

PROTECTION POLICIES FOR HUMAN RIGHTS DEFENDERS

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- *An analysis of the Latin American context: Brazil, Colombia and Mexico* •

ABSTRACT

From a civil society perspective, this article examines experiences with policies for the protection of human rights defenders currently in place in three Latin American countries: Brazil, Colombia and Mexico.¹ It identifies the main issues of concern for the organisations monitoring these policies and indicates the challenges and the importance of regional coordination on the issue. Based on the experience of the Brazilian Committee of Human Rights Defenders, a platform that brings together non-governmental organisations and social movements, the article also analyses the process of implementing the National Programme for the Protection of Human Rights Defenders (Programa Nacional de Proteção aos Defensores de Direitos Humanos or PPDDH) in Brazil and its political institutions.

KEYWORDS

Defenders | Human rights | Protection | Civil society | State | Public policies

1 • Introduction

Despite Latin America's diversity and that there are many local particularities, we share various historical and political processes that bring us closer together. A region where the majority of countries are still young and considered fragile by many, it is marked by development models based on agribusiness, the extractive industry and infrastructure megaprojects (such as hydroelectric dams, ports and major urban renewal projects), as well as intense militarisation. It is no coincidence, then, that it is the scene of serious human rights violations. It is precisely for this reason that a large number of civil society organisations coordinate their actions to advance the debate on the importance of providing protection to those fighting to guarantee rights. It is therefore understandable that Latin America is home to three of the few countries in the world that have a state mechanism for the protection of human rights defenders (HRDs): Brazil, Colombia and Mexico.²

Brazil established the National Programme for the Protection of Human Rights Defenders (*Programa Nacional de Proteção aos Defensores de Direitos Humanos* or PPDDH) in 2004. When the first report on the situation of HRDs in the country was released,³ a working group was created to discuss protective measures. Among the various issues of protecting HRDs (through individual or collective measures) which the working group addressed, one in particular was the challenge of maintaining defenders in the place where they conduct their activities. There was much discussion about the need to ensure that the justice system conducts a thorough investigation into the threats and attacks against HRDs and the need to address the issues that give rise to these threats and attacks.

At the same time, civil society groups from Colombia and Mexico have accumulated experience and have been promoting a debate on the effectiveness of their country's public policies for the protection and recognition of HRDs.

Colombia was one of the first countries in the region to adopt a protection mechanism for HRDs. The armed conflict, which has existed since the 1960s, serves as the main backdrop for the attacks and assassinations of thousands of HRDs in the country. For local civil society have strengthened their joint actions as the debate on the protection of HRDs has long been a key issue. With the eyes of the international community glued to the situation in Colombia, the first government programme for the protection of defenders was created in the late 1990s.

The history of institutional violence in Mexico, which involves complex networks, also turns a large number of HRDs there into victims. The government's protection programme is recent and human rights organisations have discussed whether it is an effective instrument for dealing with recurring cases of violations, threats and assassinations of HRDs and journalists.

2 • The history and structure of mechanisms in Brazil, Colombia and Mexico

Despite being first launched in October 2004, the Brazilian protection programme only became operational following the assassination of Sister Dorothy Stang⁴ in 2005 in the state of Pará. The PPDDH is composed of a General Coordination Office and a National Coordination Office, in which representatives of civil society and public authorities participated in until early 2016. The National Coordination Office analyses the cases of defenders in situations of risk, develops strategies for protection and for addressing structural issues, and deliberates on cases of inclusion in or exclusion from the programme, among others. However, the civil society organisations⁵ in the PPDDH had limited capacity to act,⁶ especially in being able to respond to cases that are still pending and to the definition of protection strategies. The programme also has a Federal Technical Team, which is hired through a civil society organisation, whose task is to assist the states where the PPDDH has not yet been established.

The programme has been set up in nine Brazilian states. However, for different reasons, it was suspended in the states of Pará, Rio de Janeiro and Rio Grande do Sul, and has been interrupted several times in various other states. At the time this article was written, the programme had formally been established in only six states: Pernambuco, Minas Gerais, Espírito Santo, Ceará, Maranhão and Bahia. It should be noted, however, that in Bahia, no agreement has been established with an organisation on the implementation of the programme and in Maranhão, even though an agreement existed, the programme was still not operational.

