDs: some 1,810 people in 2015. However, overall budget figures and total number of HRDs included in programme yield little information, as they do not permit direct comparison between the programmes. To do this it is necessary, for example, to compare the number of HRDs included in each programme, per 100,000 inhabitants. The following figures illustrate the differences between the programmes when this indicator is used:

|   | COLOMBIA | BRAZIL | MEXICO <sup>215</sup> | HONDURAS |
|---|----------|--------|-----------------------|----------|
| No. of HRDs included in the programme per 100,000 inhabitants | 3.8      | 0.2    | 0.2                   | 0.3      |

214 Data drawn only from the Federal Programme.

215 Data drawn only from the Federal Programme.

FIGURE 8: NUMBER OF HRDs INCLUDED IN EACH PROGRAMME PER 100,000 INHABITANTS



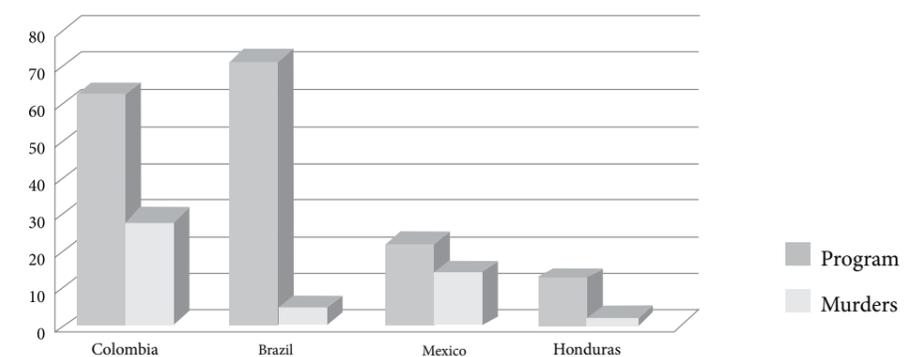
In total, the Colombian programme includes 3.8 HRDs for every 100,000 inhabitants, much higher than the other programmes all of which have a similar coverage (with Honduras slightly higher than Guatemala, Mexico and Brazil).

**Number of murdered HRDs per 100,000 inhabitants**

It is interesting to compare the number of HRDs included in protection programmes with the overall level of intentional homicides of HRDs. Intuitively, there should be more HRDs in a programme than HRDs murdered. Figure 9 shows that in absolute terms, compared with the programmes in Brazil, Mexico and Honduras, there are many more HRDs in the Colombian programme than have been murdered:

|   | COLOMBIA | BRAZIL | MEXICO | HONDURAS |
|---|----------|--------|--------|----------|
| Murdered HRDs (2015 <sup>216</sup> )        | 63       | 72     | 22     | 12       |
| Ratio of HRDs in a programme: murdered HRDs | 29       | 5      | 14     | 2        |

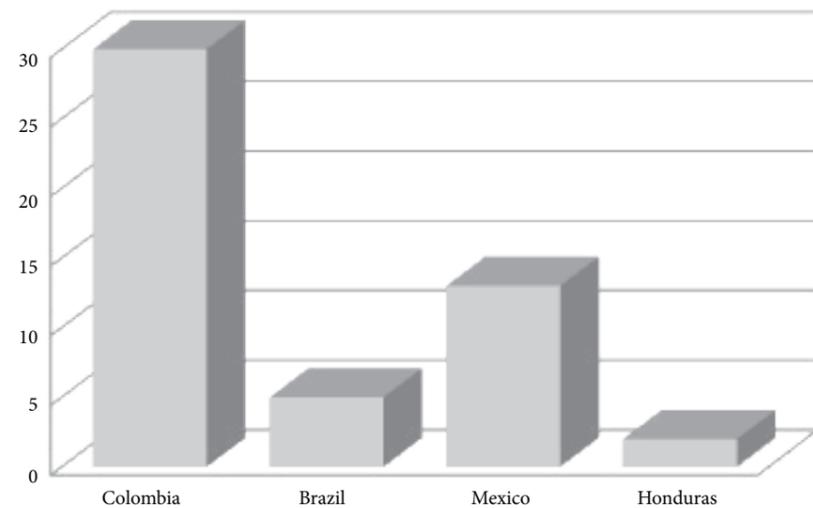
FIGURE 9: COMPARISON BETWEEN HRDs IN A PROGRAMME AND HRDs MURDERED



216 Country reports for 2015 (see bibliography).

A comparison of the ratios in Figure 10 confirms that Colombia has a higher ratio of HRDs in the programme to overall numbers of HRDs murdered (29:1). Brazil and, especially, Honduras (the latter with a ratio of 2:1) fare worst.

FIGURE 10: RATIO OF HRDs INCLUDED IN A PROGRAMME TO THOSE WHO HAVE BEEN MURDERED



We have already stated that the Honduran programme includes a greater number of HRDs per 100,000 inhabitants than its Brazilian or Mexican counterparts and it is plain that a greater number of HRDs is murdered there in relation to the number included in the programme. In other words: coverage in Honduras is higher, but the results of the programme there seem much worse.

**Analysis and comparison with external points of reference**

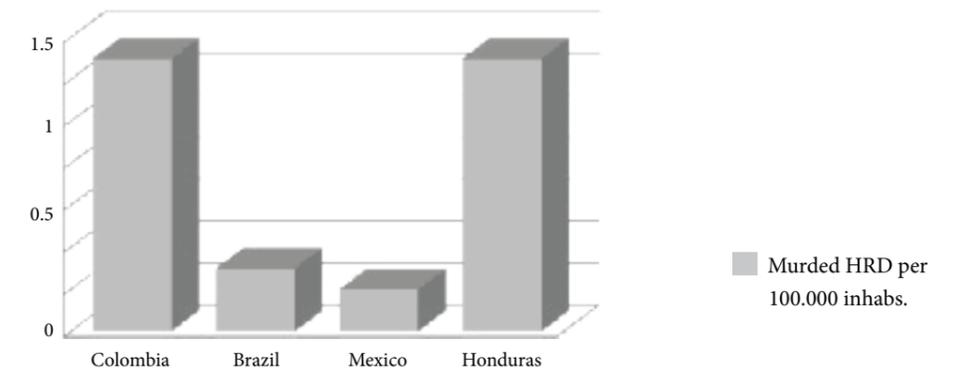
Next, we conduct an analysis and comparisons with criteria or reference points that are external to the programmes.

