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 *Center for Justice and International Law* (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.

Viviana Krsticevic   Liliana De Marco
CEJIL   *Protection International*

Executive Summary

Given the number and seriousness of the acts of aggression committed against Human Rights Defenders (HRDs)[1] 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. The position of Protection International and CEJIL is that current domestic mechanisms for the protection of HRDs (in Colombia, Brazil, Mexico and Honduras) fail to achieve adequate results, as they display key failings in the following areas:

The translation of the international normative framework to the domestic sphere. Current protection mechanisms translate the United Nations *Declaration on Human Rights Defenders*[2] to the domestic normative environment using to a model we describe as one of "agreed reduction", which is restrictive in its interpretation of international standards on the right to defend human rights.

Approaches to the problem. The existing 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.

Design and implementation. These mechanisms 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. We also point to a lack of studies demonstrating the effectiveness of many of the existing protection

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1   Spanish is a sexist language because it reduces all genders to the masculine. For this reason we 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 language, etc. This approach to the spoken language exploits limitations that are inherent to it in order to highlight everyday sexism – in other words, to turn the limitation into a cause. But written language is different. We believe that the aim of making its sexism 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, means 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 agree with this.

2   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.

measures. Equally, available budgets are not in themselves sufficient to achieve the results expected from a public policy for the protection of HRDs. Finally, these mechanisms are based on a vertical understanding of policy implementation, without analysing the importance for programmes of their implementation gaps, local contexts and bottom-up approaches.

In short, we argue that the currently existing mechanisms should be converted into public protection policies that contain 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.

Concerning the full report

This is a summary of *The time is now for effective public policies to protect the right to defend human rights,* jointly published by Protection International and CEJIL. For a fuller analysis of the points summarised here we recommend reading the complete text here.

PART 1

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

1.1. Human Rights Defenders (HRDs): definition and international standards

Who are HRDs?

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 [that contribute to] the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals".[3] For the Inter-American Commission on 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"[4]. 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).

Why should states protect HRDs?

Given that HRDs make public denunciations of human rights violations, the IACHR has recognised that their work constantly exposes them to risks that can affect their rights to life and 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 carried out by state actors or private.

The American Convention on Human Rights (ACHR) and the Inter-American Court of Human Rights (IACtHR) indicate that states have a duty to prevent situations that might result, by act or by omission, in human rights being affected.[5]

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3   ibid.

4   Inter-American Commission on Human Rights (IACHR) (2011). *Second Report on the Situation of Human Rights Defenders in the Americas OEA*/Ser.L/V/II, Doc.66, 31 December 2011.

5   IACtHR (2004). *Case of the Gómez-Paquiyauri Brothers v. Peru. Judgment of July 8 (Merits, Reparations and Costs)*, Series C No. 110, par. 124.

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

Article 3 of the UN Declaration on Human Rights Defenders indicates that it is states that have a duty to protect the right to defend human rights:

> 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.

In its jurisprudence the IACtHR has established the obligation to protect those who defend human rights by developing four specific duties (see the *Valle Jaramillo* case):[6]

a. providing the means required by 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;

d. conducting serious and effective investigations into any violations committed against them.[7]

Similarly, the IACHR has established a series of parameters for developing "global policies of protection"[8] that, for example, go beyond restricting themselves to "provid[ing] security to defenders who are in danger, but do[ing] nothing to investigate the source of the threats made against them".

Existing protection mechanisms for at-risk HRDs should be just one, albeit an important, component of a broader and more integral focus that should characterise public policies on the right to defend human rights.

FIGURA 1: MECHANISM AND GLOBAL POLICY

Global Policy

Mechanism or protection policy

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6   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. 91.

7   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.