The institutional weaknesses that mark the Brazilian programme reflect a series of problems that the Brazilian Committee for Human Rights Defenders - a network of social organisations and movements that have been monitoring the policy since the beginning - has been identifying⁷ and raising with the Secretariat on Human Rights and also making public for many years.⁸

In Colombia, although there is no national law that specifically and fully addresses the issue, Law 199 of 1995 and Law 418 of 1997 served as the basis for the creation of the first government programme designed for people in situations of risk. The programme is linked to the Office of Human Rights of the Colombian Ministry of the Interior.⁹ Since its creation, civil society has been monitoring it and questioning its weaknesses. This pressure has led to the enactment of several decrees, norms and regulatory protocols and in 2011, Decree 4,065 created the National Protection Unit (*Unidad Nacional de Protección* or UNP), again under the responsibility of the Ministry of the Interior.¹⁰

In addition to monitoring government policy, civil society has been coordinating to develop independent protection strategies since 1997. The Committee for the Protection of Defenders (*Comité para la Protección de Defensores*) was created in response to the assassination of human rights defenders Mario Calderón and Elsa Alvarado, which brought to the country's attention both the seriousness of the situation and the urgent need to protect defenders. In 1999, the

non-governmental We are Defenders (*Somos Defensores*) protection programme emerged with the support of various organisations, including the United Nations (U.N.), the European Union (E.U.) and human rights networks around the world.

The We are Defenders programme aims to ensure that full protection is provided for the lives of HRDs and to prevent attacks. The work is developed along different lines of action: protecting defenders directly and accompanying cases, mainly by relocating defenders within Colombia or outside of Colombia in high risk situations, as well as making direct financial support available through a fund; educational activities; political advocacy; communications strategies; and the Information System on Attacks on Human Rights Defenders (*Sistema de Información sobre Agresiones contra Defensores y Defensoras* or SIADDHH). Thanks to the coordination efforts of a broad network of Colombian social organisations and movements (currently over 500), this system documents and systematises case information in order to produce periodical reports on the issue. These reports are important sources of information for coordinating actions and exerting domestic and international pressure.¹¹ Some of these publications are thematic and offer more in-depth political analysis. The We are Defenders programme has earned a high level of recognition from the government and is called upon to participate in consultations and provide critical assessments of the UNP.

Since 2009, the programme, together with other civil society organisations that make up the four main human rights platforms in Colombia, participates in the *Mesa Nacional de Garantías* (national roundtable on guarantees). The roundtable is the highest instance of dialogue with the government. Monitored by the international community, it was created as a space for discussing and adopting effective measures on prevention, protection and on the investigation of issues related to human rights defenders. Local civil society organisations' evaluation of this space has been very positive due to the advances it has allowed them to make.

The experience with the Colombian mechanism served as inspiration for the programme developed in Mexico. There, the 2008-2012 National Human Rights Plan (*Plano Nacional de Derechos Humanos*) defined the competencies of state institutions and their responsibilities in the protection of human rights. The Office of the High Commissioner for Human Rights in Mexico published a report in 2010 in which it highlighted the importance of creating a national protection mechanism and collaborated in the elaboration of the law.

In 2011, Mexican organisations participated in several public hearings in the Senate on the elaboration of a proposal for a policy on protection. This process resulted in the publication of a legislative bill on the protection of human rights defenders and journalists, which was approved and published on 25 July 2012.¹² An advisory council for the protection mechanism was elected on 19 October 2012: since then, four representatives of defenders, four journalists and two scholars have been meeting regularly. However, the mechanism has had to face problems of bureaucracy and a weak response to the high demand before the protection mechanism. Therefore, the programme in Mexico is experiencing similar impasses to the ones found in Colombia.

3 • Civil society's assessment of the protection programmes

In general, civil society organisations in Brazil, Colombia and Mexico have identified various difficulties and challenges they share in relation to the protection mechanisms in their countries. Concrete recommendations have also been made, but unfortunately, their governments are slow to adopt them.

