

Emerging practices of States regarding the protection of environmental defenders in Latin America and the Caribbean



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► Introduction

The ability to conduct and participate in environmental advocacy work freely and safely is the right of all persons living in Latin America and the Caribbean. However, those engaged in the defense and protection of natural resources, the environment, community lands and indigenous territories, are often subjected to harassment, assaults and attacks on their lives, and they may live in fear for their families safety, due to their work defending human rights.

In 2014, 116 environmental and land defenders¹ in 17 countries around the world were killed. Around three quarters of these deaths took place in Central and South America. Southeast Asia was the second most affected region. The most dangerous countries for environmental human rights defenders are Brazil, followed by Colombia, the Philippines and Honduras².

Many cases of assaults and attacks on environmental human rights defenders arise in the context of private and public development projects that seek to exploit and extract natural resources often on or near community lands or indigenous territories without the consent of the affected communities. The legal and institutional framework in Latin American and the Caribbean promotes such megaprojects, and does not include effective measures for the protection of the human rights of the communities living in these territories. This can generate socio-environmental conflicts between communities, businesses and state authorities and attacks are more prone to occur against such environmental rights defenders.

Over the last few years, the protection of environmental human rights defenders has become a major issue on the agenda of human rights organizations, indigenous peoples, environmental civil society organizations, the Human Rights Council and States. In 2012, the UN Special Rapporteur on the situation of human rights defenders, Michel Forst, devoted part of his annual report to human rights and environmental and land defenders. Pointing to Latin America and the Caribbean as the most dangerous region, he recommended that States recognize the work of the environmental defenders, avoid stigmatization, and fight impunity for attacks against them. In 2016, the UN Special Rapporteur on the situation of human rights defenders, Michel Fors, completed a report for the General Assembly on environmental human rights defenders. The Latin American and Caribbean Negotiations on a Regional Agreement on Access Rights also includes specific provisions governing the protection of environmental defenders.

This report is a first attempt to describe emerging practices that are relevant to the prevention of harm, and protection of environmental defenders in countries across the region in the alarming context of violence and aggression. These case studies are the result of the work of various civil society organizations and researchers from Latin America and the Caribbean, created with the input, of environmental human rights

¹ We refer to those individuals and groups who, in a personal or professional capacity and peacefully, strive to protect and promote human rights related to the environment, in particular water, air, land, flora and fauna. It is important to mention that environmental and land rights are interrelated and often inseparable. In this publication we refer to them indiscriminately under the terms of "human rights defenders," "environmental defenders" or "defenders of the environment, land and territory." UN, Report of the Special Rapporteur on Situation of human rights defenders, Mr. Michel Forst, General Assembly, A / 71/268, 3 August 2016, para. 4 and 8

² Global Witness, *how many more? The average mortal environment 2014: intimidation and killings of environmental and earth activists, with Honduras in the foreground*, Global Witness Limited, London, 2015, p.4. <https://www.globalwitness.org/en/campaigns/environmental-activists/few-mas/>



defenders from the region. Specifically, this publication seeks to identify emerging practices that address not only protection of the physical integrity of the defender, but also promote a preventive approach to avoid social and environmental conflicts, through mechanisms of access to information, participation and justice.

The term “emerging practices” in this publication is used to refer to a wide range of practices that aim to protect human right defenders, their rights to prior informed consent and participation and ensure accountability procedures related to the use of land and the environment.

In designing the method for choosing case studies on emerging practice a list of indicators outlined in Annex 1 was used by researchers to identify good practice. After emerging practices were identified, we chose six (6) countries which had both high and low rates of incidents and attacks against environmental defenders. We then contracted local partners to examine actions undertaken by the States to protect the environmental human rights defenders, asking them to determine challenges and general recommendations for Latin American and Caribbean States to improve existing practices to protect environmental defenders.

This report includes case studies prepared by the Mexican Center for Environmental Law (CEMDA), Article 19 Brazil, Environmental and Water Law Alliance in Guatemala, the Center for Environmental Advocacy in Panama, Law, Environmental and Natural Resources in Peru and the Department of Management Studies, Faculty of Social Sciences of the University of the West Indies.

The case studies are as follows:

- The National Program for the Protection of Human Rights Defenders in Brazil,
- The Support Institute for the Analysis of Attacks on Human Rights Defenders in Guatemala,
- The protection mechanism for the human rights defenders and journalists in Mexico,
- The Ombudsman’s Office in Panama,
- Prior consultation in the case of Amazon Waterway in Peru, and
- Citizen Enforcement of Environmental Law in Trinidad y Tobago.

It should be noted that this report includes descriptive information received by the organizations mentioned on emerging practices in their countries. The case studies include identification of the practice and their key elements related to the protection of environmental human rights defenders, reflections of researchers and recommendations to improve current practice.



▶ ¿What is good practice to protect environmental human rights defenders?



Protest in Guatemala
José Pablo Chumil.

International human rights law does not specifically define good practice of States concerning protection of environmental human rights defenders. However, in response to the increasing attacks on against human rights defenders, the international community has created policy instruments and determined standards to establish the rights of defenders and the obligations of States to ensure their protection.

In environmental matters, the Independent Expert on Human Rights and the Environment, John H. Knox noted in his report to the Human Rights Council on good practices relating to the enjoyment of a safe, clean, healthy and sustainable environment that the broad concept of “practice” includes “laws, policies, jurisprudence, strategies, administrative practices and projects³.”

³ Human Rights Council, *Report of the Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment*, John H. Knox, 28th Session, A / HRC / 28/61 para.12 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/017/29/PDF/G1501729.pdf?OpenElement>



These practices can be implemented by a wide range of actors, including all levels of government, civil society, the private sector, communities and individuals.⁴ He indicates that a practice can be good practice if it “integrate[s] human rights and environmental standards, including through the application of human rights norms to environmental decision-making and implementation or the use of environmental measures to define, implement and (preferably) exceed minimum standards set by human rights norms. The practice should be exemplary from the perspectives of human rights and of environmental protection, and there should be evidence that the practice is achieving or working towards achieving its desired objectives and outcomes.”⁵

In relation to human rights defenders in 1998, the General Assembly of the United Nations adopted 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 (UN Declaration on Human Rights Defenders) through which the States undertook to promote, protect, respect and guarantee the work of human rights defenders. This Declaration adopts a broad definition of who is an advocate. It mentions that human rights defenders are those that promote or protect universally recognized human rights through peaceful means. For its part, the Inter-American Court of Human Rights (The Court) has contributed significantly to clarify this point by noting in one of its judgments that defenders are those who “promote and seek the protection and realization of human rights and fundamental freedoms, at national and international level, made peacefully, and not necessarily permanent”⁶.

Now, if we take the concept of defender in the context of protection of the environmental rights, we are talking about an advocate of environmental rights working individually or collectively and peacefully for the promotion, protection and respect of the right to a healthy environment and the rights related to it, such as culture, natural resources, housing, health, etc. This work often takes place in the context of large development projects that affect communities in several ways. The environmental rights defenders play a very important role in the promotion and protection of human rights related to the environment, and contribute peacefully to the justiciability of violations of the human rights of people and communities.



Protest in Guatemala
José Pablo Chumil.

⁴ United Nations Environment Programme, *Regional consultation on environmental human rights defenders and good practices with a focus on Asia and The Pacific*. <http://srenvironment.org/consultations/>

⁵ Human Rights Council, Report of the Independent Expert, *op. cit.*

⁶ Court HR. Human Rights Defender Case et al v Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283.



At the international level, there have been attempts to identify principles for the implementation of best practices for the protection of human rights defenders. In this regard, the Special Rapporteur on the situation of human rights activists highlighted seven principles for the adoption of actions by States for the protection of human rights defenders, these principles suggest that States should:

1. Adopt a rights-based approach to protection; empowering defenders to know and claim their rights and increasing the ability of those responsible to respect protect and fulfill rights;
2. Recognize that defenders are diverse;
3. Recognize the significance of gender; apply an intersectionality approach to the assessment of risks and to the design of protection initiatives. They should also recognize that some defenders are at greater risk than others because of what they do
4. Focus on “total security”, including physical security, digital security, and psychosocial well-being;
5. Accept that the defenders are interconnected; they must take the rights and safety of groups and family members who share the risks;
6. Be participatory and involve defenders in the development, implementation and evaluation of strategies and tactics for protection;
7. Be flexible, adaptable to the specific needs and circumstances of defenders⁷.

At the regional level, the Inter-American Commission on Human Rights (IACHR) and The Court have noted “that the attack to a human rights defender in reprisal for his or her activities can have the effect of violating several rights recognized in the Inter-American instruments.”⁸

Since 2006, the IACHR has promoted the implementation by Member States of a global policy of protection for human rights defenders. They have noted that without this explicit policy these defenders will continue in a state of defenselessness that is detrimental to their work⁹. The parameters of the global policy, state that in order for a protection program at the national level to be effective, it must be backed by strong political commitment on the part of the State. “That commitment is mirrored in the manner and the extent to which the functioning of the program is guaranteed by law, the effectiveness of the authorities in charge, and the resources and staff assigned to it.”¹⁰ Consequently, the IACHR has recommended that the States of the region implement specialized protection programs as they can “enable a State to comply with its obligation of protection while bringing it into closer proximity to the human rights defender at risk, thereby enabling it to know precisely what his or her situation is and to intervene in a timely manner, using a specialized approach that is proportional to the risk that the human rights defender may be experiencing.”

⁷ United Nations Human Rights, Office of the High Commissioner, *Statement by the Special Rapporteur on the situation of human rights defenders at the 31st session of the Human Rights Council*. Retrieved on October 06, 2016. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17216&LangID=E>

⁸ Inter-American Commission on Human Rights (IACHR) , *Second Report on the Situation of human right defenders in the Americas*, OEA / Ser.L / V / II.Doc. 662011, 2011, para.19

⁹ *Ibid*, para.474

¹⁰ *Ibid*, para.484



Civil society has also sought to develop the concept of best practices for the protection of human rights defenders, compiling the various experiences that exist in the world. Findings from preliminary work indicates a breadth and complexity of results, with approaches codified in regulatory frameworks and structural aspects of protection, including legislation, national policies on defenders, and government programs to protect human rights defenders¹¹. Also, the lack of effectiveness in the implementation of measures to protect environmental defenders by States has motivated organizations of civil society and communities to develop self-protection mechanisms to address risks and attacks, which can also be considered as good practice.