8   IACHR (2011). Report on Human Rights Defenders, par. 472 and ff.

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

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. Public protection policies should take into account the multiple obstacles to the right to defend human rights. They must, therefore, incorporate the relevant international standards, ensuring that the following elements are taken into account:

Attacks on the lives and physical integrity of HRDs	Administrative and financial restrictions	Restrictive NGO laws and on Access to funding	Defamation, stigmatisation and, in particular, criminalisation
Active discrimination against sectors of the population (for belonging to the group in question or protecting their rights)	The importance of evaluating the real results of the mechanisms if their actual effectiveness in meeting the philosophy of the Declaration	Violations of HRDs' rights to assembly and association, and freedom of expression and movement	Acts of aggression committed against HRDs by non-state actors (private sector, organised crime)
Barriers to accessing existing public policies (gender, language, geographical isolation)	Strengthening the role of National Human Rights Institutions	Additional risks faced by WHRDs because of their gender	Documentation of violations and abuse of HRDs
Obstacles that restrict access to information and its dissemination of information.		The establishment of effective and transparent ways of evaluating the level of risk faced by HRDs	

1.3. The translation of international and regional normative frameworks into domestic policy in the Americas

Existing mechanisms and programmes usually consist of structures that are controlled by the government and that HRDs who are considered to face a certain level of risk may approach for protection. These measures are maintained for a pre-determined period. 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.

Below, we provide a brief presentation of the two generations of mechanisms. The "first generation" of countries consisted of Colombia and Brazil, both of which adopted protection mechanisms by decree. Mexico and Honduras represented the "second generation", with mechanisms that were created by law. Finally, Guatemala is currently debating a draft public HRD protection policy.

The first generation of programmes

Colombia: the pioneering programme

- The first protection mechanism to be established (in 1997). It is also the largest, with the biggest budget (although it covers other groups too, not only HRDs). According to the The National Protection Unit (NPU)'s 2015 Accountability Report, at that time it included 1,810 HRDs (15% of the total).
- Created by presidential decree: Reiterated critiques by HRD organisations, and a succession of decisions by high-level judicial institutions, have led to its frequent modification. It is a dependency of the Interior Ministry.
- 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 lifetime has increased.

Brasil: the law that never was

- The second oldest mechanism (established in 2004). Created by decree, the law required to establish the programme remains in draft form and has been under discussion in the legislature since 2009.
- It is run by the national-level Human Rights Secretariat in Brasilia. In late 2016 it was operating in five priority states.
- It suffers form serious difficulties, 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 the implementation process; 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.

The second generation: towardsa a system of networked governance

México: legislation represents a step forward

- The first protection mechanism in Latin America governed by statute (2012): the Law for the Protection of Human Rights Defenders and Journalists. Both the law and its associated documentation had been amply consulted in a process that counted with the active participation of HRD organisations.
- It is the responsibility of the Interior Ministry although in large part, because of Mexico's federal structure, its actual implementation depends on agreements with State governments.
- Civil society organisations (of journalists and HRDs) have four representatives on the governing body.
- Successive analyses and evaluations carried out by civil society organisations have resulted in numerous criticisms, including of 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. Civil society organisations criticise its implementation, arguing that it is ineffective and deficient at all levels (federal, state and municipal).

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

- The second protection mechanism established by statute in the Americas (approved in May 2015): the Law for the Protection of Human Rights Defenders, Journalists, Communications Professionals and Justice Operators. It operates within a government ministry
- It was an IACtHR judgment that led the Justice and Human Rights Ministry to present a draft law in late 2012, which was finally approved by Congress in 2015
- This programme 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.

> **Guatemala: a fledgling policy**
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> - Currently, 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 «implement an effective public policy for the protection of Human Rights Defenders".
> - In February 2014 a High Level Round Table and Technical Round Table were created for the mechanism. 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 late 2017 a Working Group was (in consultation with civil society organisations and other sectors) engaged in preparing a draft HRD Protection Programme.

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

Towards a model of "agreed reduction" in the translation of the international framework to the domestic sphere

The existing mechanisms have been created on the basis of the UN Declaration on HRDs, which has been translated into domestic frameworks in Colombia, Brazil, Mexico and Honduras. How is this translation of the Declaration achieved and what are the failings in the process exemplified by the cases examined here? We argue that the translation of the United Nations Declaration on Human Rights Defenders into domestic law has been both reductionist and consensual. We call this a model of "agreed reduction", involving arrival at an agreement between the discourse of the adopting states and that of the international community, the latter discourse being shared by HRD organisations.

There is therefore a need for a critical review of this agreed reduction that has resulted from the translation of the international norm to domestic frameworks. 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 institutions such as the UN or the IACHR.

How did the model of "agreed reduction" in the translation of international norms to the domestic sphere come about?