Perhaps the main one is the need for the programmes to articulate public policies and, more importantly, to tackle the structural issues that contribute to the vulnerability of HRDs and social movements.¹³ Protection measures based primarily on policing or strictly material in nature will never be enough to protect HRDs who are under threat as long as there is no political will to address the problems that give rise to the threats and situations of vulnerability in the first place.

It is equally important that the threats be duly and effectively investigated in order to hold actors that threaten HRDs accountable. Without this guideline for justice, roles are perversely reversed, thereby helping to perpetuate the already generalised criminalisation or delegitimisation of HRDs, while the violators continue to be immune.

Another crucial element is the institutional weaknesses of protection mechanisms in the region. The case of Brazil is marked by the absence of a legal framework and the financial and political crisis that led to the dismantlement of state-level programmes and, in early 2016, to threats to dismantle the protection policy as a whole, which would cause serious setbacks in the human rights portfolio in the country. In Colombia and Mexico, despite the laws that sustain such programmes (although as said earlier, in Colombia, the UNP is sustained by decrees and norms, not a specific law) and sizeable budget allocations to them, there is a difference between what exists on paper and what is actually being done in practice. The volume and quality of the rules and regulations do not guarantee the effectiveness of protections, which are often reduced to purely material or palliative measures (such as heavy bullet-proof vests, mobile phones, vehicles and security escorts). In 2014, Colombia witnessed a corruption scandal involving the UNP, which exposed practices such as patronage and the embezzlement of millions of dollars in funds in the transfers to security companies.¹⁴ The protection programme has outsourced the service of providing protection to HRDs to private security companies. The involvement of such companies in the implementation of protection measures of the mechanisms in Mexico and Colombia are, incidentally, a cause of great concern. These companies have been strongly denounced for their involvement with paramilitary groups, death squads and corrupt security agents.¹⁵

Furthermore, in the mechanisms of all three countries, private security companies have been given a major role. The level of participation of these bodies - whether it be in management positions or at the “point” of implementation of protection measures (as security guards for defenders, for example) - is highly questionable, as in many cases, they are the ones

issuing the threats and committing violations against HRDs. Many defenders do not trust the security guards who escort them, as not only do the guards not receive proper training for their work, but they also do not value the struggle of the people they are protecting. In light of this problem, the best option appears to be keeping public servants involved in the mechanisms, provided they are civil servants.

Another indication of institutional weaknesses is the high turnover in the management of the programmes, as reported in Brazil and Mexico. This lack of continuity merely shows the governments' lack of commitment to this agenda. In Brazil, the programme still does not have a more sound structure. However, an excess of institutional structures could mean excessive bureaucratisation, which can limit the participation of civil society in decision-making bodies and delay the implementation of urgent protection measures - as Colombian and Mexican civil society organisations have warned. The situation in Brazil got worse when on 27 April 2016, Decree no. 8724¹⁶ was signed to strip the National Programme for the Protection of Human Rights Defenders (PPDDH) of its original features and backtrack on several points that had been established by Decree 6.044/2007, which created the programme. The new decree contains extremely problematic elements: it does not take into consideration collective subjects and institutions that work to defend human rights, only individuals. Also, it merely refers to "threatened persons" and no longer includes the broader term "at risk and in situations of vulnerability". Furthermore, it eliminated the participation - which was previously equal - of civil society and public agencies in the programme's coordination office or advisory council.¹⁷

There is a lack of clarity with regards to the methodology used by the PPDDH in Brazil for risk assessment. In this case, a consolidated work methodology is lacking in general. As for Colombia and Mexico, while the risk assessment methods are said to be quite objective, civil society affirms they are insufficient, inflexible and too strongly based on an instrumental logic, which leaves out the complexities and specificities that are inherent to the contexts of HRDs.

The human rights organisations from these countries have also reported the states' difficulties in dialoguing with HRDs and their concrete demands for protection. Channels of participation and attentive listening to the specific demands of a defender who is being threatened are fundamental, not only for the evaluation of the policy, but also to ensure that adequate measures are adopted for each case. Furthermore, these governments have not developed strategies for minority groups - that is, ones that take into account their specificities. There are no measures designed specifically for women, the LGBT community or indigenous peoples, for example, who are affected in unique ways. Therefore, there is still much to do in order to advance towards a collective approach to protection: in the three countries in question, the measures adopted prioritise individual actions. In some cases, this is not only insufficient - as it is entire groups or communities that are being threatened - but it also omits the possibility of having a more politicised view on the context in question.