In this context, it is crucial to note that the protection of human rights defenders must also include a precautionary approach to prevent or decrease the risks faced by man rights defenders. To prevent risks to environmental defenders in the context of socio-environmental conflicts, a preventive approach involves, among other things, finding the source, and the reason why the risk is generated for environmental advocates. This is sometimes linked to the development project itself. In this regard, the IACHR has noted that a number of countries in the region where violations associated with extractive industries are committed, do not have adequate legislation to ensure effective enjoyment of human rights. Many laws are weak, they do not guarantee the right to a prior consultation, or respect for the territory and the self-development of indigenous communities affected¹².

In that sense, the IACHR has indicated that States have a duty to enforce national and international environmental protection standards that they have enacted or accepted;¹³ therefore, one of the preventive measures could be to reduce the level of socio-environmental conflict through the effective implementation of protection mechanisms and guarantee the environmental defender's human rights within the process of design, implementation and operation of megaprojects. Thus effective implementation could achieve a better way to promote the inclusion all of stakeholders from the development.



Protest in Guatemala
José Pablo Chumil.

¹¹ Martin Quintana María Eguren Enrique Fernández. *Protection of human rights defenders: best practices and lessons learnt* Protection International, p. vi.

http://protectioninternational.org/wp-content/uploads/2013/04/Proteccion_de_defensores_buenas_praticias.pdf

¹² *Op. Cit.*, 7. paras.312-313

¹² *Ibid*, para.314



III ► Context for the work of environmental defenders in Latin America and the Caribbean.



Wixárika Community, México

The work of environmental human rights defenders in the world has always been an activity that put them in a situation of danger¹⁴ since they question and make visible the State's breach in fulfilling its obligations regarding human rights, including the economic benefits that it gains affecting these rights, often in the context of corruption and impunity. Latin America is not saved from this havoc on the contrary, increasingly it suffers from the same, including the strong social and environmental conflicts caused by the implementation of large-scale development projects - that affect the environment and human rights of the local communities. The work on the promotion and defense of environmental human rights in Latin America and the Caribbean is a dangerous activity and today environmental advocates are among the most vulnerable groups, since they face extraordinary risks of being attacked due to the work that they do.

¹⁴ Inter - American Commission on Human Rights (IACHR), *Criminalization of the work of human right defenders*, OEA / Ser.L / V / II.Doc. 49/15, 2015. United Nations General Assembly, Report of Margaret Sekaggya, Special Rapporteur on the situation of human rights activists, A / HRC / 19/55, 2011.



Tribu Yaqui

Cases of attacks on human rights defenders and are increasing, according to the information delivered by civil society organizations both local and international¹⁵, the follow up in specific cases or monitoring a particular location.

Environmental defenders face many challenges working in Latin America and the Caribbean. These include:

- Killings¹⁶, executions, enforced disappearances, assaults, threats, harassment,
- Intelligence activities and other illegal, arbitrary or abusive interference,
- Criminalization of leaders,
- The excessive use of the force during protests and demonstrations, restrictions to their freedom of association,
- Unjust restrictions on the access to information held by the state,
- Restrictions on *habeas data*,
- Limitations on the exercise of advocacy and promotion of human rights by foreign citizens and,
- Impunity in investigations related to violations of rights defenders¹⁷.

To understand the extent of the risk for environmental advocates in the region¹⁸, the IACHR has received information indicating that in Brazil, at least 125 activists and *campesino* leaders have received death threats; in the space of just five days (May 24 to 28, 2011) four people were killed for their activities in defense of the environment. In El Salvador, in the short six-month period from June to December 2009, three environmental defenders opposed to the mining industries were murdered; another was killed in 2011.

¹⁵ As an example the reports on the right to the land defenders of the International Federation for Human Rights, Amnesty International “we are defending the land with our blood”, that of the Mesoamerican Initiative for Human Rights Defenders; the Mexican Center for Environmental Law on the situation of environmental defenders in Mexico 2015, among others.

¹⁶ A few months ago the 2015 Goldman Prize winner Berta Cáceres, environmental human rights defender for the indigenous peoples of Honduras was killed..

¹⁷ General Assembly of the United Nations, *Report of the Special Rapporteur on the situation of human rights activists*, A / 69/259, 2014, para.48



In Guatemala, 4 defenders working for a healthy environment died in just one month (January to February 2010). In Mexico, during the period 2006-2012, at least 12 people were killed¹⁹. Amnesty International also noted that in 2015, 185 environmental and land defenders were killed globally and 122 of those killings occurred in this region²⁰.

Another frequently occurring action against environmental defenders is their criminalization by the misapplication of the law by the authorities, in order to hamper the defense of human rights. The IACHR has indicated that the misuse of criminal law most often occurs in contexts where there are tensions or conflicts of interest between the State and non-State actors. One example is the case of communities occupying lands of interest for the development of mega projects and exploitation of natural resources. In these situations, the criminal law can be improperly applied to impede the advancement of causes contrary to the economic interests involved.²¹

The IACHR also has referred to specific groups when registering the attacks against environmental defenders, showing its particular concern about the continuing attacks against the life and personal integrity of indigenous leaders. These attacks are taken with the intent of reducing the defense and protection of territories and natural resources and the right to autonomy and cultural identity²². Female environmental, land and territory defenders are also at specific risk from gender violence generated by various assailants, including the State through public officials²³.

It should be noted that attacks against environmental defenders have been more visible in some states in the region, especially in contexts where extractive industries (mining, oil, logging) operate, and where most of the projects developed by these industries have occurred as a result of free trade agreements and commitments to increase foreign investment in some states. In Latin America they have identified several obstacles to the work of environment defenders related to the development of extractive industries in countries such as Brazil, El Salvador, Guatemala, Honduras, Mexico, Ecuador, Panama and Peru.²⁴

This context demonstrates the urgent need for practices for the protection of environmental human rights defenders²⁵.

¹⁸ The region of the Americas is experiencing a strong context of attacks on human rights defenders. The IACHR has said that "human rights defenders account for over one third of the beneficiaries for whom precautionary measures are currently in force in this hemisphere. Out of a total of 207 measures granted in 2006-2010 period, 86 are people who engaged in the defense and promotion of human rights, which is 42% of the beneficiaries of precautionary measures "Of the total of precautionary measures in effect from 2006 to the present granted by the IACHR which remain in force since 2006 to date, nearly a third (32%) are for human rights defenders. The States that have been most frequently called to provide protective measures for human rights defenders at risk are Colombia, Guatemala and Mexico (IACHR, *op. cit.*, 9, para.434-435)

¹⁹ IACHR, *Op. cit.*, 9, para.317

²⁰ Amnesty International "we are defending the land with our blood", 2016, p.5 file:/// C:/Users/Usuario/Downloads/AMR0145622016SPANISH.PDF

²¹ Inter - American Commission on Human Rights (IACHR), Criminalization of the work of human rights defenders, OEA / Ser.L / V / II.Doc. 49/15 2015, para.3-5

²² *Ibid.*, para. 298 and 307.

²³ For its part, the Mesoamerican Initiative for Women Defenders of Human Rights states that between 2012 and 2014, only in El Salvador, Guatemala, Honduras and Mexico 1,688 assaults were recorded against human rights defenders and the frequency of attacks doubled in that period (Article 19, CIEL, "A Green Mortal" Threats against defenders and environmental human rights defenders in Latin America, 2016, p.22)

²⁴ IACHR, *Op. Cit.*, 20.

²⁵ Human Rights Council, *Report of Mr. John H. Knox, Special Rapporteur on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment*, A / HRC / 31/53, 2015, para.19. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/292/99/PDF/G1529299.pdf?OpenElement>



IV Case studies of emerging practices in Latin American and Caribbean States for the protection of environmental and land defenders



Agents of the national police prevent blockade of indigenous people.
Special for La Prensa/Jorge Cisneros, Panamá.

Many practices for the protection of environmental defenders have emerged through the submission of an application for interim measures before the Inter-American system for the protection of human rights and the granting of precautionary measures by the IACHR to various environmental and territory defenders. These measures often recommend urgent measures to protect their work, their lives and their families. Their effective implementation by the States has led to the adoption of:

- Prevention and emergency measures,
- Risk response against attacks on environmental defenders, such as the creation of inter-agencies around tables in Mexico,
- The entry to the inter agency-protection systems with participation of civil society in Guatemala,
- Implementation systems by an authority designated by the State in Peru.



Four countries in the region, Mexico, Colombia, Brazil and Guatemala have a specific regulatory framework for the protection of human rights defenders²⁶ which includes the protective approach and the precautionary approach²⁷ for the implementation of protection measures against the risks experienced by human rights defenders.

We present examples of practices in relation to protective approaches to life and personal integrity of environmental defenders, in Mexico, Brazil and Guatemala, and actions and measures, that contribute to a preventive approach to socio-environmental conflicts due to the development of megaprojects, in Panama, Peru and Trinidad and Tobago.

a. The National Program for the Protection of Human Rights Defenders in Brazil.

Julia Lima²⁸

Background and context of the situation of environmental defenders.

Brazil has the largest number of attacks against human rights defenders in Latin America. Historically, rural populations are most affected and violations against indigenous peoples and campesinos are frequent in the struggle for the preservation of nature, indigenous rights and, above all, for the right to land and their territories. In recent years, reports from international organizations show a deteriorating situation of human rights in the country, especially against a development policy that gives priority to large infrastructure projects and the expansion of agribusiness against the preservation of indigenous territories. That puts Brazil in a prominent position in Latin America as one of the most dangerous countries in the world for environmental human rights defenders.

Description of the emerging practices.

Faced with increasing risks to human rights defenders and their communities, in October 2004 the National Program for the Protection of Human Rights Defenders (hereinafter PPDDH) was created as a result of a longstanding demand of civil society and social movements.

The Protection Program emerged within the Federal Secretariat for Human Rights of the Presidency of the Republic; as a part of a national public policy. The Protection Program does not yet have a law that regulates it and the implementation of public policy is a discretionary decision of each member of the Brazilian Federation. Issues related to public safety and justice are the responsibility of each federal unit. In the case of States that do not invest resources in its implementation, the federal government is the one that is required to act. Currently, only four Brazilian states have a state protection program: Espírito Santo, Minas Gerais, Ceará and Pernambuco. The Protection Program works in partnership with civil society organizations hired through an agreement for its execution. Its aim is to adopt and coordinate measures to ensure the protection of people who are at risk or are threatened as a consequence of their actions to promote or defend human rights.

