

How the Inter-American Human Rights System works to protect human rights defenders

27.05.2014

States must adopt laws and policies, and establish mechanisms, to protect human rights defenders from arbitrary restrictions and attacks, writes José de Jesús Orozco Henríquez.



By Commissioner José de Jesús Orozco Henríquez, Rapporteur on Human Rights Defenders of the Inter-American Commission on Human Rights

Since its foundation 50 years ago, the Inter-American Commission on Human Rights (IAHCR) has monitored the situation of human rights defenders in the Americas and has employed protection mechanisms to protect the life and physical integrity of persons persecuted for their activities to defend human rights. Following the adoption of the UN Declaration on Human Rights Defenders, and at the initiative of the Executive Secretary of the Commission, a Unit for Human Rights Defenders was established in 2001. In 2011, responding to need for the grave situation faced by defenders to be given greater visibility, and to enable follow up to specific cases, the IAHCR created the mandate of the Special Rapporteur on Human Rights Defenders. The Rapporteur is also charged with monitoring the situation of judges, prosecutors and public defenders in as far as their work relates to access to justice.

Amongst the most frequent violations defenders face in their work to promote and protect human rights are assassinations, threats, harassment, illegal, arbitrary or undue interference in their work, and violence meted out during social protests. These acts are designed to generate fear, discourage the human rights defender community, and silence and terrorise victims. In recent years, the Office of the Rapporteur has noted an additional obstacle – that of criminalisation, understood as being subjected to penal investigations and judicial complaints that are without foundation, aimed at intimidating defenders and paralysing their work.

There is a lack of effective State measures to protect defenders in situations of most risk, and a very low rate of effective investigation of threats and attacks. The majority of States in the Americas have not put specialised protection measures in place. Those measures that have been created fall short, either providing security to defenders without investigating the origin of the threats, or vice versa. This shows a lack of comprehensive State protection policies, which perpetuates the vulnerability of defenders and adversely affects their work.

The challenges the Office of the Rapporteur faces include ensuring a timely response to situations where the rights of defenders are compromised, and choosing the most effective amongst the mechanisms used by the Commission to urge States to take decisive action to protect defenders, such as by developing effective policies and practices for the protection of human rights. There are several such means and mechanisms available to the Commission, namely: requesting information from States; issuing press statements; holding public hearings and working meetings; adopting precautionary measures and requesting provisional measures from the Court for the protection of defenders; considering individual petitions; and elaborating thematic reports.

The Commission is clear that the most effective way to address the challenges faced by defenders is through the adoption by States of a comprehensive framework of protection aimed at undercutting the risks faced by individuals and enabling the continuation of their work. Such a framework should include: refraining from putting obstacles in the way of defenders work; adopting public policies and norms that enable the work of defenders; protecting them from threats and risks to their lives and physical integrity; and guaranteeing investigations of violations committed against them. Furthermore, given that a third of precautionary measures issued by the Commission are aimed at protecting the life and integrity of human rights defenders, it is essential that the national protection policies include measures to establish systems for the swift and effective implementation of protection measures, including those coming from the Commission. A further critical component of these policies is the public acknowledgement of the legitimacy of the work of defenders and their contribution to the strengthening of the rule of law and protection of human rights.

There have been important advances through the work of the Unit and the Office of the Rapporteur. In the [first report on the situation of human rights defenders in the Americas, in 2006](#), the Rapporteur highlighted that the full and free exercise of the right to defend human rights entails that defenders are not victims of violations of their rights protected under the American Convention. The [second report of 2011](#), encouraged the creation of national protection mechanisms in several countries in the hemisphere. Recently the Rapporteur published a report '[Guarantees for the independence of justice operators](#)' ('justice operators' is the Commission's term for anyone working in judicial processes) which it is hoped will be a useful tool to promote the independence of justice operators as a means to ensure access to justice for victims of violations of human rights. It should also provide a basis for States and civil society organisations to work together to develop better public policies regarding the judicial process. Currently, the Office is working on a thematic report on criminalisation, aimed at making recommendations to States regarding legal, judicial and administrative steps they should take to eradicate this distorted use of penal law to target human rights defenders.

It is important to highlight, amongst the successes and advances of the Office of the Rapporteur, that standards and recommendations contained in these reports have been adopted and implemented by States and civil society. These standards and recommendations have contributed to the design and implementation of public policies and normative frameworks aimed at guaranteeing the exercise of the right to defend and promote human rights. In this way, many States have made important strides through good practices like the establishment of specialised protection mechanisms. For example, Colombia has its 'Programme for the Protection of Human Rights Defenders, trade unionists, journalists and social leaders', and Mexico its 'Mechanism for the Protection of Human Rights Defenders and Journalists.' However, whilst the Commission acknowledges the existence of these specialised protection programmes as an important advance in regard to the implementation of recommendations, it has noted that, in terms of design and effectiveness, they are still below the standards outlined by the Commission.

Finally, thanks to the system of petitions and cases, we have seen developments in Inter-American jurisprudence regarding the protection of defenders and the independence of justice operators. In a series of cases, the Inter-American Court has noted that States have specific obligations to protect activities to defend human rights. These include 'the duty to provide necessary means to enable human rights defenders to carry out their activities freely; to protect them when they are threatened so as to avoid attempts on their life and physical integrity; to refrain from putting obstacles in the way of them carrying out their work; and to combat impunity'.^[1] Equally, the Court has underlined that work for the defence of rights 'not only relates to civil and political rights but (also) monitoring of and raising awareness about economic, social and cultural rights.'^[2] The Court has also highlighted that 'unlike other public employees, judges are subjects of additional guarantees due to the independence required of the judiciary, which the Court understands as "essential for the exercise of the role of the judiciary"'.^[3] These developments all contribute to setting out more clearly the obligations of States with respect to creating an enabling environment for human rights defenders and provide a useful framework for the Commission when issuing recommendations and protection measures to States.

Photo: IACHR

^[1] Inter-American Court of Human Rights, *Kawas Fernández Vs. Honduras*, 3 de abril de 2009. Serie C No. 196, paragraph. 145; available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_esp.pdf. Also see: IACtHR, *Caso Nogueira de Carvalho y otro Vs. Brasil*. 28 de noviembre de 2006. Serie C No. 161, paragraph. 77; and *Valle Jaramillo Vs. Colombia*. Fondo, 27 de noviembre de 2008. Serie C No. 192, paragraphs. 62 y 91.

^[2] IACtHR, *Nogueira de Carvalho y other Vs. Brasil*. 28 de noviembre de 2006. Serie C No. 161, paragraph. 77, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_161_esp1.pdf. Also see: IACtHR, *Kawas Fernández Vs. Honduras*, 3 de abril de 2009. Serie C No. 196, paragraph. 147.

[3] IACtHR, *Reverón Trujillo Vs. Venezuela*. 30 de junio de 2009. Serie C No. 197, paragraph 67, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_esp.pdf

ISHR