4 • Conclusion

When one observes the difficulties and challenges analysed above, one issue that is present in the contexts of Brazil, Mexico and Colombia and that constitutes the main cause of the situations of risk and attacks on human rights defenders stands out: the contradiction between the development model adopted by these countries - which is grounded in the extractive industry, agribusiness and large-scale infrastructure projects - and the actions of the defenders. In all three countries, the HRDs affected the most are rural workers, indigenous peoples and traditional communities - that is, those who are involved in the fight for land and territory. The next issue - and Mexico is the most serious case here - is the right to freedom of expression: journalists and all those who denounce networks of corruption, political groups, large landowners and criminal groups that maintain control over territories and power are severely threatened and attacked. In the case of Brazil, it is important to highlight the harsh repression of protestors by security forces in the past two years, as well as the process of criminalising different forms of social protest¹⁸ - an issue that also marks the context of the fragile democracy in Colombia. It is therefore crucial that we advance the debate on the violation of the fundamental rights of those, who in their majority, defend economic, social, cultural and environmental rights.

These political-economic-historical-social arrangements take on different nuances according to each country and region, but the forces at play vary very little: accelerated and aggressive development projects supported by heavy militarisation, which only exacerbate social inequalities and other long-standing structural problems. As long as there is no serious confrontation of these basic causes and no political commitment to do so, more defenders will continue to be attacked and more human rights will continue to be violated in a generalised way in Latin America. To promote better practices, regional and international coordination of civil society organisations that have been monitoring protection policies in this area for years is necessary in order for them to exchange experiences and strengthen their networks. The strategy of working as a group has proved to be an important lesson learned, as it increases the political weight of civil society actors and gives greater global visibility and value to the work of defenders. This, in turn, puts pressure on states to establish truly effective public policies for the full protection of human rights defenders.

NOTES

1 • The majority of the information and observations from civil society in Colombia and Mexico used in this article were gathered *in loco* by the Justiça Global team. The team visited both countries between July and August 2015 as part of a project carried out in partnership with Terra de Direitos and Front Line Defenders, with the support of Open Society. We would like to give special thanks to Protection Desk from Colombia and SERAPAZ from Mexico.

2 • In the region, Guatemala also has a government mechanism and Honduras is currently in the process of elaborating a policy.

3 • Justiça Global and Front Line Defenders, *Na Linha de Frente – Defensores de Direitos Humanos no Brasil (1997-2001)*, 1st ed., vol. 1 (Rio de Janeiro: Justiça Global, 2002).

4 • Dorothy Mae Stang, known as Sister Dorothy (Dayton, June 7, 1931 – Anapu, February 12, 2005), was originally a nun from the U.S. who became a Brazilian citizen. Since the 1970s, she had been working with rural workers in the Brazilian Amazon.

5 • The civil society organisations that compose the National Coordination of the PPDDH are: *Comissão Pastoral da Terra, Conselho Indigenista Missionário, Terra de Direitos, Justiça Global and Movimento Nacional de Direitos Humanos*.

6 • While this article was being written, Decree nº 8724 was signed, which instituted the *Programa de Proteção aos Defensores de Direitos Humanos* (national programme for the protection of human rights defenders). The decree ended civil society participation in the national coordination of the programme. We will discuss this matter later on in the article.

7 • The Brazilian Committee of Human Rights Defenders is composed of the following organisations: AMUS – Associação de Mulheres Unidas da Serra; Associação de Advogados

de Trabalhadores Rurais – AATR – Bahia; Associação de Apoio à Criança e ao Adolescente – AMENCAR; Comissão Pastoral da Terra – CPT; Dignitatis – Assessoria Técnica Popular; Dom da Terra – AfroLGBT; CDDH – Serra; CDDH Dom Tomás Balduino; CDDH Pedro Reis – Regional Sul/ES; CADH – Centro de Apoio aos Direitos Humanos Valdício Barbosa dos Santos “Leo”; Fórum Estadual de Juventude Negra/ES – FEJUNES; Fórum Paranaense das Religiões de Matrizes Africanas; Grupo Tortura Nunca Mais – Bahia; Justiça Global; Movimento Nacional de Direitos Humanos – MNDH; Movimento dos Atingidos por Barragem – MAB; Movimento dos Trabalhadores Sem Terra – MST; Secretaria de Justiça e Segurança Pública da ABGLT; Sociedade Paraense de Defesa dos Direitos Humanos – SDDH; Sociedade Colatinense Proteção e Defesa dos Direitos Humanos; Terra de Direitos.