²⁶ Martin Quintana, Maria, *op. cit.*, 10.

²⁷ The protective approach can include guarantee the effective implementation of urgent or precautionary measures granted to environmental human rights defenders. In addition, to create mechanisms for protection and to ensure prompt and impartial investigations into alleged threats against environmental human rights defenders, while the preventive approach refers guaranteeing their meaningful participation in decision-making and by developing laws, policies, contracts and assessments by States and businesses. UN, Report of the Special Rapporteur on the situation of human rights defenders, Mr. Michel Forst, General Assembly, A / 71/268, 3 August 2016, para. 102

²⁸ Researcher of Article 19, Brazil.



Barro Blanco
Foto Ivan Saldana La Estrella de Pma

The protection mechanism, besides developing prevention and protection measures for defenders, was developed in order to overcome the structural problems that create vulnerabilities for defenders and social movements. However, the mechanism for public policies has not created a coordinated approach to address the situation. In addition, currently public bodies responsible for policies related to land in Brazil are being dismantled, including the National Institute of Colonization and Agrarian Reform (INCRA) and the National Indigenous Foundation (FUNAI), and no longer have sufficient resources to carry out their work. Weakening these organs of the State increases pressure on the territories, escalates conflicts and leaves defenders in an even more vulnerable situation.

Although there is a bill that is in the National Congress, a legal framework regulating the protection mechanism has not yet been adopted. Thus, the program is only supported by a decree. The first decree that established the protection mechanism was issued in February 2007, but in 2016, President Dilma Roussef signed a new regulatory decree on the Program for the Protection of Human Rights Defenders (No. 8724/2016). Unfortunately the decrees excluded the participation of civil society –from being formally included- in the Deliberative Council of the program. The current composition of the Deliberative Council has only one representative from the Ministry of Justice and two representatives in the Secretariat of Human Rights, which previously had the status of ministry, but is now a secretary in the Ministry of Justice.

The mechanism also has a methodological framework for its operation. In a country the size of Brazil, the realities of human rights are very diverse and complex and the absence of sensitive methodologies for all scenarios leaves them in an extremely fragile position to face threats. For instance there is currently an absence of procedures to adequately assess the risk that defenders face. The specific contexts are creating difficulties for the technical equipment to attend with the necessary efficiency possible emergencies.

The mechanism was created in the Ministry of Human Rights, which is now integrated in the Ministry of Justice and together they are the two organs responsible for implementing this public policy. Previously, in addition to the two bodies, five civil society organizations formed the council including the Public Ministry. Since the beginning of the program, civil society organizations were part of a committee accompanying the protection policy and acted for its improvement. The Committee no longer has a formal role in the mechanism, but is pushing for the existence and improvement of politics.



Results emerging practice.

Although the Brazilian protection mechanism has a number of problems in its structure, it is an essential public policy for human rights defenders in the country. The Program already has been in existence for eleven years and its continuity and improvement are essential for human rights defenders in order to have protection and security to keep fighting and defending the rights of their communities.

In a scenario of increasing criminalization and violence against human rights defenders in the country, it is necessary that the State has measures focused on the defense of people at risk and those who are vulnerable. In addition, in the political crisis that the country is facing, it is important to remember that this mechanism must have the necessary resources for its survival and that Brazil should ensure the rights and physical integrity of human rights defenders in the country as a priority.

Challenges and lessons learnt

The Human Rights Defenders Committee has been part of the protection policy since its inception and over eleven years has developed a number of recommendations to improve the protection program. These include the need for a legal framework for the mechanism; the development of appropriate methodologies of protection and the inclusion of good performance of protection measures for defenders, also as an articulation with the public agencies responsible for making effective public policies on structural issues in the contexts where defenders are inserted. Brazilian organizations currently have great concerns due to the weaknesses of national mechanisms to protect defenders and have been campaigning to improve the policy since its creation.

This Brazilian practice must be analyzed within the political and social context facing the country, and the weakening of human rights policies in the last 2 years.

b. Support Institute for the Analysis of Attacks against Human Rights Defenders in Guatemala.

Mara Bocaletti, Lucia Xiloj and Jeanette de Noack²⁹

Background and context of the situation of environmental defenders.

The Inter-American Commission on Human Rights (IACHR) 2016 Report on Human Rights, notes the increasing phenomenon of violence in Guatemala which affects all of society and all groups. This provides part of the context to understand the special vulnerability of certain groups in the country which suffer from historical discrimination and exclusion. The IACHR has noted the situation of human rights defenders in Guatemala remains a constant concern, with evidence of threats, harassment and murder cases. From 2000 to 2015, the Protection Unit for human rights defenders in Guatemala (UDEFEQUA) registered 174 murders of defenders. 2015 holds the record of 13 defenders killed, 156 cases of intimidation, 92 of abuse and cruel and inhuman treatment, 84 of arbitrary detention, 56 of defamation, 20 threats, 15 being followed, 12 criminalization through complaints, 9 raids, 8 for attempted murder, 7 telephone threats, 7 illegal detention, 4 damage to property, 4 theft and 7 including written threats persecution, kidnapping, sexual violence and rape.

²⁹ Investigator for the Environmental Law Alliance and Water in Guatemala (ADA2).



According to the Report of the IACHR on “Criminalization of the work of human rights defenders” of 2015, the attacks have been aimed at defenders who are dedicated to the defense of the rights of indigenous peoples, territory, land and healthy environment. The organizations reported that 55% of people assaulted are women and 58.21% of all attacks have been aimed at environmental defenders, particularly from the perspective of indigenous peoples. Several environmental advocates are awaiting decisions in open proceedings against them.

Description of the emerging practice.

The State has created a Prosecution Office specialized in investigating crimes “against human rights activists, trade unionists, journalists, community leaders, social media, childhood and youth,” through the Special Unit for Human Rights Defenders that belongs to the Public Ministry.

For human rights defenders to carry out their activities unhindered, an infrastructure has been developed, called the Support Institute for the Analysis of Attacks on Human Rights Defenders (the Institute). This Institute is coordinated by the Ministry of Interior, and is made up of authorities (COPREDEH³⁰ and the Public Ministry) and representatives of civil society, such as labor and human rights organizations, judges and the independent press. This body was created in 2012, as a result of the recommendations issued by the Human Rights Council within the United Nations system, for the State of Guatemala, derived from the First Universal Periodic Review -EPU- on Guatemala in 2008. At the request of various civil society organizations and human rights defenders, constituted as plaintiffs in several cases, the “Table of Accountability” was implemented with the participation of staff of the Office of Human Rights Section.



Displaced people by PH Chan 75 Still claim their rights.
Foto Joseph Ponce

One of the key civil society organizations involved in this instance is the Unit for Protection of Human Rights Defenders in Guatemala (UDEFEFUGUA), as stated in its 2015 Report,³¹ it is an organization that has provided a service for 15 years to guide, receive, investigate, report, protect and monitor attacks on human rights defenders, activists, organizations and human rights institutions which have suffered from aggression. This Unit applies all protocols designed to verify, assure safety and give psychological care as well as the accompaniment of defenders before the Public Ministry and the management of precautionary measures before the Inter-American Court of Human Rights. Depending on the severity and risk in some cases, UDEFEFUGUA conducts communication of urgent warnings by international mechanisms to protect human right defenders, including the international community present in Guatemala for the promotion of the Guidelines on Human Rights Defenders of the European Union and Norway.

³⁰ Presidential Commission for Coordinating Executive Policy on Human Rights (COPREDEH).

³¹ UDEFEFUGUA, Report 2015, *My spirit is peaceful resistance, -I am a woman defender, I am a man defender, Report on the situation of human rights defenders*, January-December 2015“. http://udefegua.org/wp-content/uploads/2015/08/informe_final_2015.pdf



Since its inception in 2000, UDEFEGUA has made efforts to build confidence among civil society organizations, who find in the Unit support and they have conducted the necessary coordination to enable the commencement of institutional processes of protection by the State in regard to incidents affecting human rights defenders. According to organization Protection International³², in 2011, worldwide, only Colombia, Uganda and Guatemala through UDEFEGUA, had Defenders units created by civil society.

The Ministerial Agreement 103-2008 of January 10, 2008, issued by the Ministry of the Interior, creates the Support Institute for the Analysis of Attacks on Human Rights Defenders, attached to the First Deputy Minister of the Interior. This carries out its functions through a defined scientific methodology, approved and agreed by members, while establishing their way of integration and operation in order to make recommendations to the institutions in charge of providing security and protection to human rights defenders. This agreement was renewed on January 10, 2012, by the Ministerial Agreement 09-2012. However, it is attached to the Vice Ministry of Security, and it is integrated only by state entities (Ministry of Interior, Public Prosecutor and COPREDEH). Civil society organizations are invited to participate as observers, as well as Human Rights Prosecutors, International Cooperation Organizations, OHCHR and other state officials or representatives of other organizations, if the members of the Institute consider it necessary.

Originally, in accordance with Article 2 of Ministerial Agreement 103-2008, the Support Institute for the Analysis of Attacks against Human Rights Defenders in Guatemala was integrated by: a) A representative of the Ministry of Interior; b) A representative of the Directorate General of Civil Intelligence - DIGICI-; c) The Head of the Human Rights Unit of the Criminal Investigation Division -DINC-, the National Civil Police; d) A representative of the Public Ministry, specifically the Office of Human Rights Section; e) Two representatives of human rights organizations, at the national level and f) A representative of human rights organizations, at the international level (OHCHR³³).

In 2012 the mandate of the Support Institute for the Analysis of Attacks against Human Rights Defenders coordinated by the Ministry of the Interior and comprised of authorities (COPREDEH and the Public Ministry) was renewed representatives of civil society, such as unions, human rights organizations and independent media as CERIGUA were invited to participate³⁴. Judges are also involved and the press who were not a part of the original format of the Institute. On March 1, 2016, the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights, -COPREDEH-, the Ministry of Interior, -MINGOB, and the Public Ministry -MP-, signed the Framework Convention on Institutional Cooperation which will serve to improve analysis of attacks against human rights defenders in Guatemala.

³² Protection International is an organization that provides tools and strategies to protect human rights defenders, <https://protectioninternational.org/es/>

³³ Office of the United Nations High Commissioner for Human Rights-Guatemala: OHCHR

³⁴ Center for Informative Reports on Guatemala: CERIGUA.