Figure 11 shows the number of HRDs murdered per 100,000 inhabitants in each country, which is higher, and very serious, in Colombia and Honduras:

|   | COLOMBIA | BRAZIL | MEXICO <sup>217</sup> | HONDURAS |
|---|----------|--------|-----------------------|----------|
| Number of HRDs murdered per 100,000 inhabitants | 1.3      | 0.3    | 0.2                   | 1.3      |

217 Data drawn only from the Federal Programme.

FIGURE 11: HRDs MURDERED PER 100,000 INHABITANTS

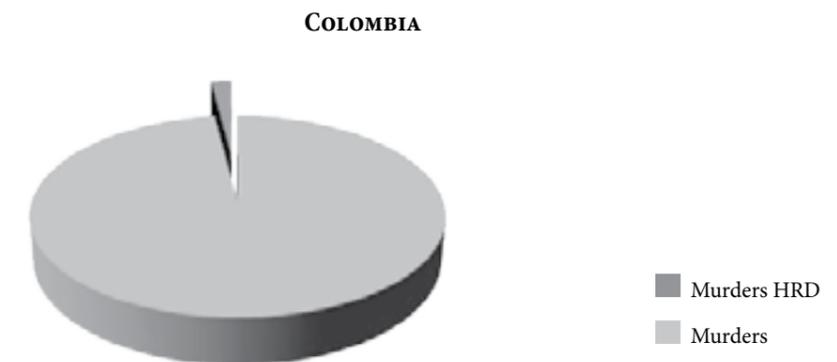


To put the murder of HRDs into perspective, the numbers that are killed is actually very low when compared to the number of intentional homicides per 100,000 inhabitants:

|  | COLOMBIA            | BRAZIL              | MEXICO <sup>218</sup> | HONDURAS            |
|--|---------------------|---------------------|-----------------------|---------------------|
| Intentional homicides per 100,000 inhabitants <sup>219</sup> | 28                  | 25                  | 16                    | 75                  |
| HRDs murdered per 1,000 murders                              | 5 per 1,000 murders | 1 per 1,000 murders | 1 per 1,000 murders   | 2 per 1,000 murders |

This does not mean that the number of HRDs murdered is not an extremely serious problem, but that it has to be examined in relation to another equally complex one, namely the very high number of intentional homicides in the countries examined here. A comparison of murders per 100,000 inhabitants at regional level and internationally shows the following:

FIGURE 12: HRDs MURDERED COMPARED TO OVERALL HRD MURDER RATES

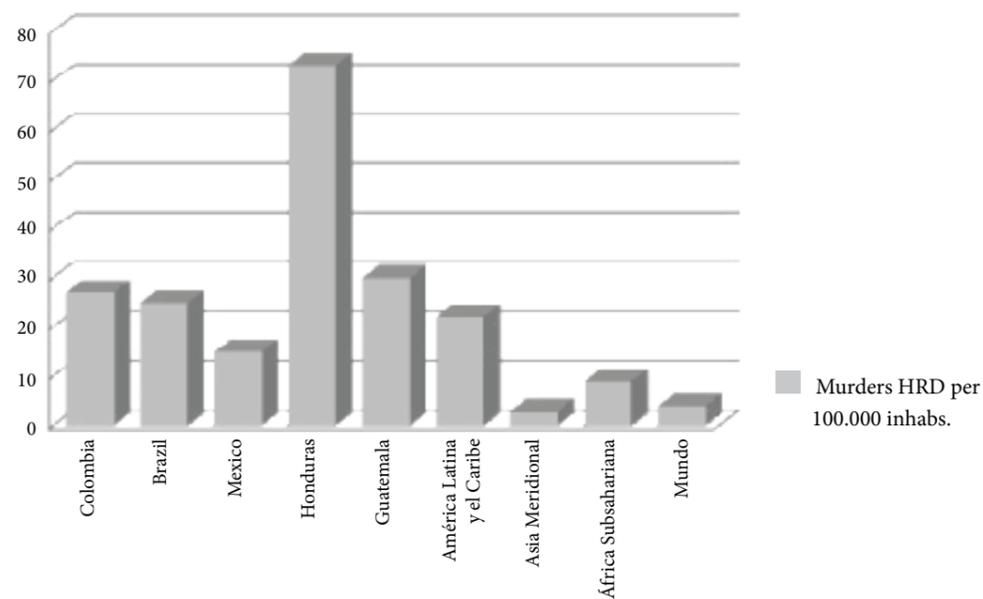


218 Data drawn only from the the Federal Programme.

219 World Bank data, 2014. See <https://data.worldbank.org/indicator/VC.IHR.PSRC.P5> (Accessed 5/12/16). The data have been calculated per 100,000 inhabitants and not per million as in the original source. Note that the global average was 50 per 100,000 inhabitants, compared with 230 in Latin America and the Caribbean.

Murder rates in the countries analysed in this study (see Figure 13: the four countries on the left, and in particular Honduras and Guatemala) are several times higher than the average for the world and for other regions, including those with high levels of geopolitical instability such as Africa. Beyond the confines and limitations of this study, it is vitally important to examine this context of violence in depth, in order better to contextualise public protection policies for HRDs.

FIGURE 13: MURDERS PER 100,000 INHABITANTS

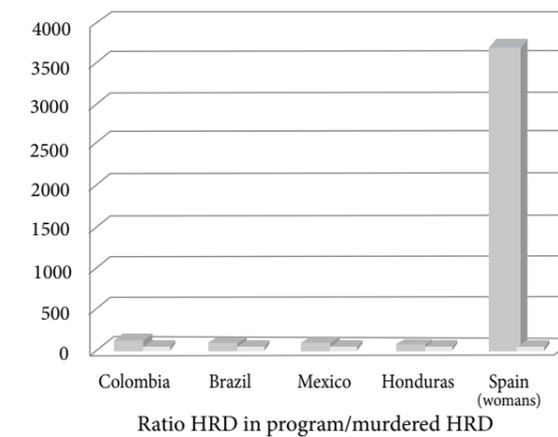


### Comparison with other protection programmes

It is difficult to be sure whether the ratio of HRDs in a programme to murdered HRDs is an adequate measure because there are not many aspects with which it can be compared. But a comparison (for illustrative purposes only, and recognising the abstract nature of the exercise and the major differences between the cases) between these programmes and the Spanish protection programme for women affected by gender-based violence<sup>220</sup> permits some kind of assessment to be carried out.