International norms are incorporated into domestic legal frameworks by way of complex processes that depend on many factors. In the case of HRD protection policies, a restricted discourse on "the protection of some at-risk HRDs" has prevailed over the broader alternative of the right to defend human rights. The instruments adopted have tended to focus on the most visible aspects of the problem, namely that HRDs have been attacked and killed. This logic of security might in addition offer further advantages for government discourse, namely a short-term acceptability rooted in its immediate results, and a de-politicisation of the

problem, allowing the profound social injustices and human rights violations that are at the root of acts of aggression against HRDs to be ignored.

The **incorporation of a norm into a domestic framework** occurs in stages, during which it is 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:

Table 1: The norm translation process (based on Zimmerman: 2016, 106)

	Resistance	↔	**Full Adoption**
First stage: 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 **reinterpreted** 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.
Second stage: Translation into law or decree	The norm is not translated into a law or decree.	The norm is **remade** when it is translated into a law or decree (things are added, or left out, modifications are made…).	Full adoption of the international standards.
Third stage: Translation into implementation	There is no translation into implementation.	The norm is **remade** when it is implemented (things are added, or left out, modifications are made…).	Full implementation.

This table suggests that the following combinations are possible: (i) **the embedding of the norms**, when their validity is rejected at domestic level (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); and **(ii) the re-shaping of the norms**, when governments are less susceptible to international pressure concerning their adoption, they are reinterpreted from the very beginning, and a unique discourse is created that is maintained during the two subsequent stages.

We detect an intermediate process in domestic discourses on HRD protection programmes, which we label "agreed reduction":

- The discourse constructed in Colombia, Brazil, Mexico and Honduras is consistent with that of the "international community", which commands broad consensus, though the norms actually adopted by these countries fail to comply fully with international standards.

- This paradox has emerged because no alternative international frame of reference existed when the discourse was originally constructed.

- A discourse was constructed on the hoof, intended to reflect international standards, but leaving out aspects that are essential to defending the right to defend human rights.

- The translated norms were transformed again during their implementation, in the third stage, as they are 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

A critical analysis of this reduced interpretation of the international norms leads us to argue the following:

The process followed in the 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.[9]

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.

CONCLUSIONS AND RECOMMENDATIONS LINKED TO PART 1

On the international obligation on states to develop and protect the right to defend human rights:

- 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.

On the need to adopt broad policies on the right to defend human rights:

- 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.

On the incorporation of the UN Declaration on Human Rights Defenders into domestic normative frameworks:

- 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. Consequently, a critical review should be conducted of the translation of the international norm to the domestic framework, in order to make public policies to guarantee the right to protect human rights are more effective.

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9   Amnesty International's 2017 report on HRDs includes 281 cases of murdered HRDs globally, an increase of 80% compared to the number of cases documented the year before (Amnesty International: 2017). 75% of these cases occurred in the Americas.

PART 2

Analysis of the existing mechanisms

from a public policy perspective

2.1. Potential instruments for the protection of HRDs: laws, mechanisms and public policies

The instruments adopted by the countries examined here (Colombia, Brazil, Mexico and Honduras) include protection mechanisms or programmes and, in some cases, legislation. Both the mechanisms and the laws are complementary instruments capable of dealing with some important aspects of the protection of HRDs, but they are not sufficient, inasmuch as they leave out aspects that are indispensable if the right to defend human rights is to be ensured. Below, we provide a brief explanation of the principal characteristics of these instruments:

Laws

- Provide a framework that confirms the right to defend human rights, the population group(s) covered by the measures, what protection measures can be applied, etc.;
- (Usually) approved by the legislature with the expectation that future governments will implement it;
- Require a longer, more complex, process for their creation and approval;
- Once promulgated they generate rights (in this case, for HRDs) and obligations for the state and for everybody else;
- May have greater scope and offer more continuity;
- May provide a good basis on which to establish a policy capable of lasting longer than a single term of government.

Mechanisms or programmes

- Approved and implemented by a government that has the will and capacity to do so. This provides more flexibility but also greater variation, as it can easily be revoked by successor governments;
- Tend to have more operational objectives and more concrete, well-defined plans;
- May be easier to adopt, but have a shorter lifetime and less profundity than is provided by a law;
- Only create obligations for those officials who are responsible for their implementation.solo para los funcionarios encargados de su implementación.