Results emerging practice.

Despite the adoption of this practice the current situation for human rights defenders, according to the information provided in the various annual reports of human rights of international and national organizations is still a worrying situation in Guatemala. The Institute, through the Bureau of Accountability, gives support based on the analysis of the risk that a human right defender may be facing. It even allows the State to give personal or perimeter security to a defender at risk through the National Civil Police and court proceedings relating to the Prosecutor for Human Rights. For this to be a proceeding action, there must be a complaint before the Crime Unit against Human Rights Defenders of the Office of Human Rights Section of Public Prosecutions. In specific cases, they must also be accompanied by UDEFEGUA and the OHCHR, who transmit the case to the Institute and follow up the case, so that they meet the established protocols of protection. The institute does not perform other procedures in specific cases, but is a space for coordination and strategic analysis of cases for the protection of defenders. For specific measures, the process is directly before the Attorney General, the Office of Human Rights or the Ministry of Interior, because cases must be channeled through the Direction of People Protection and Security (DPPS) for risk analysis and then, based on this, the security scheme will be implemented.

According to the General Public Prosecutor, Thelma Aldana, it is necessary for the Institute to strengthen the research methodology and gather facts which constitute crimes against human rights defenders. Based on the particular characteristics of these facts, different strategies must be applied for an appropriate investigation. The Chairman of the COPREDEH, José Estuardo Luna, has indicated that the inter-agency coordination bodies are strengthened, when it has legal support.

Francisco Manuel Rivas Lara, Ministry of Interior, has indicated that the signing of Interinstitutional Agreement is the manifest will represents the commitment to create efficient and close co-ordination mechanisms among all members. This agreement is important and necessary as it provides for the implementation of a program of immediate protection, ensuring customized protection to any defender who requests it. Ileana Alamilla, Director of Cerigua has indicated that civil society is perceived as “a space where the problems that the human rights defenders trade unionists, journalists, justice operators face are addressed and as well as the responsiveness of the authorities in the same part participate facing allegations and claims that arise.”

Also, the Program to Protect Journalists now driven by the Government was promoted from this space. UDEFEGUA has stated that the Institute needs to be strengthened to have an active, strong and independent office for analysis and investigation of patterns of attacks against human rights defenders in the field of resistance to the imposition of megaprojects, playing a triple role to be able to hold the actors who profit from impunity accountable, stop violations and prevent possible attacks. To UNHCHR, the Institute is perceived as a space to analyze patterns of attacks to defenders and allows organizations like UDEFEGUA to request an update and follow up cases when there has been a complaint.

Challenges and lessons learnt

According to Amnesty International in its report of September 1, 2016, environmental activists working on land rights have been subjected to constant defamation campaigns aimed at stigmatizing and discrediting their legitimate work. These campaigns have included false accusations and prosecutions to silence charges. According Global Witness, ten killings took place in Guatemala in 2015, making the country one of the nations with the highest homicide rate per capita in the region.



The UDEFEGUA 2015 report which maps the situation of human rights defenders during the 2000-2015 period, there is a steady increase in the risk to the safety of human rights defenders. The attacks are directed especially towards emerging social movements facing problems as a result of the “new” model of development or expansion of new rights which increases the vulnerability of more groups. It is important to have a policy to protect human rights defenders which integrates its priorities based on these variables: actors and territory. Civil society organizations will be challenged to make efforts towards participation and greater convergence, in order to achieve an interaction that allows reaching consensus between organized groups, the State and advocacy against the development model generated by the private sector.

The IACHR, in its report on the Criminalization of Human Rights defenders, reiterates that there seems to be a pattern in which criminal proceedings relating to the defense of human rights in situations involving the exploitation of natural resources are brought before the local prosecutors’ offices. Offences are out of proportion to the facts alleged, such as conspiracy, terrorism or kidnapping, which correspond to organized crime, and not to social movements.

Due to the alarming state of the human rights defenders in Guatemala, and in particular of those who defend the territory and environmental rights, organized civil society must demand a space at the Institute, as originally conceived. Due to their missions, civil society organizations have a better understanding of what human rights defenders experience. This also provides greater support and guarantees the safety of victims in risky situations by promoting protection and alert mechanisms.



Displacement, Barro Blanco
Foto Chiriqui Natural



During the period from 2012 to 2015, there was an increase in the military force in charge of citizen security thus weakening the role of the civilian national police as a result of internal armed conflict in Guatemala. It is unacceptable for human rights defenders to go backwards on the progress made with the national civil police, despite the challenges faced, and the possibility of security falling into the hands of military, taking as an example the Tonicapan slaughter at the Summit of Alaska on October 4, 2012.

The creation and maintenance of the Institute is limited by the Ministerial decision of its members, as to whether to give it the character of Decree of Congress which would raise its level of influence and could assign to it an exclusive budget to strengthen its work. In addition, it is necessary for the Institute to be permanent and not required to renew its mandate every four years. However, there is still a debate whether it is necessary for a State to establish specific mechanisms (laws, policies, offices) for the protection of defenders, or if it is best to ensure that institutions (justice system, security forces) fulfill their obligation to ensure adequate protection for defenders. The discussion is important because experience shows that mechanisms such as the Institute, generally have limited capacity legally (secondary law) and in execution (offices with limited budget and staff for research) and that technical officials do not have enough political power to generate adequate protection.

Critics of this type of ad hoc government institution, state that sometimes they become another bureaucratic barrier to overcome and hinder the work of organizations to achieve proper investigation or prosecution of the perpetrators of criminal acts against defenders. However, this is debated by those in favor of these institutions in which communication with authorities which is sometimes a problem for civil society is facilitated and improved, at least in short - term situations where there is serious lack of protection for human rights defenders.

c. Protection mechanism for human rights defenders and journalists in Mexico.

Felipe Romero³⁵

Background and context of the situation of environmental defenders.

The situation of environmental human rights defenders in Mexico is serious and can be seen in various reports from international organizations. The last report of the Inter - American Commission on the situation of human rights in Mexico³⁶ recognizes the serious context of violence and insecurity which human rights defenders continue to face. Additionally, reports on indigenous peoples, Afro-Colombian communities, extractive industries³⁷ and criminalization of human right defenders,³⁸ warn of the alarming frequency in reprisals, murders, misuse of public force, criminalization of indigenous leaders and defenders who are defending their territory against impacts related to extractive development projects.

³⁵ Lawyer of the Mexican Environmental Law Center AC

³⁶ Inter-American Commission on Human Rights (IACHR) "Human Rights Situation in Mexico 2015", OEA / Ser.L / V / II.Doc. 44/15, 2015. <http://www.oas.org/es/cidh/informes/pdfs/Mexico2016-es.pdf>

³⁷ Inter-American Commission on Human Rights (IACHR), *indigenous peoples, communities of African descent extractive industries*, OEA / Ser.L / V / II.Doc. 47/15, 2015. <http://www.oas.org/es/cidh/informes/pdfs/IndustriasExtractivas2016.pdf>

³⁸ IACHR, *op. cit.*, 20.



In this context in Mexico there are few effective mechanisms to ensure information, participation and access to justice for people affected by megaprojects. This causes various conflicts between the main actors: the government as a driver of investment, the authority approving the project; the State as guarantor of human rights, companies interested in developing projects and key stakeholders; and communities and peoples affected by the fact that their lands and territories are the places where these projects are to be located. Nor are there effective mechanisms for evaluating the environmental, social and cultural impacts of projects, which can cause multiple violations of the human rights of individuals and communities. This situation has led to the emergence of multiple conflicts and social movements in defense of their collective rights and the environment and territory.

Finally, in Mexico there are a number of attacks on defenders of environmental rights. These have been evidenced by CEMDA, which is the only organization that registers cases of attacks on environmental defenders in Mexico. According to CEMDA's 2015 report, in the last 5 years 240 cases of attacks on individuals, communities and non - governmental organizations defending the environment were registered. The attacks were mainly caused by opposition to the implementation of projects related to water, mining, real estate, wind, road, and hydrocarbons. Assaults range from threats to murder³⁹. For its part, the Mexican government, through the Ministry of the Interior, has reported that the protection mechanism for human rights defenders and journalists has granted protection in only 21 cases of environmental activists since its inception until April 2015⁴⁰. This figure is very low compared with the above data.

Finally, in the difficult context of constant attacks on human rights defenders and the lack of a national strategy for prevention and protection some civil society organizations defending people began to demand that the authorities should pay attention to this problem. At the same time, the UN Special Rapporteur for Human Rights Defenders issued recommendations to the States to adopt a policy of protection for defenders.⁴¹

Description of the emerging practice.

The protection mechanism for human rights defenders and journalists implemented in Mexico (hereinafter the Mechanism) is referred to in the Act for the Protection of Human Rights Defenders and Journalists, enacted on June 25, 2012. Also, according to the explanatory statements of the Act⁴², it has its basis Articles 6 and 7 of the Constitution of the United Mexican States, which recognizes as fundamental the peoples right to information and free expression of ideas⁴³.

³⁹ Mexican Center for Environmental Law AC. Report on the situation of environmental defenders in Mexico 2015, Mexico, 2015. <http://www.cemda.org.mx/estudios/>

⁴⁰ Response obtained by requesting information number 0000400145015 submitted to the Ministry of the Interior (Interior Ministry). In different application (0000400179316) data provided by the authority are different, speaking 09 requests for protection for defenders in cases of megaprojects and the environment.

⁴¹ Human Rights Council, Report of Ms. Margaret Sekaggya, Special Rapporteur on the situation of human rights activists, A / HRC / 13/22, 2009. http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-22_sp.pdf

⁴² Explanatory Statement. Decree by which the Law for the Protection of Human Rights Defenders and Journalists was issued. DOF 25-June-2012. [Http://www.diputados.gob.mx/LeyesBiblio/proceso/lxi/257_DOF_25jun12.pdf](http://www.diputados.gob.mx/LeyesBiblio/proceso/lxi/257_DOF_25jun12.pdf)

⁴³ It is important to note that the law seeks to protect human rights defenders and journalists, however in the Explanatory Statement of the law issued by the Congress of the Union primarily raises the plight of journalists in Mexico and the activity carried out by human rights defenders are not addressed.