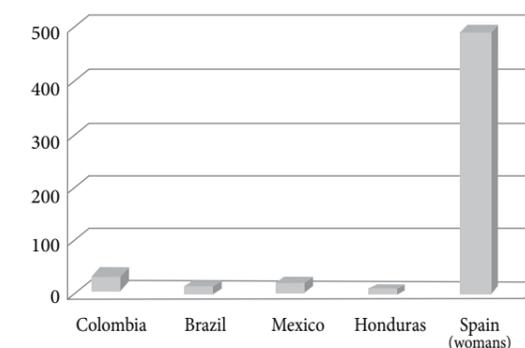
Previously, we compared the number of HRDs included in a programme with the overall number of HRDs murdered. But what does an examination of the protection programme for women affected by gender-based violence show to be the ratio of women included in the programme to the overall number of women murdered? (See the comparison in Figure 14).

FIGURE 14: COMPARISON WITH THE SPANISH PROGRAMME FOR PROTECTION AGAINST GENDER-BASED VIOLENCE



As is apparent from Figure 15, the ratio of women in the Spanish programme to the number of intentional homicides is much higher. In other words, it would appear that this proportion must be high for a programme to be of better quality. The protection programme for women has a ratio of 492 women included in the programme to every woman murdered nationally. Compared to this, the ratio of HRDs in the programme to HRDs murdered is, in the case of Colombia, 29 : 1 and in Mexico 14 : 1.

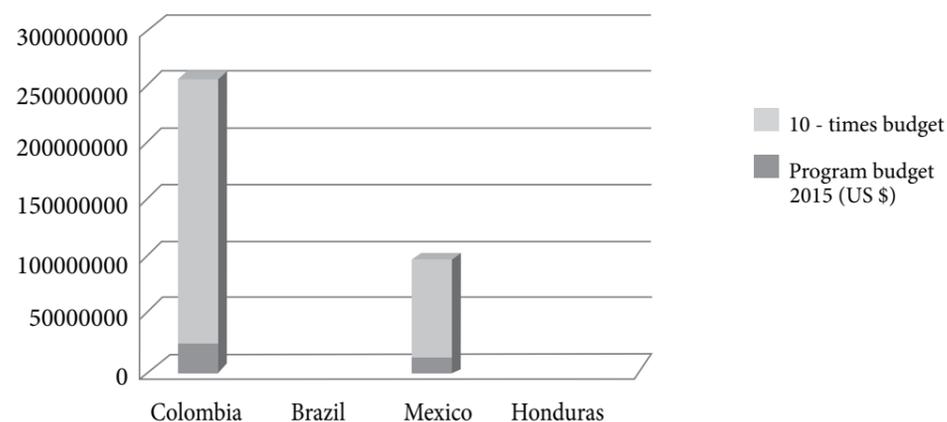
FIGURE 15: RATIO OF PEOPLE IN PROTECTION PROGRAMMES TO MURDER VICTIMS



Now, if it is believed that increasing this ratio the quality of the programme would improve, then in order to reach the ratio achieved in the gender-based violence programme, the ratio found in the best-performing HRD programme – in Colombia – would have to be multiplied by 17. But this would result in astronomical budgets. More cautiously, a mere ten-fold increase would still require unmanageably large budgets: more than US\$230 million a year in Colombia, or nearly US\$81 million in Mexico (Figure 16):

220 See [www.poderjudicial.es/cgpi/es/Temas/Violencia-domestica-y-de-genero/Actividad-del-Observatorio/Datos-estadisticos/La-violencia-sobre-la-mujer-en-la-estadistica-judicial--Datos-anuales-de-2015](http://www.poderjudicial.es/cgpi/es/Temas/Violencia-domestica-y-de-genero/Actividad-del-Observatorio/Datos-estadisticos/La-violencia-sobre-la-mujer-en-la-estadistica-judicial--Datos-anuales-de-2015) (Accessed 01/12/16).

FIGURE 16: COMPARISON WITH THE THEORETICAL INCREASES IN PROGRAMME SIZE



### Conclusions on appropriate budget levels for public HRD protection policies

It is not easy to draw conclusions from these analyses:

- The available data and experiences do not permit a judgement to be made concerning adequate budget levels for any given public protection policy.
- This study in general, and in particular the analyses conducted in this chapter, suggest that it is reasonable to argue that states should assign sufficient resources for a public protection policy – however conceived – to be implemented in full. We do not believe this is the case with the existing mechanisms.
- Some aspects of resource allocation may prove useful as points of reference. For example, the proportion of HRDs included in a programme could be increased in relation to the overall numbers of HRDs murdered. The target could be set, perhaps, at 100:1 or 200:1.
- Sufficient resources are a necessary, though not a sufficient, requirement if a public policy for the protection of HRDs is to be successful.

### RECOMMENDATIONS CONCERNING THE ALLOCATION OF RESOURCES

- As a minimum, protection policies should count with sufficient resources for all their activities to be implemented as designed (internal budgetary allocation criteria).
- The programme budget should be subject to the same regulation, control and transparency required of any other public policy.
- The establishment of a special fund assigned to the policy should not be allowed to divert resources away from the overall programme which – like any other public policy – should have its own dedicated budget.
- A radical reform of the programmes is required in order to increase the efficiency and effectiveness of protection policies and of the deployment of resources assigned them. This study has made numerous recommendations of how this might be achieved.
- More research should be conducted into how high overall homicide levels might affect the murders of HRDs.

