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## The implementation of the Law for the Protection of Human Rights Defenders and Journalists

### Introduction

In Mexico, human rights defenders have experienced a situation of high risk for many years due to their legitimate work.<sup>1</sup> As a result of the inefficient response from the Mexican State,<sup>2</sup> in October 2010, various civil society organisations (CSO)<sup>3</sup> proposed the creation of a protection mechanism and they initiated a debate about its development, which included establishing a dialogue with Federal Government officials. On 22 June 2012, former Mexican President, Felipe Calderón, signed the decree to bring the Law for the Protection Human Rights Defenders and Journalists into force.

PBI recognises that since June 2012, the Interior Ministry (Segob) has taken a number of measures to guarantee the satisfactory implementation of the Mechanism. However, PBI has noted with concern that various elements which are essential for the Mechanism to function efficiently and effectively, and central to guaranteeing the beneficiaries' physical and psychological integrity, have not yet been implemented.

### What is required for the implementation of the Mechanism?

- The Prevention, Follow up and Analysis Unit has not yet been installed, although according to Segob, some of its functions are being carried out by other units within the Mechanism.
- Improve the implementation of Risk Evaluations, contemplating a wide range of protection measures. Ensure that these measures correspond with the level and nature of risk faced by HRDs and journalists who are registered with the Mechanism. At present, the proposed protection measures often rely on police operations, and do not place sufficient emphasis on other key aspects for defining and assigning protection measures, such as gender issues or the socio-political context. Some HRDs and journalists have reported that measures granted don't reflect their level or type of risk, and as a result, are not useful or, in some instances, have placed them in even greater risk. Others have denounced that measures granted are not based on the risk analysis formally adopted by the Governing Board (*Junta de Gobierno*).
- Guarantee a rapid and adequate response, particularly in cases of extraordinary risk. As of February 2014, the Mechanism had received approximately 131 applications for protection measures, but only 37 cases were revised by the Governing Board. There is an alarming accumulation of cases, and according to HRDs, the risk analysis which should be conducted within 10 days, often takes up to six months.
- Human Resources: According to Segob, all but two positions within the Mechanism have been filled and the personnel receive training and guidance. Nevertheless, the CSOs have expressed concern regarding (1) the frequent rotation of personnel which negatively affects their training, the transfer of case information and the follow up of cases, (2) their lack of sensibility regarding protection issues, as well as a lack of recognition of the risk faced by HRDs, particularly with regard to grassroots defenders, who voluntarily dedicate themselves to the defence of human rights, while having other

1 OHCHR (Mexico Office): Report about the situation of human rights defenders in Mexico: updated in 2012 and 2013, Mexico, June 2013. Available at: <http://bit.ly/1diQXAr> ACUDEH: Human Rights Defenders in Mexico, the cost of dignity June 2012 to May 2013, Mexico July 2013, available at: <http://bit.ly/1jL3vmY>

2 According to statements from a range of civil society organisations, the protection measures granted by the National Human Rights Commission, State Human Rights Commissions or the Inter American System for Human Rights were very weak. Among the issues identified were the failure to implement measures in agreement with the beneficiaries and adequate for their context or situation of risk, as well as a deficient coordination between different government entities.

3 The CSOs Group, made up of various organisations including: *Acción Urgente para Defensores de los Derechos Humanos* (Acuddeh AC), *Asociación Mundial de Radios Comunitarias- México*, *Centro de Derechos Humanos de la Montaña Tlachinollan*, A. C., *Centro de Derechos Humanos "Miguel Agustín Pro Juárez"*, A. C., *Centro de Derechos Humanos Fray Francisco de Vitoria*, O.P. A.C., *Centro Mexicano de Derecho Ambiental*, A.C. (CEMDA), *Centro Nacional de Comunicación Social* (CENCOS), *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*, A.C. (CMDPDH), *Servicios y Asesoría para la Paz*, A.C. (SERAPAZ), *Dimensión Pastoral de la Movilidad Humana*, and the *Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todos y Todos"*. It is accompanied by PBI and Amnesty International Mexico, and also incorporates contributions from other organisations, defenders, and journalists through forums, diffusions and digital consultations.

remunerated professions, and (3) the lack of knowledge about how to carry out an adequate risk analysis. Furthermore, Segob mentioned that the structure of the Mechanism is too small to deal with the number of applications it receives.