The Mechanism is federal in scope, generally observed throughout the Republic and aims to establish cooperation between the Federation and the states to implement and operate different types of preventive, protection and urgent protection measures to protect the life, integrity, liberty and security of people who are at risk as a result of the defense and promotion of human rights and the protection of the environment. The Mechanism is composed of three main bodies, the Governing Board, the Advisory Council and the National Executive Coordination and is coordinated by the Interior Ministry. The Governing Board is the highest authority of the Mechanism and principal organ of decision making for the prevention and protection of human rights defenders. It is made up of five members of the federal executive (range undersecretary) of the Interior Ministry, the Attorney General of the Republic (PGR), Ministry of Public Security (SSP), Ministry of Foreign Affairs (SER), National Human Rights Commission (CNDH) and four members of the Advisory Council. The Advisory Council is a consultative body of the Board of Governors, made up of nine councilors elected from the civil society, experts in the defense of human rights and the exercise of freedom of expression and journalism. The councilors are elected through a public call and four of them are appointed to be part of the Governing Board. Finally, the Coordination is the body responsible for coordinating the operation of the Mechanism along with the states, agencies of the federal government and autonomous organizations.

In addition, there are three auxiliary units of a technical and scientific nature. The Unit that receives cases and is required to take quick action is the subsidiary body of the Coordination. It is responsible for receiving requests for joining the Mechanism, defining the type of procedures (ordinary or extraordinary) requested and conduct risk assessments, issue and implement protective measures, and develop and evaluate protocols for implementing protective measures, among others. Moreover, the Risk Assessment Unit is the organ that is responsible for evaluating risks and defines preventive or protective measures and their timing. Finally, the Prevention Monitoring and Analysis Unit, is responsible for implementing actions aimed at prevention.



Indigenous person arrested
Foto Flor Bocharel Diario



It is important to emphasize the participation of CSOs Space⁴⁴, formed by a group of civil society organizations, which is a major player with strong outreach work towards dialogue and monitoring. Defenders and journalists who are under attack, and security experts –consultancy agents- also participate and implement urgent protection measures, including a private company providing security services to human rights defenders who are beneficiaries of the Mechanism.

Results emerging practice.

According to the statistical report from October 2012 to June 2016, the Mechanism has obtained the following results:

- The addition of 333 cases with protective measures: of this number 140 cases are for the protection of human right defenders and only 9 cases for environmental defenders⁴⁵.
- 549 human rights defenders and journalists have benefited from protection measures and currently benefiting 465 people by June 2016. Of that total, 26 cases are collective (156 people in total).
- The implementation of 44 precautionary measures for defenders issued by various human rights protective agencies, both national and international.
- The Implementation of 762 protective measures to protect defenders and 217 extraordinary measures.
- The conclusion of 22 records on cases of defenders.
- The attention of 704 cases by the Board of Governors.

The Act and Regulations that create the protection mechanism are the government's response to an unfavorable context for the environmental rights defenders, and in general for all human rights defenders and journalists. The fact that there is State action to try to reverse the current situation is major progress. The existence of this Mechanism regulated by a law and a regulation provides clear obligations for the authorities in order to implement and operate measures to guarantee the life, integrity, liberty and security of defenders who are at risk as a result of their work as environmental advocates.

The Mechanism has as its principal objective the protection of the life, integrity, liberty and security of human rights defenders through the implementation of protective measures. Also, procedures and defined time periods are established depending on the type of risk in each case. In addition to this, reactive and preventive actions are provided, as well as protective measures in cases of risk, and the third unit can implement actions aimed at prevention. The federal mechanism should coordinate action between the Federation and the States through cooperation agreements where shared responsibilities can be assumed based on the capabilities of each authority, as an example of this is the early warning in the State of Chihuahua to prevent attacks on defenders and journalists.

It is important to involve civil society (defenders and journalists), four (4) in the Governing Board and the Advisory Council, as well as the monitoring work done by CSO Space (civil society organizations). Although CSO Space is not covered by Law, they have had an important role in fostering dialogue with all the actors involved: The Mechanism authorities, defenders and journalists.

⁴⁴ Site of CSO Space: <http://propuestacivica.org.mx/tags/espacio-osc/>

⁴⁵ This last data obtained from the information request number 0000400179316 submitted to the Interior Ministry.



Challenges and learning.

The Mexican State must fulfill its obligations on human rights and through effective mechanisms, ensure the right of communities to information, participation and access to justice in the case of activities and projects that could affect their environment, culture and life. The work and results of the Mechanism since it began operating in 2012 are poor. It takes a greater commitment by the Mexican government to allow the best performance and effective use of resources for the Mechanism and to provide information, participation and access to justice for the environmental rights defenders.

The Third Mechanism Unit (Prevention, Monitoring and Analysis Unit) began its work in October 16, 2015 with monitoring activities, risk analysis, early warning and preventive measures, evaluation of measures, and information and communication.⁴⁶ It is essential that actions focused on real prevention are contemplated, since there must be not only reactive actions, but also preventive that address the root causes of the problem of attacks on environmental advocates.

It is necessary to implement a periodic evaluation of the operation of protective measures in each particular case, to improve coordination between authorities of different levels; allocate larger budgets; respect the times specified in the Act and Regulations as most times are not met; provide information; ensure the participation of the (potential) beneficiaries of protective measures through accessible and flexible mechanisms; periodic assessments of measures of protection of the beneficiary defenders to adapt to new conditions; and to integrate the gender perspective and the specific conditions of each defender, especially in the case of vulnerable groups or communities. Protection measures provided by the Mechanism should be implemented according to each case and specific context, depending on whether it is indigenous, rural or urban communities, organizations, women, or an individual or group. In this regard, measures must be open to change and not be limited to the existing catalog of measures. The protection provided by the State should be broadly focused on providing security and not limited to a catalog of measures.

Currently there are deficiencies, such as lack of political will and coordination between authorities at different levels of government, as well as issues to be resolved in the implementation of the measures included in the law. However, it is recognized that there has been progress. Moreover, hiring private security services by the Mechanism has been unsatisfactory⁴⁷, it is important to note that the Mexican State is obliged to ensure the free work of environmental defenders through various security agencies at the state and federal level. Environmental defenders have indicated distrust in appealing before the Mechanism due to its deficiencies and the general perception that exists on impunity in the country. The data shown by federal authorities on cases where the Mechanism has received a request for intervention by an environmental defender⁴⁸ are very low compared with the 250 cases of attacks recorded by CEMDA in recent years. This means that, despite the large number of cases of attacks against environmental defenders, few are turning to the state to receive some measure of security.

⁴⁶ Response obtained by requesting information number 0000400180016 submitted to the Ministry of the Interior (Interior Ministry).

⁴⁷ CSO Space, Second diagnosis of the implementation of the Mechanism for human rights defenders and journalist, México 2015, p. 57.

⁴⁸ Response of the Ministry of the Interior of Mexico to requests for information 0000400145015 and 0000400179316.



d. The Ombudsman of Panama.

Susana Serracin⁴⁹

Background and context of the situation of environmental defenders.

In recent years we have noted with concern the tendency to criminalize, stigmatize, defame and delegitimize the work of those who defend and promote human rights in Panama. This has been done in order to hinder the work of environmental defenders and question their personal or professional integrity and honesty with assertions that they are against the “development of the country” and “national unity”. They are accused of promoting riots, acts of crime and threats to national security, and subjected to being called subversives, terrorists and other serious charges. Bounded by these accusations, the loss of legitimacy extends to the organization in which they work, the community in which they live or the entire social movement. Among the main causes of criminalization of human rights defenders are:

- a) Attacking the legitimacy of the work of the human rights defender, and initiating lawsuits against them.
- b) Minimizing or ignoring their work.
- c) Intimidation and prevention of the development of forums for the protection of human rights.

Aggression against human rights defenders is often related to projects including challenges against mining, hydroelectric or other megaprojects. It has been reported that, in some cases attacks occur with the consent and support of the State. Police abuse, arbitrary arrest, denial of medical care, repression and militarization of security have been identified as threats to human rights.

The Report on Human Rights delivered by the Alliance for Citizen Pro Justice highlights the lack of knowledge about human rights defenders and that the defenders themselves do not know the mechanisms and devices that can be used to improve their visibility and protection as well as the international framework that defines them. There are no figures or precise data on attacks on environmental advocates. However, the report acknowledges that “although the situation of human right defenders in Panama does not have the gravity of other countries in the region, there is a need to continue spreading information including, on their rights and the legitimacy of their actions in the development of a democratic society, with the objective to collaborate to reduce risk levels and hostility”⁵⁰.

Description of the emerging practice.

The Ombudsman is an institution of the Panamanian State that ensures the protection of the human rights of all citizens of the Republic of Panama. It acts with full independence and administrative and financial autonomy without receiving instructions from any authority or organ of the State. The powers of the Ombudsman in accordance with the law are clearly defined: to investigate, conceal or report acts or omissions of public servants that may constitute violation of human rights. Broadly, the duties of the Ombudsman are exercising non-judicial control of public administration and defending human rights against government authorities.

⁴⁹ Researcher of Center of Panama Environmental Advocacy (CIAM).

⁵⁰ Alliance for Public Justice, “Situation of human rights defenders in Panama”, 2012. https://www.academia.edu/13429431/Informe_sobre_situaci%C3%B3n_de_defensores_as_de_derechos_humanos_en_Panam%C3%A1?auto=download p. 28.



The Ombudsman can also investigate and report facts, acts or omissions of public or private companies, individuals or legal persons performing a public service by concession or administrative authorization that may constitute violations of human rights. The Ombudsman is not an alternative legal remedy for private persons as it does not exercise judicial or administrative or disciplinary functions.

The authority of the Ombudsman rests on the moral strength of the institution as representative of the people and delegated by popular power. However, The Report on Human Rights delivered by the Alliance for Citizen Pro Justice stated that “It should be noted that the evaluation of the performance of the national human rights institution, the Ombudsman, by the generality of the people interviewed, gives a deficient rating in terms of its capabilities to implement its goals and achieve its objectives of promotion and protection of human rights and as a space for dialogue and mediation of conflicts. Those interviewed also point to the poor relationship between the Ombudsman and the community of human rights defenders”⁵¹.