## 3.5. The implementation gap or deficit in public policies for the protection of human rights defenders

*This chapter provides an analysis of the implementation gaps or deficits in protection policies, namely the difference between what they seek to achieve and their actual levels of success.*

*It examines the way in which this deficit depends, among other factors, on the distinct local contexts, and the ways in which the policy is interpreted by different actors, in particular those responsible for its implementation at local level.*

An implementation gap or deficit is the difference between the objectives contained in a public policy and its actual results. These gaps in implementation are not exclusive to HRD protection policies but are common to most public policies dealing with complex problems. The 1970s saw the first research into how and why these deficits occur, and into their impact. It was becoming increasingly clear that the then-prevalent rational-positivist posture, according to which all that was required to deal with a problem was for governments to promulgate a law or decree establishing some regulation or public policy, was failing to yield the expected results. Different theories and approaches to this question have been developed.<sup>221</sup> These are reviewed below and applied to the case in hand.

### Top-down and bottom-up analyses of protection policies

Adherents of the vertical (“top-down”) model argue that policies are initiated by a central power (the government) and that their implementation depends, among things, on good management of the hierarchies inherent to the norms and procedures, and on their quality. Adherents of the “bottom-up” model, which emerged subsequently, argue that only such an approach is capable of illustrating the room for manoeuvre residing in the hands of the officials responsible for implementing the policy, and that it is this level that provides one of the keys to overcoming the weaknesses in implementation.

These contrasting approaches may be differentiated according to what some authors have described as contrasting models of democracy: vertical approaches being rooted in traditional concepts of representative democracy, while their bottom-up counterparts respond to a participatory, deliberative, view of the process. In the words of Pülzl and Treib (2006, 94-95):

*In this view, elected representatives are the only actors within a society who are legitimized to take collectively binding decisions on behalf of the whole citizenry. It is thus a matter of proper democratic governance to ensure that these decisions are carried out as accurately as possible. In other words, any deviation from the centrally defined policy objectives is seen as a violation of democratic standards. Bottom-up approaches contest this model of democracy. They stress that local bureaucrats, affected target groups and private actors have legitimate concerns to be taken into account as well. In their view, the elitist model disregards these concerns and thus leads to illegitimate decisions. Deviating from the centrally defined policy objectives*

<sup>221</sup> For a deeper analysis of this matter, see Fischer and Miller (2006).

*thus does not contravene democratic principles. Seen from this angle, legitimate democratic governance is only possible in a participatory model of democracy which includes those who are affected by a particular decision (lower-level administrative actors, interest groups, private actors etc.).*

Some analysts have argued that a combination of the two approaches is required and have emphasised the importance of participation in policies, of taking account of the contexts in which they are implemented, or of the different meanings they have for the different social actors they affect. In the case at hand, it may be argued that most efforts have focused on improving the top-down approach (through norms and procedures), with much less attention being paid to bottom-up analyses.

#### RECOMMENDATIONS

- In order to improve approaches to local implementation, and the perspectives and actions of the actors operating at this level, the gaps in implementation that characterise current public protection policies should be analysed using a vertical approach (top-down, with a focus on improving norms and procedures), but also from the opposite point of view (bottom-up, with an emphasis on the delivery of programme activities).

### The interpretation of protection policies

The so-called “interpretative approach” to the implementation of public policies considers that it is not possible to make a clear differentiation between the content of a policy (as drafted) and the interpretations, ideological biases and conflicts of values that mark the approaches of different players towards it and which directly affect its implementation. For this reason, it is of prime importance to analyse these interpretations.

An HRD protection policy is interpreted in different and opposing ways by different actors, and it is important to analyse the coexistence between these meanings and the ways they influence the different levels of implementation. Below, we examine one case of interpretation carried out from the perspective of the centre (the capital city) and another from a local point of view.

At the centre, a public policy is usually understood to have explicit objectives, objectives that are no more and no less than those “they had to have” or, at the least, those that are “capable of public expression” (in other words, that can be spoken out loud without being rejected). But neither of these necessarily represent the objectives pursued by the governments promulgating the mechanisms, nor of the HRDs who are prepared to accept them as the limited results of a set of demands that were originally much more ambitious. It is important, therefore, to recognise that implicit objectives might exist that cannot be expressed publicly, but that nevertheless interfere with explicit aims. For example, in this study we have found that HRDs complain that governments attempt to use the mechanisms in order to reduce the external pressures to which they are subjected. This might in fact be one of their implicit objectives. Whatever the truth of the matter, more research is required on the topic.

At the local level, a policy may be subjected to a different interpretation from the one it receives in the capital city. While a high-level official of an Interior Ministry might understand why it is important to protect HRDs, the same might not be true of a lowly official in a small town, far from the capital, whose actions might well be framed differently. We believe that

the local interpretation tends to have a detrimental effect on the implementation of some protection measures. However, looked at in positive terms, in theory this local interpretation might also be conducive to an adaptation of the protection measures to the realities of the particular local context. For this reason, it is important to understand the different interpretations and meanings surrounding protection policies better, in the different contexts in which they operate, so that the different ways they might influence the implementation of the policy may be observed.

#### RECOMMENDATIONS

In order to improve implementation, research should be conducted into the ways in which different officials interpret public policy in varied working contexts. Accordingly, special attention should be paid to the interpretation gap that exists between capital cities and more far-flung places.

### Levels of ambiguity and conflict, and how they affect the implementation of policies

For some authors, if a policy is to be implemented its levels of **conflict** and **ambiguity** must be taken into account. According to Matland (1995):

- **Conflict** exists when different social actors affected by a policy have different points of view about it.
- **Ambiguity** has to do with the **aims** of the policy and the **means** by which it is executed: the aims of the policy might be left ambiguous in order to make it easier to arrive at agreements during the discussion process, and there might be ambiguities in the means when, for example, the role of each player during the process of implementation is not clear.

The following “ambiguity-conflict matrix” illustrates the implementation of policies analysed in this way:

TABLE 8: ANALYSIS OF THE AMBIGUITY-CONFLICT MODEL IN PUBLIC POLICIES

|                | LOW-LEVEL CONFLICT   | HIGH-LEVEL CONFLICT  |
|----------------|--|--|
| Low ambiguity  | <b>Administrative implementation</b><br>Key to implementation:<br>available resources            | <b>Political implementation</b><br>Key to implementation:<br>implementation capacity                   |
| High ambiguity | <b>Experimental implementation</b><br>Keys to implementation:<br>Context and gradual development | <b>Symbolic implementation</b><br>Keys to implementation:<br>Interactions and networks<br>(coalitions) |

(Adapted from Matland, 1995)

#### Administrative implementation

When a public policy has low levels of ambiguity and conflict its results depend, above all, on available resources. This is an administrative matter, a question of implementing and evaluating results (see upper left quadrant). For example: a traditional vaccination programme in a country with a medium or high Human Development Index.