We argue that these instruments (both laws and mechanisms) are inadequate to protecting HRDs and their work. The problem of interpreting, designing, coordinating, implementing and evaluating existing actions (and omissions) in the provision of protection to HRDs is best approached from the **public policy perspective**. In contrast to the instruments mentioned above, a public policy has more complex components:

- It constitutes a complex arrangement of programmes, procedures and regulations that come together in a single overall objective[10];

- It can be used to approach and resolve complex social matters and can be examined and evaluated using a broad range of tools[11];

- It is made concrete through decisions to act but also through decisions not to act.

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10   Kessler et al. (1998), 1. Quoted by Cardozo: 2006, 25.

11   Cardozo et al. (2006). *La Evaluacion de politicas and programas publicos. El caso de los programas de desarrollo social en Mexico*, págs. 25-26.

2.2. Essential aspects of a broad and comprehensive public policy

Existing programmes should be transformed into public protection policies endowed with all the standard instruments and employing a broad comprehensive conceptualisation of the right to defend human rights, in line with the growing collection of international standards, and expanding the scope of the UN Declaration on HRDs.

The translation process, covering all the stages between the initial adoption of the international standard and its implementation at domestic level, requires an analysis of certain aspects that are key to the construction of a public policy: political will, participation and governance.

Political will

It is generally agreed that political will is a necessary but insufficient condition if a public policy is 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 a great deal on context, on cultural factors, and on the problems being approached, etc.

Therefore, in order to compensate for the lack of "political will", governments that take the decision to establish public policies for the protection de HRDs must ensure their plans incorporate the actions required to build and guarantee the presence of political will.

Participation of HRDs and other actors

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.

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. 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, etc.

Other actors with responsibility for implementing the policy - such as different state bodies or local political authorities - should also be involved. 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.

Networked governance

Existing protection programmes involve interactions between different actors, including: the target population (HRDs), parts of the executive branch, other government bodies such as ministries (of Justice, Foreign Relations, etc.) the police and security forces, investigating bodies such as prosecutorial offices or the judicial system, and other state institutions (such as the office of the Human Rights Ombudsman, for example).

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: (i) centralised public policy (or a policy that is managed in a centralised manner) and is managed from the executive; (ii) collaborative governance, expressed either through networks or in decision-making procedures; or (iii) an intermediate model that combines a centralised approach with networked activities involving other actors.

Of the three models, we **consider that collaborative, or networked, governance (ii) might be the most appropriate for 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[12]. Accordingly, governments retain control over public policy while at the same time seeking to ensure a level of agreement and a shared objective, based on interactions and negotiation involving the different actors, each of which takes part according to their own perspectives and interests.

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.

2.3. What is required to overcome the current restricted and state-centric focus of HRD protection?

Existing programmes focus on the physical protection of only some HRDs, neglecting the chronic insecurity HRDs face when engaged in their activities. We employ a broad approach to examine this situation of insecurity, analysing the following aspects:

a	Defining the problems to be dealt with by public policies for the protection of HRDs
b	The concept of the "HRD" as an object of protection
c	The insecurity faced by HRDs: direct physical violence and structural violence
d	The categorisation of HRDs in terms of risk
e	The role of the perpetrator and the construction of acts of aggression against HRDs

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12   See, among others, the research of Colebatch (2009, 58-67) and Dodge (2010, 384-404).

a. Defining the problems to be dealt with by la public policy de HRDs

Public policies for the protection of HRDs should seek to resolve the factors that limit 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 decided upon?

The conjunction of several factors can determine whether the problem is included in the political agenda. These include:

- A clearly threatening context;
- The existence of networks (either formal or informal, involving HRD organisations)
- HRD access to policymakers. That is, the degree of openness to the question displayed by the government.

The states analysed here (Colombia, Brazil, Mexico and Honduras) included the problem of HRD protection in their policy agendas, but did so reductively, employing a restricted approach focused exclusively on security and risk (the HRD as potential object of protection), opening the way to mechanisms focused on securitisation and physical protection for at-risk HRDs, but without including a larger collection of possible actions with the aim of guaranteeing the right to defend human rights.