- Mechanism Funding: In 2013, the Technical Committee responsible for the Mechanism's Funds (*Fideicomiso*) was formed and the guidelines on how to manage its budget were published. However, since 2013, due to bureaucratic reasons, the 170 million Mexican pesos set aside for the Mechanism have not been made accessible, and therefore can not be used. According to Segob, at the beginning of 2014, a contract was signed with a security company which is tasked with the installation of security measures, such as cameras, fences, and lights, etc. However, many doubts exist within CSOs about whether these funds may be accessed. They have also expressed concern about the lack of transparency surrounding the advances made by the *Fideicomiso* and the contract with the security company.
- Impunity: Although the Attorney General's Office has a specific role in the implementation of the Mechanism, it has not had a significant impact, particularly in the identification and indictment of perpetrators of attacks against defenders. Without investigations and judicial processes, conducted in line with international standards, the protection measures granted may be rendered insufficient and the Mechanism will become unsustainable in the long term.
- Close cooperation between Segob and state governments is necessary to establish points of contact with the Mechanism at State level, and to define their role in its application: According to Segob, as of 1 March 2014, 31 of the 32 Mexican states have signed cooperation conventions with the Mechanism. The Federal District is in a process of revising the Mechanism and therefore has not yet signed. Furthermore, in their most recent meeting held in February 2014, the leaders of the 31 states agreed to place greater emphasis on human rights issues, stating that the implementation of the Mechanism was fundamental. However, civil society has stated that in practice, there is still a lack of coordination between the different levels of government.
- Ample dissemination of the Mechanism and how possible beneficiaries may access it.
- Institutional, political backing from the highest levels of government is necessary to ensure that the protection of human rights defenders and journalists is a priority for the current administration, and to guarantee that those working at an operational level within the Mechanism have their support and cooperation when implementing protection measures. In this connection, in October 2013 the Interior Minister, Miguel Osorio Chong, met with the Consultative Council and offered his full support for the Mechanism, agreeing to promote it with the relevant government entities. It is fundamental that such initiatives are continued.

## **RECOMMENDATIONS:**

### **To Enrique Peña Nieto, President of Mexico:**

- Following the example of the declaration made on 10 December 2013, continue to recognise publicly and periodically the important role which HRDs and journalists have to play in a democratic Mexico, the situation of risk which they experience due to their activities, and the responsibility of the Federal Government to protect them through a Protection Mechanism.

### **To the Interior Ministry (Segob) (and in particular its Sub-secretariat for Judicial Affairs and Human Rights) and the governmental members of the Mechanism's Governing Board:**

- Ensure that dialogue with the OSCs continues, recognising their legitimacy due to the role they played in promoting and formulating the Mechanism. Ensure that the implementation of the Mechanism is conducted in a transparent manner, in particular, with regard to contracts with external organisations and persons whose roles involve the implementation and strengthening of the Mechanism.
- Create the Unit for Prevention, Follow-up and Analysis and select an adequate Director.
- Ensure that the Mechanism has sufficient trained personnel so that it may operate efficiently.
- Provide information regularly and in a transparent manner, about the status of the Technical Committee for the Mechanism's funds, to clarify concerns, detailing the amount of money available and how it will be used. Moreover, with regard to the security company contracted by Segob, provide the information necessary to clarify doubts that beneficiaries may have.
- Ensure better application of Risk Analysis, contemplating a wide range of possible protection measures that correspond to the level and nature of risk of the beneficiaries.
- Ensure ample dissemination of the Mechanism among defenders, including those who live in rural

- or isolated areas, informing them of what the Mechanism is, and how it may be accessed.
- Implement a national campaign in recognition of defenders, their work, and the importance of their role.
- Work in close cooperation with state governments to define state level contacts for and participation in the Mechanism.
- Publicly commit to strengthening the Mechanism, providing guidelines on effective inter-institutional coordination.
- Ensure that the Mechanism's protection measures granted to community defenders are effective, taking into account their specific needs.
- Include guidelines which focus on gender issues, guaranteeing the protection of women HRDs.

#### **To the Governors of all Mexican states:**

- Recognise, via a public statement, the important role which HRDs and journalists have to play in a democratic Mexico, the situation of risk which they live in due to their activities, and the responsibility of state governments to protect them through a protection mechanism.
- Work in close cooperation with Segob to guarantee application of the Mechanism in each state.
- Guarantee the proper implementation of the measures authorised by the Mechanism.