This National Institution for Human Rights was established by Act No. 7 in February 5, 1997, amended in December 1, 2005 by Law No. 41 and No. 55 in October 2, 2009. The Ombudsman is considered a constitutional legal instrument under Articles 129 and 130 of The Constitution of the Republic of Panama by the 2004 No.1 Legislative Act. Article 129 of the Constitution states that “The Ombudsman shall ensure the protection of rights and fundamental guarantees enshrined in the Constitution as well as under international agreements on human rights and law, through the non-judicial observation of the facts, acts or omissions of public servants and those who provide public services, and act so that they are respected”

Meanwhile Law No. 7 of 5 February 1997 provides in Article 2 that “The Ombudsman shall ensure the protection of the rights established in Title III and other rights enshrined in the Constitution of the Republic of Panama as well as rights under international human rights agreements and the Law, by controlling the facts, acts or omissions of public servants and those who provide public services, and act so that they are respected under the terms established by this Act”.

According to the Constitution, the Ombudsman will act under the direction and responsibility of the head of the ombudsman's office and is appointed by the Legislature for a period of five years, within which time the person in charge shall not be suspended or removed. The Ombudsman is confirmed by the vote of two thirds of the members of the National Assembly, with powers defined by law. Operationally the Ombudsman has work related to: Citizen Guidance, Department of Education, Promotion and Academic Research, Department of Ecological Affairs, Directorate of Protection of Human Rights, Department of Protection of the Rights of Women, Department of Specialized Units, Regional Offices and Offices of Persons Deprived of Liberty.

⁵¹ *Ibid*, p. 12.



Results emerging practice.

The creation of the Ombudsman, has led to legal recognition of organizations in socially controversial issues such as the rights of people with diverse sexual orientation and gender identity; positioned women's issues, environment, gender, and sexual diversity among others in the media despite weaknesses in coverage and focus. As well as publishing reports on human rights violations, as the events of Changuinola, San Felix and Columbus, the fire in the Juvenile Detention Center Tocumen, and including parallel reports on the situation of human rights in Panama and evaluation mechanisms of the country in the universal system of human rights protection. The Ombudsman also has a role related to thematic hearings of the Inter-American Commission on Human Rights.

Despite these advances, it is worth noting that in practice, human rights defenders report the following:

- a) Little attention of authorities and officials in response to human rights conflicts. The majority of those interviewed state that they go to political authorities with administrative and institutions functions at the administrative level and often they are faced with negative responses, or delaying or diversionary tactics.
- b) In relation to access to justice, as shown by the data on access to lawyers, access is difficult. Response usually go against the interests of individuals or communities who consider their human rights affected.⁵²

The Ombudsman is empowered by constitutional mandate to carry out functions to protect human rights, especially the most vulnerable groups who receive personalized attention through visits to prisons and shelters. This can manifest itself in support before judicial authorities and police, counseling, lectures and moral support for victims. The Office often has working relationships with Ministries, as well as with senior members of the security forces, and prosecutors, etc.



Information process of prior consultation for Amazon waterway, Peru.

⁵² *Ibid*, p.11-12



The Ombudsman has established permanent communication with non-governmental organizations for the protection and defence of human rights and welcomes cooperation agreements with non-governmental, national, foreign and international organizations. This interaction takes place through the implementation of methodologies and techniques, such as promotional campaigns, radio and print media, as well as coordination of workshops and joint projects with these organizations. However, despite the above it is worth mentioning that “In an interview with the General Secretariat of this institution (the Ombudsman), the office has shared the perception of institutional constraints originating in the Act 7 of 1997 as well as the political reality of the country, and many of the concerns of civil society on the issue of defending human rights and protection of the defenders”⁵³.

Challenges and lessons learned

The existence of the Ombudsman may reflect real political will and in some cases has led to substantial progress, and however its mere existence does not per se result in an improvement in the situation of human rights defenders. The challenge is to recognize and enforce the responsibility of the State regarding the proper protection of human rights defenders and the fight against impunity. From this point of view, rather than assess the immediate results of national protection programs we would have to assess the capacity of civil society to generate the proper response by the State. Therefore, it is important that the rules governing the protection offices have the necessary network of institutional relationships. Furthermore, on a more technical level, problems such as insufficient allocation of resources or poorly trained officers can result in very little effectiveness.

It is necessary to strengthen the institutions related to the protection of human rights by reviewing their regulatory framework and monitoring their budgetary actions, mechanisms of action, efforts and results. It is important to include mechanisms, laws and policies, actions and measures to address and prevent criminalization, avoid lackluster responses and promote the protection of human rights. In this regard, it is necessary to encourage the creation of national and regional networks of support and protection for defenders.

As a final thought, it should be noted that it is important to strengthen the legitimacy of the work of human rights defenders, especially in the country’s democratic development in its broadest and deepest sense. There is significant room for improvement in protection programs, especially better oriented protection and prevention of attacks rather than reactive measures, with the investigation and trial of those responsible for attacks against defenders, and the institutionalization of a democratic culture human rights, etc. In this regard, it is still essential to raise awareness and emphasize the importance of education in human rights, so that society as a whole recognizes the importance and contribution of human rights defenders. . This is important because when a person is prevented from acting in the defense of human rights, it directly affects the rest of society.

⁵³ *Ibidem*, p. 12.



e. Prior consultation in the case of Amazon Waterway in Peru.

Iris Oliveira and Ariane Thenadey⁵⁴

Background and context of the situation of environmental defenders.

In 2014, Peru was ranked the fourth deadliest country for environmental rights defenders according to Global Witness. Most of the victims are indigenous leaders. Many of these deaths originated in relation to conflicts with mining projects, but situations of violence are widespread due to increasing pressures around the extractive sector. The murder of four Ashaninka leaders by illegal loggers in Madre de Dios a few months before the Conference of the Parties (COP-20) of the UN Framework Convention on Climate Change (UNFCCC) held in Lima, shocked the international community and forced the Peruvian government to engage and develop measures for the protection of environmental defenders. The current national political context is marked by the government's open stance in favor of an economic model based on the extraction of natural resources. This may create increased risks for Peruvian environmental defenders in the coming years.

Description of the emerging practice.

The river system is the main means of transport in the Amazon region of Peru, due to the lack of technical and economic means of other ways of transport. However, this system is often limited by the existence, at different points of its way, by restrictions on navigation due to morphological changes, lack of depth or the presence of palisades among other things. Faced with these conditions, the project "Amazon Waterways", promoted by the Ministry of Transport and Communication (MTC), aims to establish a system capable of developing and maintaining navigation in safe conditions 24 hours a day, 365 days a year in the areas of the Huallaga, Marañon, Ucayali and Amazon rivers.

The investment of approximately USD 70 million, seeks to connect the northern coast of Peru with the interior of the continent, providing a corridor from Brazil to the huge Asian market and Australia. The area of influence of this project covers 14 indigenous peoples grouped in 410 indigenous communities representing a total population of 60,199 people. Indigenous peoples regional representative organizations are the Regional Organization of Indigenous Peoples of Eastern Peoples (ORPIO), the Regional Coordinator of Indigenous Peoples San Lorenzo (CORPI SL) and the Regional Organization AIDSESEP Ucayali (ORAU). As a result of a lawsuit introduced in 2013 by indigenous peoples (promoted by the Cocama Association for Development and Conservation San Pablo de Tipishca, ACODECOSPAT), the MTC held the consultation process for the Amazon Waterway Project between March and September 2015 which was the first experience of consultation on infrastructure in the country.

It is considered that this experience is, in many respects, an example of raising standards in the implementation of the right to prior consultation of indigenous peoples. Indeed, compared with the previous consultation processes carried out in Peru, replicable good practices in future processes can be identified. For example, about the information, the information process was extended during the dialogue stage approximately one month, responding to the demands of indigenous organizations, for the first time, of the consultation measures in the concession contract and recognition of an indigenous independent monitoring program.

⁵⁴ Researchers of Law, Environment and Natural Resources of Peru.



Other significant improvements observed in this process are the application of principles governing the right to prior consultation including the principles of participation, flexibility and good faith.

In Peru, the right to prior consultation of indigenous peoples is recognized and regulated by Law No. 29785 and its Regulations. Both standards (Article 15 of the Law and Article 23 of the Regulations) stipulate that the consultation agreement is binding on the parties. Therefore, good practices included in the terms of the agreement have a legal basis and are binding on the parties, such as the recognition of the independent indigenous surveillance program or the multi-sectoral team work institution (agreements reached in the consultation process). However, it should be noted that the right to consultation in Peru does not set any precedent and such advances are not binding for future consultation processes. In addition, many of the good practices that have been identified in the case of Amazon Waterway are not in the terms of the consultation agreement but rather are lessons learned about the practical implementation of the consultation process. These are not, therefore, recognized by a legal framework but rather are tools for the proper enforcement of existing rules.

The actors who participated in the process of prior consultation in the case of Amazon Waterway were the MTC in its capacity as promoter, the Vice Ministry of Multiculturalism in its capacity as the governing body of the prior consultation in Peru and 14 indigenous peoples from the land that was affected by the project, through their respective base federations and regional indigenous organizations (ORPIO, CORPI SL, ORAU) accompanied by their team of advisors which was composed of civil society organizations.

Results emerging practice.

In this case study good practices regarding the right to information and participation of indigenous peoples through the application of the principles of flexibility and good faith were adopted. Among the good practices identified regarding the right to information of indigenous peoples, the most representative is undoubtedly the extension of the time period within the information stage for the demands of the indigenous peoples consulted.

Among the good practices identified regarding the right of participation of indigenous peoples, one can cite the participatory development of the Consultation Plan. Although Article 15 of the Peruvian Law of Consultation only raises the possibility for the promoter to inform indigenous organizations about the consultation plan by preparatory meetings; in the case of Amazon Waterways the promoter went beyond providing mere information and allowed real participation of organizations in preparing the evaluation, enabling the adoption of a Consultation Plan agreed with all peoples required to be consult. In fact, this good practice is already happening in other consultation processes. The same was observed regarding the development of a joint methodology between the sponsoring entity, the governing body and indigenous organizations. Previously, the methodology had been developed only by the promoter with the advice of the governing body, but without the opportunity for participation by indigenous organizations.

The joint development of the Consultation Plan and methodology with the participation of indigenous peoples gave confidence to the people consulted and allowed a better response to their demands. The participation of indigenous peoples was also more substantial than in other consultation processes through the recognition of a team of advisors composed of civil society and the creation of spaces and times for organizations and consultants to work together. These coordinated actions allowed indigenous peoples



to adopt a position and formulate clear and agreed demands. As a result, participation and dialogue were much more organized and productive.