### Experimental implementation

When a policy is not expected to result in high levels of conflict but its ambiguity is high, its implementation is experimental, and its results depend, in large part, on matters of context and on learning processes made possible by its gradual adoption (see lower left quadrant). For example: a programme intended to create small businesses, implemented in a country for the first time.

### Political implementation

On many occasions, public policies will have clear objectives and methods (that is, a low level of ambiguity) but face high levels of conflict, because they affect powerful actors with divergent interests. In this situation, the results depend on the power of the central actor to implement the policy in a top-down manner. This is known as political implementation (see upper right quadrant). For example: policies intended to regulate some controversial aspect of the social system. In theoretical terms, these policies are best analysed by employing a vertical logic, reflecting the lines of authority or power mentioned above, while context and the interpretations of policies by officials are less important.

### Symbolic implementation

Finally, in some cases, a public policy may have high levels of ambiguity and of conflict: this results in what is known as symbolic implementation, which is characteristic of processes focused on deeply held values or principles (see lower right quadrant). In this case, the results vary considerably according to the context and to the actors involved. For this reason, vertical analysis is less useful in the case of these policies, bottom-up analysis being more useful. Indeed, in this case, the results of a policy depend greatly on context and on the actors involved. For this reason, vertical analysis of these policies is less useful, and bottom-up analysis gains in importance. Indeed, the key to explaining the results of a policy lies in the power of the interactions and networks (or coalitions) in the local sphere.

Applying this analysis to existing HRD protection mechanisms, the first observation to make is that their model of implementation is, fundamentally, **administrative**, in that they seek to minimise levels of conflict and ambiguity (the focus is on providing simple protection measures, they seek to take perpetrators into account, they avoid having to produce protection plans, etc.). As they are focused on administrative implementation the key question is the availability of resources. It may be for this reason that debates around these policies frequently end up focusing on resources too (the budget, the catalogue of measures, whether these are available or not, etc.).

However, the public protection policies proposed in this study involve matters about which there is considerable conflict, such as: incorporating political protection measures, reducing the impunity enjoyed by perpetrators, what to do in order to generate political will in different sectors of government, etc. This creates an implementation model part way between the **political** and the **symbolic**. If a public policy were capable of diminishing the current ambiguity characterising the mechanisms, implementation would be **political**. That is, it would depend on power emanating from central government. But if the levels of ambiguity are not reduced, the resulting implementation model would be **symbolic**. It is interesting to compare both forms of implementation, and their implications. According, again, to Matland (1995, 169-170):

*Symbolic implementation policies are conflictual; they therefore exhibit similarities to political implementation. Actors are intensely involved, and disagreements are resolved through coercion or bargaining; problem solving or persuasion are used to a limited degree only. Any actor's influence is tied to the strength of the coalition of which she is part. Symbolic implementation differs from political implementation in that coalitional strength at the micro level, not at the macro level, determines the implementation outcome. This difference occurs because of a high ambiguity level. When a policy has a referent goal and ambiguous means it is solidly in the symbolic quadrant. As the ambiguity level decreases the policy moves upward, toward the political implementation quadrant. A decrease in ambiguity, either through explicit goals or a crystallization of discussion around a limited number of possible means, would provide central level actors an increased opportunity to assert some control and influence. When the policy is very clear, the macro level actors are able to exert considerable control, and this becomes a case of political implementation.*

We believe that this necessary analytical transition from an administrative model of implementation to a political or symbolic one could fit well with the results of this study, and also indicate important steps that could be taken to improve implementation:

- Reducing their ambiguity.
- Dealing with the levels of conflict between the actors involved.
- Paying more attention to analysing implementation at the local level, in terms of local and national-level conflicts, interests and power relations, and to the alliances, interactions and networks of different actors (that favour, or impede, the work of HRDs).

### GOOD PRACTICE

The influence of national-level policy should be brought to bear on the local level by arranging meetings, seeking to resolve problems, ensuring plans are informed by local as well as national factors, organising monitoring missions, etc.

### RECOMMENDATIONS FOR THE EFFECTIVE IMPLEMENTATION OF POLICY:

The leadership model must enjoy a governance structure that is capable of promoting and coordinating different government actions that (i) generate and coordinate the political will of all actors involved, promoting actions and accountability; and (ii) deal with the ambiguity and conflict that result from the implementation of these public policies, avoiding mere administrative implementation and instead ensuring political implementation at national and local level.

Ambiguities in proposed actions should be removed, and the conflicts between the different affected actors should be dealt with in a contextualised manner, especially at local level.

At local level, research and the evaluation of existing protection measures, should play a fundamental role designing improvements to implementation.

### Implementation: context, resistance and conflicts

The actors involved in, or affected by, a public policy seek to exert influence over it. This will occur in different ways depending on the government regimes involved, political culture, etc. For example, we have seen that in some programmes (namely, Colombia and Brazil) implementation is vertical, while the two more recent laws (Mexico and Honduras) establish opportunities for the participation of civil society in decision-making concerning the implementation of the policy. We believe that this is an important development because controversial matters do not simply cease to exist with the approval of a law or a decree. On

the contrary, they return during the implementation period, whether as a result of opposing interpretations of the same events (Yanow: 2000, 10-11), or because of aspects that have been excluded from the law (because it should never be forgotten that a public policy also involves things that governments decide *not* to do).

It is common for some factors to complicate or impede the implementation of a public policy. Some of these are analysed below, in the light of the results of the research presented here. It should be stressed beforehand that not all these factors are present at the same time in all scenarios and that when they do appear their significance varies considerably from case to case. We believe this to be a topic that merits further research.