**PBI considers urgent that the Mexican State guarantee the security of HRDs and journalists by implementing an effective mechanism for their protection. Unless HRDs and journalists have sufficient political space and safety guarantees to be able to promote social change, Mexico's democratic transition will be seriously compromised.**

#### **Annex: Additional information regarding the Protection Mechanism's legislative process, characteristics, and structure.**

##### **The Legislative Process:**

- In November 2010, and July 2011, as a result of the lobbying efforts of the CSOs, former President Felipe Calderón signed presidential decrees which authorised the development and implementation of the Mechanism for journalists and HRDs.
- In a separate parallel process, which sought to give the Mechanism a legal base, which would oblige its implementation by any future federal administration, the CSO Group proposed a project to create a Bill in the Mexican Senate.
- In an example of international best practice, CSO Group representatives designed and drafted the Law for the Protection of Human Rights Defenders and Journalists, together with technical advisors from the Senate's three majority political parties.<sup>4</sup> Furthermore, this process was closely followed and accompanied by the international community and, consequently, the process included international examples and experiences related to security issues from other regions.
- On 22 June 2012, Felipe Calderón signed the decree which promulgated the law, which had been passed unanimously in both chambers of the Mexican Congress.
- On 11 December 2012, the Sub-Secretary for Human Rights, Lía Limón, recognized the risk situation faced by HRDs and journalists and the State's responsibility to protect them. She committed to prioritizing the strengthening of the Protection Mechanism within the new administration.

##### **The Law for the Protection of Human Rights Defenders and Journalists: characteristics**

- The law responds to the 2011 recommendation from the UN Special Rapporteur for HRDs.<sup>5</sup>
- The law defines HRDs according to the UN Declaration 53/144 of 1998.
- The law provides a legal basis for the coordination between the different governmental agencies responsible for the protection of HRDs and journalists.

<sup>4</sup> National Action Party: *Partido de Acción Nacional* (PAN), Institutional Revolutionary Party: *Partido Revolucionario Institucional* (PRI), Democratic Revolutionary Party: *Partido de la Revolución Democrática* (PRD).

<sup>5</sup> (A/HRC/13/22) "a) Human rights defenders should be consulted throughout the setting up or review of protection programmes; b) The structure of a protection programme should be defined by law; c) In federal States, the structure of a protection programme should be defined by federal legislation. The administration of such a programme should be overseen by the Federal Government even in cases where in practice administered by States".

- The law ensures the participation of civil society organisations in the implementation of the Mechanism and its decision-making processes. It also guarantees the right of the beneficiary to participate in the analysis of his/her risk and the definition of his/her protective measures.
- The law contemplates prevention measures, preventative measure, protective measures and urgent protective measures.
- The law defines an extraordinary process for emergency response in less than 12 hours.
- The law includes collaboration agreements with state level governments in order to ensure their participation in the Mechanism.
- The law establishes the 'subsidiarity principle', obliging *Segob* to assume responsibility for the implementation of protective measures in cases of municipal or state level incapability or when these levels of government are shown to be related to the existent threat.
- The law ensures that public officials who do not implement the measures ordered by the Mechanism will be legally sanctioned.
- The law establishes a complaints procedure for cases in which the beneficiary is not in agreement with the measures authorised or when these measures are implemented in a deficient manner.

### **Structure of the Protection Mechanism**

- The Governing Board: The maximum organ of the Mechanism, and made up of representatives – of Junior Minister (*Subsecretario*) level or equivalent – from the Interior Ministry, the National Security Commission (*CNS*), the Foreign Affairs Ministry (*SRE*), The Federal Attorney General's Office (*PGR*), the National Human Rights Ombudsman (*CNDH*), and four representatives of the Consultative Council (*Consejo Consultivo*). The Governing Board is chaired by the Interior Ministry representative, who has ultimate responsibility for the good functioning of the Mechanism and the correct implementation of its protective measures. The Governing Board was formally installed on 12 November 2012 and has held two meetings with the Consultative Council in October 2013 and in February 2014.
- The Consultative Council (*Consejo Consultivo*): Nine volunteer members of civil society (representatives of HRDs and journalists) who comply with the requirements established by the law and who were elected by civil society itself on 19 October 2012. They monitor the Mechanism and send representatives to its Governing Board.
- National Executive Coordination (*Coordinación Ejecutiva Nacional*): Responsible for coordinating actions between the different organs of the Mechanism. The person currently responsible is Juan Carlos Gutiérrez Contreras, Head of the UPDDH in Segob.
- Unit for the Reception of Cases and Rapid Reaction (*Unidad de Recepción de Casos y Reacción Rápida*); Risk Evaluation Unit (*Unidad de Evaluación de Riesgos*); Unit for Prevention, Follow-up and Analysis (*Unidad de Prevención, Seguimiento y Análisis*): auxiliary, operative units in the Mechanism.