Another good practice in this process was the identification, for the first time, of the concession contract and the terms of reference for the Environmental Impact Study (EIS) as measures for consultation. Through this, indigenous peoples are allowed to substantially influence measures that may affect them and fulfill the objective of prior consultation. Other results are the recognition of an independent indigenous monitoring program, the commitment to develop the environmental capacities of indigenous monitors, which are important advances in the protection of defenders insofar as they recognize and institutionalize their work and grant them a tool for protection and conservation of territory. It is an example of how effective participation of indigenous peoples in consultation processes can lead to the adoption of measures for the protection of environmental human rights defenders.

Finally, the creation of a multisector working group responsible for promoting dialogue with indigenous peoples within the area of influence of the project in order to address the problems they face (e.g. the need to encourage productive projects, legal physical healing, health, education, among others) ensured a response to the social demands of indigenous peoples. In this regard, the working group can maintain and develop the dialogue between indigenous peoples and the State, thus reducing the likelihood of generating conflicts.

More than 60 agreements were closed as a result of a dialogue between indigenous peoples and the State, linked to the measure consulted, with concrete contributions to EIS, such as the inclusion of three wise indigenous in the EIS drafting team, with the purpose of identifying cultural affectations; contributions to the terms of the Concession Agreement as protection of the territory of indigenous peoples; easements will not apply to them; view of the river as part of the territory of indigenous peoples, beyond the communication means. The possibility to consult on the EIS and that it should identify new impacts to indigenous peoples was addressed, which included a major challenge in Peru to incorporate more time for prior consultation. In addition, agreements for institutional improvement and environmental management of the transport sector were finalised.

Prior consultation is a collective right of indigenous peoples which aims to enable them to influence decisions that may affect them to guarantee their fundamental rights. However, many consultation processes are carried out simply in order to comply with a formal requirement. To lose sight of the objective of this process, it is devalued and the prior consultation ceases to be a tool for dialogue between the state and indigenous peoples, increasing the risk of growth of socio-environmental conflicts that end up costing the lives of human rights defenders.

In this sense, identifying good practices that ensure substantial compliance with the objective of prior consultation is a step forward in the protection of human rights defenders. The progress made in this area is essentially located at the preventive level. However, examples such as the recognition of indigenous monitoring in the agreement show that by allowing real participation of indigenous peoples in the consultation process, protective measures can be achieved that directly protect environmental human rights defenders.



Challenges and learning.

Environmental human rights defenders in Peru, lives and security are most at risk in the context of socio-environmental conflicts. The consultation, understood as an exercise in intercultural dialogue through which the State recognizes different and respects their rights, is a powerful tool for the prevention of socio-environmental conflicts. However, when the consultation is assumed to be a simple administrative procedure, it is devalued and it loses the ability to prevent socio-environmental conflicts. In Peru, to date, 24 consultation processes have been held, most of them in the hydrocarbon sector⁵⁵. In practice, the vast majority of these processes have been carried out as mere administrative fulfillments without reference to the main purpose of the consultation and, therefore, increasing the risk of conflict. For Amazon Waterway it offers examples of good practices that allow an implementation of the consultation that best meets their objectives.

To conclude, what Amazon Waterway case teaches us is that a consultation process properly conducted has a double potential for the protection of environmental human rights defenders: indirectly preventing socio-environmental conflicts that claim lives and directly promoting the recognition and visibility of their work. For this potential to be fully realized, it is necessary that the consultation process is assumed as a tool for intercultural dialogue and not simply as a social license. There are good practices, as shown by the case of Amazon Waterway in achieving this ideal approach.

In addition to preventing socio-environmental conflicts, properly conducted prior consultation also offers indigenous peoples the opportunity to adopt measures for the direct protection of these defenders. For example, in the case of Amazon Waterway, the consultation agreement included recognition of indigenous independent monitoring program and the training of indigenous environmental monitors by the proponent. Many efforts for the protection of environmental human rights defenders are focused on recognizing their work. This recognition is directly involved in their protection as it allows the mobilization of the media and public opinion against any aggression towards them, which in turn diverts aggressors.

f. Citizen Enforcement of Environmental Law in Trinidad and Tobago.

Natalie Persadie⁵⁶

Background and context of the situation of environmental defenders.

Environmental Democracy is new to Trinidad and Tobago. However, there has never been any real threat to those who seek to defend the environment, as has been experienced by some of our Latin American defenders. The greatest difficulties faced in the environmental field are compliance with and enforcement of the law. Environmental defenders, therefore, struggle with access to justice, which relates directly to their ability to seek enforcement of existing environmental laws.

⁵⁵ According to Amazonian Center for Anthropology and Practical Application. <http://www.caaap.org.pe/website/2016/07/07/gobierno-central-tramita-24-procesos-de-consulta-previa-en-el-peru/#>

⁵⁶ Text by Natalie Persadie of the Faculty of Social Sciences of the University of the West Indies.



Description of the practice.

In 1995, Parliament enacted the Environmental Management Act⁵⁷ (“the Act”) which includes a provision for private third parties to take specific actions to ensure compliance with and enforcement of the law. It established a specialized environmental court, known as the Environmental Commission, to hear and determine specific matters arising out of the Act. Section 69 of the Act allows for what is known as Direct Private Party Action, where any private party may institute a civil action in the Environmental Commission for specific violations. This was complemented by the enactment of the Judicial Review Act⁵⁸ which allows persons to question the decision-making process of any public body or authority, including those with responsibility for the environment.

Prior to the enactment of the Act, environmental law in Trinidad and Tobago was a piecemeal approach to environmental responsibility and was scattered among various governmental entities. Enforcement was also particularly difficult, as matters were filed through the general court system where numerous delays were experienced. Environmental matters brought before the court, though very few in number, generally were only pursued by persons directly and personally affected.

The new environmental legal regime has changed many of these deficiencies. As noted above, the new environmental law introduced a provision that allows any private party to bring an action against someone who is in violation of an environmental requirement where the Environmental Management Authority, the regulator, is not enforcing the provisions of the law. Environmental requirements under the Act (noted in its section 62) require persons to comply with standards, as prescribed under subsidiary legislation made in accordance with the Act, and to apply for permission to conduct certain activities, among other things.

Where there is a claimed violation and the regulator fails to ensure compliance, environmental defenders have the legal right to force compliance through the procedure detailed in section 69. In tandem with this section is the Judicial Review Act, which allows persons to question the decision-making process of any public body or authority, including those with responsibility for the protection of the environment.

With respect to actions under section 69, environmental defenders may force compliance through the procedure detailed therein. The private party must first bring the claimed violation to the attention of the regulator and give it the opportunity to act within 60 days. Once the procedural requirements have been met by the environmental defender and the regulator still fails to assume responsibility for taking enforcement action, he may file an action before the Environmental Commission to compel action by the regulator.

In other cases not covered by the Act, an environmental defender may take action under section 5 of the Judicial Review Act. Even though the law is not specific to environmental issues, it allows persons to question the decision-making process of any public authority or body. This law has been successfully used to challenge the decision-making process implemented by the regulator to grant certain permissions to undertake development projects that did not properly take into account relevant environmental factors.

⁵⁷ Ch. 35:05 (revised laws of Trinidad and Tobago, 2014).

⁵⁸ Ch. 7:08 (revised laws of Trinidad and Tobago, 2014).



What makes the Judicial Review Act so important is that it allows affected persons to have another person or group (such as environmental defenders) to file an application on their behalf where they are unable to do so “on account of poverty, disability, or socially or economically disadvantaged position”⁵⁹. The implementation and enforcement of these legal provisions involve key actors, such as the Environmental Management Authority (the regulator), the Environmental Commission (specialized court), the judiciary (regular court system) and environmental non-governmental organizations (either acting on their own behalf or on behalf of individuals unable to do so themselves).

Results of the practice.

As noted above, there has never been any real threat to environmental defenders in Trinidad and Tobago. Nevertheless, by institutionalizing citizen enforcement in the law itself, the State has vested in environmental defenders the right to access justice. Including in the law the right for third parties to take action to ensure compliance with and enforcement of the Act, and the right to act on behalf of disadvantaged and affected people, has encouraged environmental defenders to take legal challenges where they were unable to do so before. In addition to directly challenging the regulator’s enforcement of the law (through section 69), they may also act on behalf of others to question whether the proper process was followed in coming to a decision that affects the environment, once they are acting bona fide (the Judicial Review Act). These rights to act, now enshrined in the law, did not exist before the year 2000 and therefore were not previously available to environmental defenders. Prior to 2000, only persons directly affected were able to take legal action. This is certainly progress in enshrining environmental defenders’ right to undertake legal challenges to ensure good environmental decision making, enforcement of the law, and protection of the environment on the part of the regulator.

Challenges and lessons learnt

The types of direct private party actions that may be brought before the Environmental Commission should be expanded. There are three environmental requirements that are explicitly excluded from the environmental defender’s reach and for which he is not entitled to take legal action. These include, inter alia, the provision of information in a timely manner and compliance with standards prescribed in subsidiary legislation under the Act. For example, where the regulator requests that an applicant submit information, it must be done in a “timely manner”, which leaves the timeliness of the submission at the applicant’s discretion. If the applicant chooses to take six months to provide the information, for instance, an environmental defender cannot take action to compel the applicant to submit the information sooner.

One of the challenges in being able to take either direct private party action or an action under judicial review is that constant monitoring (of decisions taken or non-enforcement of the law) of the regulator is required. This would allow the environmental defender to act promptly; however, he might not always have resources available to undertake such monitoring. Moreover, information is not always readily forthcoming or correct, whether from the regulator or the claimant. It was unsuccessfully argued in *Fishermen and Friends of the Sea v The Environmental Management Authority and BP Trinidad and Tobago* that the regulator withheld important information from the environmental non-governmental organization that led to its delayed, and subsequently denied, application or judicial review. In the case *Concerned Residents of Cunupia, Second Claimant v Environmental Management Authority, the Defendant and RPN Enterprises Limited Interested Party*, the judge dismissed the application for judicial review on the basis of material non-disclosures on the part of the claimants.

⁵⁹ Section 5 (6).