### **Interaction between context and the actors involved with implementation**

HRD protection policies are implemented in very different contexts, ranging from capital cities (where the government is usually based) to isolated rural areas. This presents a challenge to “national policy”, because in every scenario different kinds of encounter occur between the various officials who implement programme, the HRDs included in it and other actors, not forgetting the presence of the perpetrators of the acts of aggression. Furthermore, every actor may have their own interpretation of the policy, in addition to different levels of acceptance of central government, diverse and frequently opposed interests, etc., without forgetting that there are other powerful players that are relevant to protection issues (such as transnational corporations), but that are rarely mentioned in the programmes.

Examples of such complex interactions between context and actors might include:

- Conflicts and rivalries within and between government bodies, conflicts between public servants who occupy different posts, tensions between central government and decentralised or federal bodies (who must reach specific agreements about the implementation of the programme in each state), etc.
- Resistance to change, a common occurrence in all bureaucratic organisations, can lead to a distrust of new norms, leading to a stubborn adherence to the letter of law. This phenomenon can be particularly serious if the contents of the policy are ambiguous, lack detail, or are poorly drafted.
- Resistance to the requirement for transparency and accountability towards third parties – for example when the evaluation of risk is being conducted, as these will also be evaluated by the HRDs themselves.
- The restrictions or influence that certain local actors might impose or exert on national or local level officials or, in other cases, connivance between them and these officials.

### **The capacity of officials and the resources available to protection programmes**

Officials should have the capacities required to be able to implement a protection programme. In our experience, these capacities should not be taken for granted: training and monitoring for public servants are a part of the successful implementation of a protection policy, as are processes to ensure staff turnover is kept to a minimum.<sup>222</sup>

<sup>222</sup> In the past, the author of this study has worked with the Mexican government training mechanism staff, and has first-hand experience of the difficulties in finding people with experience in the field, and of how the rapid turnover rates means training has to be repeated and makes it difficult to build up institutional knowledge.

Similarly, it is important that the necessary resources should be freely available.<sup>223</sup> However, the results of the programme do not depend only on resources, which are a necessary but not a sufficient condition for the adequate implementation of a public protection mechanism.

### **The interaction between public officials and HRDs as subjects of protection**

Some public servants may resist the establishment of what we might call a “new relationship” with civil society actors that might imply working cooperatively with them but that might also (at least theoretically) lead to the latter complaining about the quality of the protection they receive.<sup>224</sup> The question is – as suggested earlier – even more complex if we take into account the views the official in question might have of traditionally excluded sectors of society, such as women, the indigenous population, minorities, etc.

For their part, HRDs may also distrust the notion that it is the state that is offering to protect them, especially in cases when it is, precisely, state agents who are the aggressors.

#### RECOMMENDATIONS

The characteristics and conditioning factors of each context should be incorporated into local protection plans, which should include an analysis of perpetrators, interests, conflicts, the willingness and capacity of local authorities and officials, and the ways in which they interact with HRDs in this context.

## Conclusions

Given the number and seriousness of the acts of aggression committed against HRDs in the Americas (and in the rest of the world), this research has sought to enquire into what has been going wrong with the domestic mechanisms and programmes that various governments in the region have established in order to provide them with protection. This question is fundamental, because dozens of HRDs are murdered each year and hundreds are subjected to different forms of aggression. What improvements should be made to these programmes to enable them effectively to defend the right to defend human rights? What should the response of the state be if it is to guarantee the right to defend human rights and, in particular, to protect the need HRDs have for recognition and to provide them with support and protection?

Our conclusion is that current national mechanisms for the protection of HRDs fall short of what is required, because they have key weaknesses in several aspects: the translation of the international normative framework to the domestic sphere, the coverage that a public policy designed to guarantee the right to defend human rights should really provide, the approach to the problem, and the design and implementation of the policy. Below, we reiterate our arguments on these points.

<sup>223</sup> It took many months for the trust that provides funds for the Mexican to be ready, delaying the start of its activities considerably and causing ill feeling. In the case of Colombia, the delays in the implementation of measures are notorious (Programme Somos Defensores: 2014 and 2015).

<sup>224</sup> The Colombian programme allows for applicants who are not happy with the response they receive can file an acción de tutela (a complaint at not being able to exercise a right) *queja al no poder ejercer un derecho*) before the courts. In the Mexican an appeal procedure has been established within the programme itself.

### **Weaknesses in the translation of international frameworks to the domestic level**

The mechanisms have been created on the basis of the UN Declaration on Human Rights Defenders by translating this international norm into legal frameworks in Colombia, Brazil, Mexico and Honduras. Thus, after describing the mechanisms, we began our analysis with an examination of this process of translation. How did it occur, and to what degree did it fail? Our conclusion is that the current frameworks represent a reductionist – though consensual – translation of the UN Declaration to the domestic sphere. This “agreed reduction” occurred as a result of an agreement between the discourse of the adopting states and that of the international community, the latter being shared by HRD organisations. This agreement has been created in the absence of an existing point of reference with which it might have been compared, permitting the norms to be designed according to a restrictive interpretation of the Declaration on Human Rights Defenders, and in a way that is at the same time instrumental to other government policies.

A critical review of this agreed reduction that has resulted from the translation of the international norm to domestic frameworks is therefore needed. This review could be conducted on the basis of a growing number of international standards on the protection of HRDs and would probably have to be initiated by the HRDs themselves and by bodies such as the UN or the IACHR.

### **The absence of components required by a broad and inclusive public policy**

In response to the question about the components that should be included in a domestic protection programme, we have argued that current programmes should be transformed into public protection policies that contain all the usual instruments, and apply a broad and inclusive conception of the right to defend human rights, as stipulated by the growing body of available international standards. We have reviewed the growing body of available standards that underwrite a broad and integrative conception of the right to defend human rights. As the work of HRDs becomes better known and the activities it entails evolve to adapt to changing realities, the incorporation of these international standards into protection policies will help to deepen and expand the reach of the UN Declaration on Human Rights Defenders and, as a result, to inform new or more nuanced components in public policies intended to protect this right.

However, this process of enlarging existing policies, or incorporating new standards, will not be possible if discussion of the agreed reduction model is not renewed, as it was this that made the reduced translation of the international norm to these protection mechanisms possible in the first place. The process of translation will have to be redefined, and the agreements and disagreements surrounding it will need to be made explicit, so that the ensuing debates can contribute to an improved understanding of the protection of HRDs.