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 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 the underlying causes will remain untreated.

b. The conceptualisation of "HRDs"

"Human Rights Defender", or HRD, 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, a resident of an isolated rural area or live 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. It is important for public policies to take this complexity into account and to incorporate aspects such as gender and intersectionality, the multiple viewpoints that exist of the HRD, and the distinct identities – trade unionist, peasant farmer – that might also be theirs.

To summarise, public policies for the protection of HRDs should question any reductionist approach to the concept of the HRD, seeking to include all these identities and ensuring that HRDs are understood to subjects of rights. 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.**

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 in isolation. It is therefore important to recognise them as social agents in construction.

c. The security threats Human Rights Defenders face: physical and structural violence

In the course of their work HRDs may be subject to threats and physical violence, the effects of these acts, such as psychological damage, and the privations they imply for their loved ones and communities. Every threat or attack made against an HRD by a perpetrator results in an act of **direct violence**, that is, an action that is visible inasmuch as it is committed by somebody[13].

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 (1969, 171) 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.

d. 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. These simplifications and exclusions include:

An exclusive focus on <u>Human Rights Defenders</u> and on <u>risk</u>: "exceptional" situations in an overall context of "normality" → This leads to an approach according to which the protection of HRDs is seen as a physical and individual matter and is in consequence characterised by a range of limited security measures.

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". Thus, the mechanisms create a dividing line between two categories of HRD: those who are "inside" the programme (victims of exceptional acts of aggression) and those who are "outside" it.

This categorisation fails to provide an answer to a question we have frequently heard from HRDs: "If we're all at risk, why does the state protect some of us and not others?"

e. The role of the perpetrator: How are acts of aggression against HRDs constructed?

Existing HRD protection policies are focused on the individual HRD, viewed in isolation from other social actors. No mention is made, for example, of the perpetrator, who remains "out of focus" as a player. In order better to understand the question of HRD security better

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13 Galtung, Johan (1990). "Cultural Violence". Journal of Peace Research. 27 (3): 291-305.

the viewpoint and actions of the perpetrator must be understood. It might be said that acts of aggression committed against HRDs are the result of at least three interacting factors:

THE BELIEF THAT VIOLENT ACTION IS BOTH DESIRABLE AND USEFUL	THE EXISTENCE OF A FAVOURABLE SCENARIO	THE AVAILABILITY OF RESOURCES PERMITTING THE ACT OF AGGRESSION TO BE CARRIED OUT
Certain past and present situations lead the aggressor to consider that the use of violence is a desirable option. People who attack HRDs believe their actions to be a "useful" way to achieve their objective of "resolving the problem", either because they are confident their actions will remain unpunished, or because they are prepared to assume the political cost, "because it's worth it".	A favourable set of physical and social circumstances is needed, which enables the perpetrator to carry out the act of aggression, or that at least does not prove an obstacle to its completion. HRDs should realise that they are vulnerable in the environment in which they operate, allowing perpetrators will recognise opportunities to act. The perception of immediate and mediate impunity is fundamental ("who's going to complain just because another peasant gets killed?")	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.

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 an action, their attitude towards the acceptability of an attack, and the probability 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.

CONCLUSIONS AND RECOMMENDATIONS LINKED TO PART 2:

On the requirement for political will:

- Given that political will is a necessary but insufficient condition for producing effective protection programmes, these must be constructed with the involvement of 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 the effectiveness of the solutions contained in the public policy.

On the participation of HRDs and other actors:

- 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 participation of implicated sectors in their implementation (starting with the HRDs themselves).
- Effective networked governance opens up spaces for participation that help the different actors take part in and influence HRD protection policies.