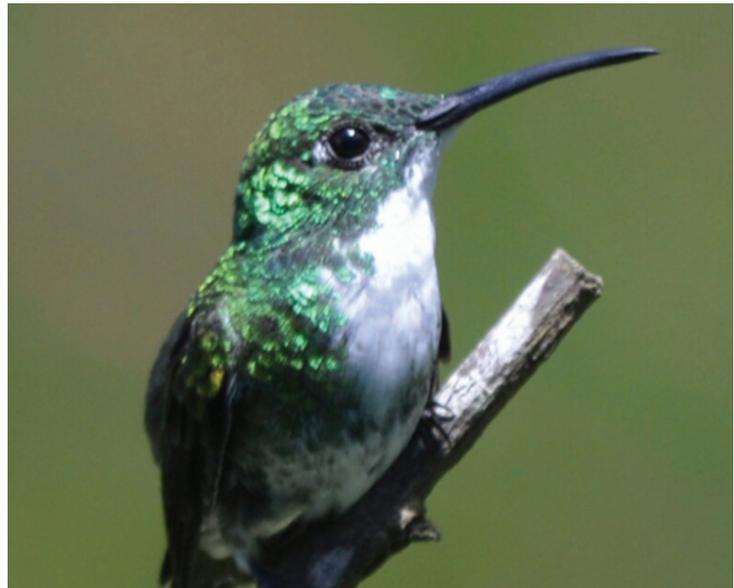


Some judicial review actions require expert technical assistance not available in Trinidad and Tobago. It was only in preparing some of the earlier actions that the environmental non-governmental organizations learnt that international networks of environmental technical and legal experts were willing to work on local cases pro bono simply because of their interest in environmental protection. This proved to be a real boom to the initiation of legal challenges being undertaken by environmental defenders, regardless of the outcome. Environmental defenders, therefore, must be prepared to work quickly in bringing any action before the courts.

Observations and general comments

It has generally only been environmental non-governmental organizations, on their own behalf or on behalf of others, that have elected to explore the legislative provisions to compel the regulator to ensure compliance with the Act or question the decision-making process of public authorities as they relate to environmental matters. This might largely be due to the financial inability of individuals to bring the matter to court, although costs have rarely been successfully awarded against the claimants / applicants, or simply out of general disinterest. The environmental non-governmental organizations have real concern in ensuring environmental protection and were genuinely interested in legally challenging the regulator to determine if and how the new laws would work.

The first judicial review case brought to court (Fishermen and Friends of the Sea v The Environmental Management Authority and BP T&T) was unsuccessful on purely procedural grounds at all stages (High courts to court of Appeal). This was rather disappointing, as the refusal of the court to grant leave on the ground of delay meant that the substantive environmental matters raised could not have been explored. Nevertheless, this case was a trial run and the environmental defenders learnt from that process. More importantly, both pieces of legislation have now enshrined in law the right of environmental defenders to take action in pursuit of environmental protection, even if they are not directly affected by the decision taken by the regulator.



Hummingbird at Asa Wright Nature Centre ©
Gillian Beharrylal 2016 Foto Flor Bocharel Diario



Conclusions.



TRINIDAD Y TOBAGO
The Hall of Justice © CNC3 2015

This study is a first attempt to identify emerging practices in the Latin American and Caribbean region for the protection of environmental human rights defenders. The cases presented range from preventative measures e.g. Trinidad and Tobago - provisions to guarantee mechanisms on access to justice - to measures to protect environmental defenders at risk e.g. Brazil – provisions for specific protection measures for individuals.

The cases described here represent various efforts to protect defenders and have been categorized into prevention measures such as the cases of Panama, Peru and Trinidad and Tobago whose objectives guarantee mechanisms for access to justice and the development of processes of prior, free, informed and in good faith consultations against measures and/or development projects and infrastructure that may affect indigenous communities and peoples, as well as ombudsmen aimed to document and prove violations to human rights and legal figures in judicial proceedings. These emerging practices constitute progress in the prevention of harm and protection of environmental defenders. However we have identified in almost every case challenges in implementation and enforcement that require improvement to meet their objectives in light of the international standards. Indeed there is a clear need to create stronger security programs to protect human rights defenders, built to take into account the specificities and needs of the people who exercise this work of defending human rights in their countries.



All the practices described in these case studies have a legal basis (decrees, laws or agreements). Some countries in the region have a specific law to protect human rights defenders which provides mechanisms for environmental human rights defenders to request protection from the State. It is clear in the case of Federal States; issues involving coordination between different authorities in different levels of government have created specific complications in the implementation of these practices. Also the examples show that protection measures for environmental human rights defenders can be collective in scope, since they are often groups, such as whole communities who organize to defend their territory and the environment.

A positive development has been the inclusion of civil society participation in many emerging practices, which is an important advancement. Emerging practices in this study show the importance of the role that civil society has played not only in the creation of institutional mechanisms but also in their operation. In several protection mechanisms human rights defenders themselves get involved in making decisions on the creation and implementation of these measures. The practices described in the case studies however, show the inherent weaknesses in a number of these measures illustrating that these measures may not provide protection in practice.

It is possible to draw some conclusions about the challenges in the implementation of protection measures for environmental human rights defenders. First, to ensure the creation of effective measures of protection for environmental rights defenders, it is clear that the participation of all sectors involved, government, defenders and civil society must be secured to ensure such measures address the individual and specific needs and concerns of all. Also from the case studies, introducing measures via an explicit legal framework may ensure the creation of important institutions with a mandate to implement protective measures that can be used to demand accountability.

Preventative and not only reactive measures are essential to reduce risks to environmental defenders. As many attacks occur in the context of major development and infrastructure projects, a real focus on practices that aim to guarantee the rights to information, participation and access to justice in environmental matters of individuals and peoples that live in the affected territories is necessary to safeguard their human rights and territory.

While this was not an extensive study it is clear that the various protection practices, have only achieved modest results in protecting environmental defenders. However, based on these findings we propose the following specific recommendations:

- States should diagnose and monitor attacks on individuals, communities, organizations and movements defending the environment, land and territory are needed in all countries to identify patterns in the attacks in order to design effective programs of protection.
- States must re-commit to take efforts to promote, protect, and ensure the right of defenders to practice their work freely without any kind of attacks.
- States should provide legal certainty in terms of development of protection measures to systematically address national deficiencies through a legal framework.
- Civil society has an essential role to play through monitoring, reporting and follow up of the actions of the authorities in ensuring compliance with the practices.



- Specialized programs to protect environmental defenders must be supported by strong political commitments to invest institutions with resources and sufficient and qualified staff who are assigned to take concrete actions⁶⁰.
- Mega-projects raise particular difficulties for environmental defenders in many countries and specific controls to reduce risk are essential in the development of precautionary measures. This includes the creation of policies that ensure effective mechanisms of access to information, participation and justice in environmental matters.
- Countries in the region should seize the opportunity of negotiating a regional Principle 10 agreement on access to information, participation and justice in environmental matters to include their commitment to the protection of environmental defenders adopting effective mechanisms to have access to information, participation and justice in environmental matters. In particular, more deliberate measures need to be taken ensure the right of participation of indigenous communities and rural communities.
- International standards require taking into account the situation of vulnerability in which environmental defenders are living. This includes having a gender perspective in their design and including the specific experiences and context of environmental rights defenders. Consequently such protection must meet the standards set by the Special Rapporteur on the situation of human rights activists, as well as the Inter-American Commission on Human Rights.
- Finally, for indigenous communities and peoples that defend their rights to land and territory, collective measures should be contemplated to ensure their work and comprehensive security based on their cultural diversity and specific contexts.



Guatemala.
José Pablo Chumil.

We hope that this report will serve as a springboard for reflection on the current environmental landscape, and for building more effective programs for the prevention of environmental conflicts and for the protection of environmental defenders. In this regard, more research is needed to allow for a more comprehensive review of existing prevention and protection measures throughout the region, to identify the reasons for their development in specific countries and their respective conflict patterns, as well as to assess existing mechanisms so we may strengthen them and increase our ability to defend environmental rights without violence.

⁶⁰ CIDH, op. cit., 9. para.541 (recommendation 9).



Annex 1. Indicators.

Initially, the following indicators in the form of questions were used in order to support the researcher in identifying “good practices” in the area of protection of environmental rights defenders, considering their scope in the legal framework and their application in the reality. Subsequently we decided to use the term “emerging practices”, since each of the case studies need to be strengthened in different aspects.

■ GOOD PRACTICES IN THE LEGAL FRAMEWORK.

Is there a legal framework that has a broad and inclusive definition of environment and human rights defenders? Does the law recognize different tasks and objectives for the defenders? Is there a system for protection of defenders of the environment? Are there mechanisms to ensure the right of affected communities to reject mining investment projects unless they give their free, prior and informed consent? Are there measures and standards that provide special protection for lands and territories of indigenous peoples? Is there a specific legal recognition of the obligation of the State to protect environmental defenders?

■ GOOD PRACTICES ON IMPLEMENTATION OF MEASURES OF PROTECTION.

Are there any actions of protection by the State in practice? Is there a recognition of environmental defenders in contexts of large investment projects? Is there medical and psychosocial support for the defenders and their families if attacked?, Is there equal treatment and non-discrimination? Are you working on preventing attacks? Has there been special rapporteurs visiting the country? Are there any efforts in addressing their recommendations? Is there any proof of remedies and adequate compensation to victims and local communities to remedy that has suffer a direct and/or indirect human rights abuse? Is there training for public officials on the importance and legitimacy of human rights defenders and the obligation of any State to protect them? Are defenders confident that the State is seeking to protect them? Have government made any announcements in favor of the defenders? Do defenders trust the authorities responsible for implementing good practice or protective measures? What is the protection provided by this good practice and what is the progress in its implementation?

■ COMPLEMENTARY INDICATORS.

What is the protection provided by this good practice and what is the progress in its implementation? What are the criteria for accessing protection by a defender? Are the procedures clear and simple to get access to simple protective measures? What kind of measures are contemplated in practice? Are Protection measures adequate? What is the purpose of the protection afforded by this practice?, How long do the measures last ? Are their protective measures for individuals and groups (collective)? How are these measures defined and do defenders get to choose specific protection measures? who defines how the defender participates in defining their own measures? Is there a periodic review of risk and protection measures? Does this include measures to reduce vulnerabilities and to confront direct threats? Are any granted protective measures proportionate, effective and according to social context? Does the government provide confidentiality of personal data of the defender? Who are the authorities responsible for implementing and / or run good practice? Is there sufficient budget? What results have been achieved and what is the progress? Are there precedents where a person or organization is brought to trial including gthe perpetrators and masterminds of an attack? Is there a periodic evaluation of protection practice? Granting the protective measures allows the Defender continue doing their work? What is the perception of the defenders on good practice and on the operation of the scheme?



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