### **The design of public policies**

The path followed by the process of translation does not merely involve the initial adoption of the norm at the domestic level, but is integral to its design and implementation. In an effort to ensure the norm is able to continue this path “inside” the country, we have linked this final part of the translation process to the theory and logic of public policies, because these are the government actions that are best placed to incorporate the scope and the complexity required to protect the right to defend human rights into public policy.

### **The definition del problem**

All public policies should define the problem they have been designed to deal with, and this definition is subject to the frameworks of understanding of those responsible for their production and the power relations between them. It is therefore necessary to point out that public protection policies for HRDs should define the problem according to the broadest possible interpretation of what the letter and spirit of the UN Declaration mean in terms of guaranteeing the right to defend human rights.

### **Participation and governance in public protection policies**

Current protection mechanisms include aspects such as participation and networked governance, which acquire their true importance when they are recognised as fundamental to the governance process of a broad and integrative policy. We have found that - as recommended in the regional standards - there has been considerable participation during the design of the mechanisms and that the governance of programmes has evolved. This has led to the simultaneous existence of two generations of public policies. The first involves a limited number of actors drawn from beyond government circles in their design – particularly of their governance structures - and the second, systems of networked governance that count with the active participation of HRDs and others in its governance structures.

In theory, networked governance would permit protection policies to be more durable in the long term helping them to include new elements, in line with growing international standards.

Staying with the question of the design of protection policies, we have concluded that they currently employ a reductionist approach to the problem, using a restricted focus based exclusively on security and risk (with the HRD as a potential object of rights). We have demonstrated that looking beyond the phenomenon of “physical risk”, the persistent and systematic nature of aggressions against HRDs should inform and qualify the search for strategies designed to guarantee the right to defend human rights. For this reason, it is of prime importance to avoid reductionist approaches to defining the problem of aggressions against HRDs. In the most serious of cases the phenomena that might give rise to acts of aggression against HRDs - such as organised crime, the interests of the powerful, and the co-optation and capture of the state - should be borne in mind when defining the problems to be dealt with.

For this reason, it will also be of prime importance to deal with the structural violence that affects many HRDs, and to emphasise again the figure and interests of the perpetrator, and especially of the forces that mastermind the attacks against HRDs. In any case, the state should consider the participation of HRDs and of other sectors in defining the problems that a policy should be expected to deal with.

Not only should this reductionist approach deal with the totality of the acts of aggression against HRDs but also with their systematic nature. In addition, any temptation to simplify the concept of the HRD should be resisted and its complexity fully recognised. A positive tension should be maintained, expanding the concept in order to include a range of different identities that may characterise people who defend human rights, without ever forgetting that their activities are also collective. Furthermore, it should be accepted that in exercising their right to defend human rights they will come up against many forms of power (including power held by people who collaborate with them) and that programmes should evolve over time

in order to be able to deal with different social struggles, including emerging ones. For this reason, programmes require an intersectional perspective on violence against HRDs, which takes dimensions such as gender or membership of a minority into account.

An approach that identifies risk as the principal focus of protection mechanisms permits them to focus their attention on the “at-risk” Human Rights Defender whom they present as an exception to a loosely-defined normality, an exceptionality that, furthermore, allows HRDs working with different population groups to be categorised reductively, according to a single criterion, that of risk.

To summarise, a critical human security perspective suggests that the current programmes respond to a *securitisation* of the right to defend human rights, an approach that is instrumental to a model of security focused on the state. This permits the government in question to maintain its priorities in the protection of HRDs while diverting attention away from the structural causes of the acts of aggression to which they are subject: acts that are frequently committed by actors that are close, or linked, to the state and who, in the vast majority of cases, benefit from its failure to fulfil its duty to guarantee the right to defend human rights.

It might seem utopian to argue that states should have the duty do everything in their power to defend HRDs to the last when the information they provide (or, to put it another way, their complaints about the severity of structural violence) may directly affect its interests. Every day, HRDs point out inequalities in land ownership, or the exclusionary exploitation of natural resources by transnational corporations. We believe that there are indeed certain areas of work that mark the real limits of how far protection policies will go, and that mark the point at which the social struggle for the right to defend human rights is taken up once more against the state (and not in cooperation with it).<sup>225</sup>

In conclusion, it is fundamentally important to recognise that the security of HRDs is a complex, deep-seated and cross-cutting matter, and that it is also central to protecting the right to defend human rights. It is imperative that protection programmes “unpack” the concept of security they use, recognising that all security actions are political actions, and examining the way in which perceptions of security are constructed in every context and everywhere by different actors. At no point should sight be lost of the problems that remain hidden because of the approach adopted by the protection policies themselves.

In light of the reductionist approach described above, government bodies should, with the support of HRDs or other sectors, incorporate a broad and critical perspective on security and rights in public protection policies. This should be manifested in the political decisions that are taken, discussions in the executive branch, consultations or public events, shared analytical exercises, advocacy and demonstrations, etc. The aim of these actions should be to arrive at a stage in which HRDs are recognised as subjects of rights (of the right to defend human rights) and not simply as objects of protection.

### **The implementation of public protection policies**

Our analysis of implementation has led us to argue that procedures for the implementation of current protection mechanisms are lacking, specifically in relation to ensuring effective

access for the target population, procedures and timescales, the application of the focus on risk, protection measures and the allocation of resources.

Although the target population is defined in broad and inclusive terms, as in the UN Declaration on Human Rights Defenders, there are no high-quality mechanisms that make it possible to determine which sectors of the population are unable to gain access to them, nor what happens to the HRDs who are denied support. Procedures and timescales tend to be vaguely defined at the best of times, and frequently are not met.

In terms of the way in which the focus on risk is applied, we have established that some good practices are in place, such as ensuring that people with a close association with the HRD are taken into account, or providing channels for HRDs to express their discontent with the results of their risk evaluation. But numerous improvements are required, in particular the distinction between the evaluation of risk and the determination of its level, the offer of greater transparency in evaluation processes (using qualitative techniques), the necessary incorporation of the (potential) actions of perpetrators in analyses, and improvements to, and full implementation of, a gender and intersectional perspective during the process (which should be collective as well as individual). All in all, current protection mechanisms select their target populations (“at-risk” Human Rights Defenders) using a tool (risk evaluation) that proves inadequate to the task when it is borne in mind that it also has to satisfy requirements for quality and equity in access to public policies.