On the restricted and state-centric focus current programmes:

- 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 against 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 if the right to defend human rights is to be guaranteed.
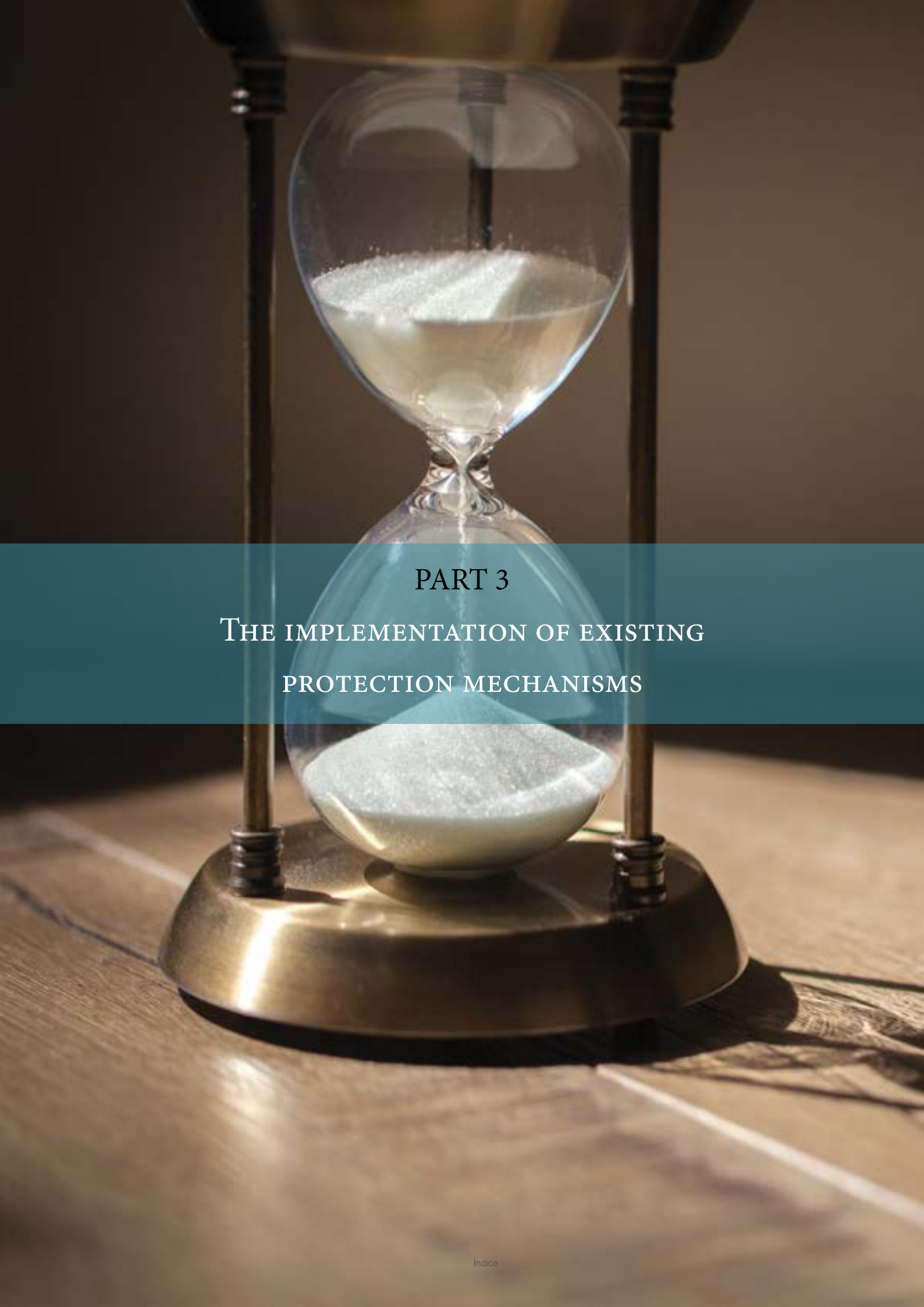
On the conceptualisation of HRDs:

- The way in which HRDs are conceptualised is vulnerable to simplification, and a positive tension should always be maintained, 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.

On structural violence:

- 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.

On including the role of the perpetrator in the analysis:

- 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.

PART 3

THE IMPLEMENTATION OF EXISTING

PROTECTION MECHANISMS

Current protection mechanisms display weaknesses in their implementation procedures, specifically in relation to effective access for the target population, procedures and timescales, application of the focus on risk, the protection measures themselves, and resource allocation.