8 • The letters with the most recent recommendations are available at: <http://global.org.br/programas/carta-aberta-sobre-a-politica-de-protacao-as-defensoras-e-defensores-de-direitos-humanos/>; “Letter to the National Secretariat for the Promotion and Defense of Human Rights Demands Improvements to the Defenders Protection Programme”, Terra de Direitos, 2015, accessed May 5, 2016, <http://terradedireitos.org.br/2015/03/04/carta-enviada-a-secretaria-nacional-de-promocao-e-defesa-dos-direitos-humanos-cobra-melhorias-no-programa-de-protacao-aos-defensores/>.

9 • María Martín and Luis Enrique Egure, “Protección de Defensores/as de Derechos Humanos: Buenas Prácticas y Lecciones a partir de la Experiencia.” *Protección Internacional*, 2012, accessed May 20, 2015, http://protectioninternational.org/wpcontent/uploads/2013/04/Proteccion_de_defensores/as_buenas_praticias.pdf.

- 10 • “Informe Especial - Protección al Tablero,” Somos Defensores Programme, 2014, accessed May 6, 2016, http://www.somosdefensores.org/attachments/article/88/proteccion_al_tablero_version_eb.pdf.
- 11 • Somos Defensores Programme, accessed September 12, 2015, <http://www.somosdefensores.org/index.php/en/>.
- 12 • “Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas y Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas,” Secretaría de Gobernación, 2012, accessed March 15, 2015, http://www.derechoshumanos.gob.mx/es/Derechos_Humanos/Ley_para_la_Proteccion_de_Personas_Defensoras_de_Derechos_Humanos_y_Periodistas.
- 13 • Rafael Dias, Sandra Carvalho e Isabel Mansur, *Na Linha de Frente: Criminalização dos Defensores de Direitos Humanos no Brasil (2006-2012)*, 1st ed., vol. 1 (Rio de Janeiro: Justiça Global, 2013).
- 14 • “Carrusel de Contratos en la UNP Dejó Pérdidas por \$600 Millones,” El País, 2014, accessed May 6, 2016, <http://www.elpais.com.co/elpais/judicial/noticias/capturan-gerente-financiero-unidad-proteccion-por-corrupcion>; “Director de la UNP Denunciará Más Casos de Corrupción,” El Espectador, 2014, accessed May 6, 2016, <http://www.elespectador.com/noticias/judicial/director-de-unp-denunciara-mas-casos-de-corrupcion-articulo-515260>.
- 15 • Ignacio de los Reyes, “Além do Narcotráfico, México Teme Agora os Paramilitares.” BBC, 2011, accessed May 6, 2016, http://www.bbc.com/portuguese/noticias/2011/10/111007_mexico_mata_zetas_paramilitar_mm.shtml; Daniel Valero, “Temen que Proyecto de Cooperativas de Seguridad Reviva las Convivir.” El Tiempo, 2011, accessed May 6, 2016, <http://www.eltiempo.com/archivo/documento/CMS-10314228>; Zósimo Camacho, “Seguridad Privada: 50% de Empresas, Irregulares.” Contralínea, 2013, accessed May 6, 2016, <http://contralinea.info/archivo-revista/index.php/2013/05/21/seguridad-privada-50-de-empresas-irregulares/>.
- 16 • Available at: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Decreto/D8724.htm.
- 17 • The Brazilian Committee of Human Rights Defenders adopted a critical stance on the new decree and submitted a document suggesting changes to the then Ministry of Women, Racial Equality, Youth and Human Rights (eliminated in May 2016 by the Michel Temer government).
- 18 • Dias, Carvalho e Mansur, *Na Linha de Frente*.