In terms of protection measures, perhaps the most troubling conclusion is that in many cases there are no studies that demonstrate their effectiveness (this is especially the case with technological measures such as the “panic button”, or passive ones like bullet-proof vests). In addition, reasonable doubt exists about the effectiveness of hard measures such as armed bodyguards in guaranteeing that HRDs can continue working. In any case, a necessary step is to design protection plans that incorporate and contextualise different measures in the light of the risk evaluation that has been carried out, and that open the way up to establishing collective protection measures, albeit these remain poorly-defined.

In terms of implementation, after describing the budgetary resources allocated to the current mechanisms, we have proposed two criteria to determine the level of resources required if they are to function. One is internal and has to do with planned activities, while the other is external, and is linked to the ratio of HRDs in the programme to the number of HRDs murdered. Two further, more strategic, conclusions were added to this. First, the need to approach the statistics on the number of murdered HRDs in the light of the high overall murder rate in the region, because it is likely that both phenomena are interrelated. Second, and of particular importance, the tendency simply to increase resourcing levels in an attempt to improve protection represents a dead end, because resources will always be insufficient to achieve their goals and the goals themselves will be unobtainable, because never clearly defined. Other changes, as this study has shown, are much more urgent.

To draw these conclusions on the implementation of the mechanisms to a close, we argue that current protection mechanisms are based on a vertical conception of policy implementation and fail to recognise the importance of analysing the implementation gaps, so characteristic of public policies, nor the significance for these programmes of local contexts or of bottom-up interpretations

The ambiguity with which these mechanisms have been drafted, and the conflicts that revolve around them, mean that they have the potential to become purely symbolic in their

<sup>225</sup> The author wishes to thank Cristina de la Cruz Ayuso for this critical insight.

implementation. In practice, the different actors responsible for implementing the policies interpret them according to their own frames of reference and in the light of the contexts in which they are immersed - and this creates resistance and opposition. One critical focus of the protection policies leads us to indicate the need to transform these forms of resistance into spaces of negotiated implementation, capable of creating shared ways of understanding the policies. For this to occur it will be fundamental to find ways to ensure that officials and HRDs alike become agents who are capable of reflecting on their own praxis. However, continuing with our analysis of the application of policy theory, we have seen that it is difficult to evaluate policies of this kind and that they lack theories of change, both of which are factors that complicate their evaluation.

### Closing remarks

To close this study, we have argued that a reductionist concept of the “protection” of HRDs predominates in existing public policies, despite the fact that the UN, the IACHR and the IACTHR have positively recognised the right and the duty of individuals and groups to defend human rights. As has been seen, public policies should develop all aspects of these rights and duties, and not limit themselves to offering protection to just some HRDs.

Our intention is to propose a way of thinking about the insecurity in which HRDs work, and not to restrict ourselves to examining the measures offered by limited protection programmes. We have argued that the protection of HRDs, as currently conceived, is an “ungovernable object” that neither can, nor should, be converted into the sole object of public policy in this area. The matter is much more complicated and delicate than this, and requires more than is offered by security programmes that adopt an individual and technical approach affecting just *some* HRDs.

It is therefore necessary to develop a more integral approach, that is better and more broadly implemented, and that deals more adequately with the *insecurity* of the situations in which HRDs work. This would imply, in the first place, an approach that is not exclusively focused on direct violence against HRDs, but reflecting critically on the concept of the HRD and on structural violence (without leaving to one side the importance of dealing better with direct physical violence perpetrated against HRDs). Secondly, it is important to analyse, as we have in this study, the ways in which this insecurity is constituted, in order to seek solutions that employ a broader approach to the construction of citizenship, democracy and the state. In synthesis, this is a matter of ceasing to see HRDs as the *object* of protection and, instead, treating them as *subjects* of rights.

The socio-political and legal processes through which these public policies are constructed need to be critically analysed if the forms they assume, the instruments they use, and their results are to be explained. Not only should the decisions of the authorities concerning what they *do* be analysed, but also what they decide *not* to do, because in the field of public policy, not acting can be considered a conscious action.

This critical analysis of current policies indicates the debates and agreements that are required on the concepts, meanings and definitions of the problems to be dealt with, as well as the research that is required and, it is to be hoped, the agreements that will be reached on their solutions and the best ways for them to be implemented. The ordinary actions of the state should be brought together, in order to create a safe and dignified environment for HRDs, with short term protection being provided for those at risk, pending success in achieving the

principal objective. The requirement to act in this dual way also points to the need for policies that bring together the different actions and protection responses implemented at different levels and by different institutions. This requires an intense political process and for power to be challenged in scenarios in which all too often it is the projects of the most powerful that prevail.

Throughout the course of this study debates have emerged concerning whether governments have the political will really to protect HRDs, or whether, instead, they content themselves with “managing the damage” that others of their policies cause (by action or by omission). It is probably the case that both are true in part, given that governments and states are not unitary actors, but complex systems involving many players, as also are civil society groups and transnational corporations, etc.

However, we have preferred to go beyond this discussion and to explore in depth the ways in which, in response to the different situations that exist, states can properly fulfil their obligation to protect the right to defend human rights. In 2016, the UN Declaration on Human Rights Defenders had been in existence for 18 years. In other words, in that year it *came of age*. Since its promulgation, the needs of HRDs have evolved, demonstrating, on the one hand, the need for public protection policies to interpret the Declaration in depth and to adapt to each context and, on the other, the importance of public policies dealing both with the critical aspects of the security of HRDs and with their underlying causes. As a woman Human Rights Defender said to the author during an interview,<sup>226</sup> now is the time for truly efficient public policies that are capable of protecting and guaranteeing the right to defend human rights.

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226 Interview with a Woman Human Rights Defender, Bogotá, 15 December 2016.

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An hourglass with white sand is positioned on the right side of the frame, resting on a wooden surface. The sand is partially in the top bulb and partially in the bottom bulb. A shadow of a pen is cast across the wooden surface in the foreground. The background is dark and out of focus.

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