3.1 Relevant Good Practice standards and Recommendations

a. The target population and its access to public protection policies

Standard criteria for gaining access to protection programmes:

- Adoption of the criteria contained in the UN Declaration at the point of defining who should be considered an HRD
- Inclusion of the HRD's social milieu in the protection programme (family members, communities or organisation that face risks because of their link with the individual in question)

The inclusion of public servants in an HRD protection programme

- The importance of maintaining a separation between HRD protection programmes and other programmes intended to protect other actors, such as public servants.
- The protection provided to public servants should not exert a negative impact on the availability of resources required to ensure protection to HRDs drawn from civil society.

What happens when a request for inclusion in a programme is rejected.

- Procedures should be in place (for example, an appeals process) to enable applicants to question decisions.
- Increase the levels of transparency concerning the percentage of applications that are rejected and why.
- Ensure decisions are monitored

On whether HRDs should be required to lodge a complaint before applying

- It is not necessary for a prior complaint to have been lodged in order to gain access to a protection programme.
- Channels of communication should be kept open in order to 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 HRDs and the programme

- Programmes should be flexible about the ways in which HRDs can make contact with them.
- 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 benefit from the protection provided by the programme.
- When necessary, protection programme should initiate contact with HRDs

Obstacles to accessing the programmes (lack of publicity, perceptions of bias, exclusion of certain groups, etc.)

- All policies should have quality improvement procedures in place to detect and minimise barriers and facilitate effective access for the target population.
- Analysis 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.

A NON-EXHAUSTIVE LIST OF FACTORS THAT MIGHT FAVOUR HRD ACCESS TO PROTECTION PROGRAMMES:

- Legitimacy of the implementing bodies
- Decentralisation, ensuring the physical proximity of offices; officials traveling to zones distant from urban centres …
- Open organisational culture and broad mandate
- Integrity, quality and diversity of officials
- Efficient, timely and respectful procedures
- Effectiveness, and sufficient authority to intervene with the bodies responsible for providing protection to HRDs.H

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b. The response of protection policies: procedures and timescales

Once a programme has accepted an HRD, a series of procedures is initiated in order to analyse the situation, threats or difficulties and the level of risk they face 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).

c. 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 conflict with powerful players, including state actors. Therefore, permanent efforts should be made to build confidence between them and the protection programmes intended to help them. Such efforts are essential if it is to be possible to establish joint ways of working. 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.

c. Systems for monitoring and analysing the security situation of HRDs

A protection programme should have a system for monitoring and analysing the security situation of HRDs and identifying the trends and patterns of violence committed against them. This information should be fed into an Early Warning System, permitting preventive protection measures to be adopted.

d. Security and access to information concerning the HRDs included in a programme

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 outside the mechanism.

3.2. The Evaluation of Risk

Risk evaluations 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. Similarly, it is advisable to examine existing protection measures implemented by the authorities, as well those adopted by HRDs.

Factors that should be taken into account include:

- (1) Whether the work carried out by the applicant might have a negative impact on the interests of some actors 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 have been carried out against HRDs or journalists;

- (4) Whether the applicant is working at a critical moment for the issues they are concerned with; or,

- (5) Whether they belong to some organisation or group that has previously been harassed, threatened or attacked.

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

- **Risk analysis:** the result of several factors, principally threats against HRDs, their vulnerabilities, and their capacities

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

Risk increases with increased threat and vulnerability, and diminishes with increased capacities. Accordingly, the risks faced by HRDs can fall with a decline in the number of threats and vulnerabilities and with an increase in the capacity to confront them.

- **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.

3.3. Protection measures and plans

What are protection measures?

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".

- **Prevention or "political" measures.** 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".[14] They are frequently described as "political measures" by HRDs. They include, for example, dissemination of information on the mechanism, training courses for officials, public awareness-raising of the importance of the work carried out by HRDs, or the publication of information on acts of aggression against HRDs.[15]

- **(Ordinary and urgent) protection measures**
  - **Ordinary measures** are those measures habitually implemented by the programmes examined in this study. They consist of equipment for HRDs, police protection, evacuation and, to a lesser degree, training and service-provision for HRDs.
  - **Urgent measures** are intended for 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.

Difficulties associated with the protection measures provided by existing mechanisms

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. On occasion, the protection measures offered can pose additional difficulties, such as: HRD and victim distrust of the police, interference with the work of HRDs, the provision of bodyguards from private security companies, or disagreement on the part of HRDs with the use of violence and bodyguards.

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14   Articles 41-45 of Law and 68-74 of the Regulations.

15   These measures respond to demands made by HRDs for the creation of an environment that is favourable to exercising the right to defend human rights. In practice, however, it is barely implemented.

What measures tend to be provided?

the overwhelming majority of the measures granted are technical, and their capacity to produce effective responses is limited, above all in countries with high levels of crime and poor records of police accountability. This is without mentioning the numerous rural zones where there is almost no police presence in the first place.

How effective are these protection measures?

It has not proved possible to ascertain whether any technical evaluation has been carried out of the effectiveness of these protection measures. An examination of the methods used by perpetrators suggests that it is questionable whether many of these protection measures are, in and of themselves, capable of dissuading or even directly impeding an act of aggression.

Table 6: Protection measures and their limitations

Measures		Limitations
Mobile (that move around with the HRDs), permitting acts of aggression to be repelled.		
Dissuade potential acts by perpetrator and permit acts of aggression to be repelled directly	Bodyguard, or armed protection[16] (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.
Reduce damage if an act of aggression is carried out.	Bullet-proof vest.	Only useful if combined with the previous measures.
Static (that provide protection in a fixed location)		
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.
Reduce the exposure of HRDs		
Remove HRDs from a specific place.	Evacuation.	Impede HRDs from doing their work, and can be difficult to reverse.

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

There are no studies of the current protection mechanisms 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 doubts exist about the effectiveness of hard measures such as armed bodyguards in guaranteeing that HRDs are able to continue working.

While it is recognised 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.

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.[17]

A possible definition of collective measures is that they involve attempts to prevent potential illegal actions being committed against HRDs. Such 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 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.

In any case, collective measures should be carefully adapted to each context and to the collective needs of communications professionals and HRDs, as well as taking into account questions of intersectionality such as gender, minority, or other issues.

Protection plans: beyond protection measures

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 the victim faces (a protection plan, furthermore, that should be based among other things on the corresponding risk evaluation).

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

3.4. The allocation of resources

All protection policies should have dedicated budgets of adequate size. This principle is made explicit in the laws governing the policies in Mexico and Honduras.

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.

3.5. The implementation gap, or deficit, in public policies for the protection of human rights defenders

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 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) in order to improve the focus on local-level implementation and the perspectives and actions of the actors operating at this level.

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.

GOOD PRACTICE AND RECOMMENDATIONS LINKED TO PART 3:

On the evaluation of risk
Good Practice:
- Include family members and persons who are associated with the work carried out by at-risk HRDs.
- 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 in socially-oriented activities.
- 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 second opinion carried out by civil society experts.

Recommendations:

- Avoid conducting risk evaluations as if they were police investigations (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.
- 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 risk evaluations using a qualitative approach that ensures transparency, discussion and the building of agreement.
- 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.

On protection measures:
Good Practice:

- 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:

- 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 those that are most appropriate 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 obstacles as they emerge, while always maintaining the security of HRDs as a priority.
- Investigate and evaluate procedures that involve the use of armed bodyguards, in order to reduce mutual distrust and the suspicion intelligence information might be used against HRDs, etc.

On the allocation of resources:
Recommendations:

- 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.

On the implementation gap:
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).
- 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.

On the effective implementation of policies at national and local level:
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:

- 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 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 in designing improvements to implementation.

On contexts:

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 these factors interact with HRDs in the 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 to defend the right to defend human rights effectively? 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?

Current national mechanisms for the protection of HRDs fall short of what is required, because they display 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 really should provide, their approach to the problem, and policy design and implementation. The ambiguity with which these mechanisms have been drafted means they have the potential to become purely symbolic in their 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. If a critical perspective on protection measures is to be developed, then officials and HRDs alike must become agents who are capable of reflecting on their own praxis.

Closing remarks

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.

It is necessary to develop a more integrated 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 also to reflect critically on the concept of the HRD and on structural violence (without leaving aside the importance of dealing better with direct physical violence 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.

States can properly fulfil their obligation to protect the right to defend human rights. By 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[18], the time has come for truly efficient public policies that are capable of protecting and guaranteeing the right to defend human rights.

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18 Interview with a Woman Human Rights Defender, Bogotá, 15 December 2016.