



## OBSERVATIONS TO THE LAW FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS, JOURNALISTS, SOCIAL COMMUNICATORS AND LEGAL PRACTITIONERS

On 15 May of this year, the National Congress of Honduras approved the Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Legal Practitioners (hereinafter the “Protection Law” or “Decree No. 34-2015”). This law comes in response to various recommendations that had been given to this country by the Inter-American Commission on Human Rights (IACHR),<sup>1</sup> the UN Special Rapporteur on the situation of human rights defenders, the Human Rights Council through the Universal Periodic Review (UPR),<sup>2</sup> and by virtue of the *Luna Lopez vs. Honduras* ruling issued by the Inter-American Court of Human Rights (I/A Court).<sup>3</sup>

The international organizations Center for Justice and International Law (CEJIL) and Protection International (PI) conducted an analysis of the law in order to identify progress made and the challenges ahead. We set out below the main findings of that analysis, in order to provide input to the key stakeholders involved in preparing the enabling regulation and protocols for the implementation of the law.

### I. Positive aspects of the new law

The approval of the Protection Law is positive as it recognizes the vulnerability and risks faced by the groups of beneficiaries protected by the law. The law incorporates the concepts established in 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* (hereinafter the "Declaration

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<sup>1</sup> Inter-American Commission on Human Rights (IACHR). Annual Report, 2013, paras 235 and 239. See also the annual report of the IACHR for year 2012, para 169.

<sup>2</sup> United Nations. *Report from the UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*. Mission to Honduras. 13 December 2012.

<sup>3</sup> Inter-American Court, *Second Report on the situation of human rights defenders in the Americas*. OAS/Ser.L/V/II, Doc.66. 31 December 2011, paras 541 et seq. United Nations. *Report from the UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*. Mission to Honduras. A/HRC/22/47. 13 December 2012, paras 125 and 126. I/A Court, *Luna Lopez vs. Honduras case*. Merits, Reparations and Costs. Judgment of 10 October 2013, para 243. Human Rights Council. *Report of the Working Group on the Universal Periodic Review of Honduras*. A/HRC/16/10. 4 January 2011. Recommendations, 81.2, 82.29, 82.30, 82.31, 82.32, 82.33, among others.

on Human Rights Defenders"), adopted by the General Assembly of the United Nations on 9 December 1998.

In this sense, for example, considering that the I/A Court has noted that it is the duty of States "to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity",<sup>4</sup> it is important to note that the law recognizes the state as the primary responsible party and guarantor of the right to defend human rights.<sup>5</sup>

At the same time, it is worth noting that the Protection Law represents a public recognition of the importance and the work that human rights defenders do for the promotion and protection of democracy and the rule of law.<sup>6</sup>

In accordance with the parameters of the Declaration on Human Rights Defenders,<sup>7</sup> the Protection Law recognizes, among others:

- The individual and collective right to promote the protection and defence of human rights, through a wide range of actions.<sup>8</sup>
- The right to an effective remedy that allows human rights defenders to be protected when peacefully protesting or opposing acts or omissions attributable to public authorities that result in violations of fundamental rights.<sup>9</sup>
- The right to have the State ensuring due protection against acts of violence, threats and discrimination. These guarantees must be not only legal, but also legislative and administrative.<sup>10</sup>
- The duty of the State to promote the teaching of human rights at all levels of education.<sup>11</sup>

It is also important to note the following:

- [The Law] recognizes that both the petitioners and beneficiaries can be individuals, groups or communities (Article 5, paragraphs 8 and 9).

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<sup>4</sup> I/A Court. Case of *Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of 3 April 2009, Series C, No. 196, para 143; I/A Court. Case of *Fleurt et al v. Haiti*. Merits and Reparations. Judgment of 23 November 2011, Series C, No. 236, para 100.

<sup>5</sup> Decree No. 34-2015, article 6.

<sup>6</sup> *Ibid*, article 6.

<sup>7</sup> UN. *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (hereinafter the "Declaration on Human Rights Defenders"), Resolution 53/144 approved by the General Assembly of the United Nations on 9 December 1998, A/Res/53/144. 8 March 1999. Articles 1, 5, 6, 7, 8, 9, 11, 12 y 13.

<sup>8</sup> Decree No. 34-2015, article 4.

<sup>9</sup> *Ibid*, articles 4, 19.

<sup>10</sup> *Ibid*, article 11.

<sup>11</sup> *Ibid*, articles 14, 18.

- Sets forth an obligation to consider the risk analysis and the context in order to adopt protective measures (Article 37).
- Establishes the possibility of issuing preventive, reactive and urgent measures to safeguard the life and physical integrity of the groups under protection (Article 50).
- Establishes the obligation to prevent human rights violations by teaching, and promoting, human rights; identifying and mapping risks; by setting up a monitoring system that includes early alerts (Articles 12, 14, 17 and 18).
- Creates simple (Article 41) and expedited (urgent and ordinary) procedures to resolve requests for protective measures (Articles 43, 44, 45, 46, 47, 48, 49, 50).
- Sets forth an obligation for the General Directorate for the Protection System to report to the Attorney General any facts that may constitute an offense (Article 51).
- Establishes an obligation to comply with the precautionary and provisional measures issued by the I/A Court and the IACHR without allowing domestic authorities to suspend, revoke or reduce the protection afforded by said international bodies (Article 52).
- Establishes a regime of disciplinary measures for breaches of the obligations set forth in the Law (Articles 56 and 57).
- It clearly states the obligation of the (ministry) Secretariat of State in the Finance Department to assign necessary and sufficient resources in order to implement the Law (Article 65), and it creates the Protection Fund [*Fondo de Protección*] with resources from the People's Protection and Security Fund [*Fondo de Protección y Seguridad Poblacional*] (Article 66).

In addition to this, it is important to recognize that many of the observations made by civil society organizations to the draft bill were incorporated into the final version signed into law, but as it is discussed below, other highly relevant comments were not considered.

Based on the above, CEJIL and PI consider that the adoption of Decree No. 34-2015 represents progress for Honduras to meet its international obligations as well as for the effective protection of human rights of those defending human rights. However, the Protection Law still faces many challenges that must be addressed in the process of creating secondary legal frameworks. Those challenges will be discussed below.

## **II. Observations to the Protection Law in light of the drafting of its enabling regulations**

Although the adopted law meets international standards in terms of concepts and principles, as mentioned above, its success will depend on its effective implementation and on a real commitment from the authorities to the law's objectives. In this sense, it is especially important for the senior level authorities of the State to meet their obligations set forth under the law and to publicly acknowledge the contributions made by human rights defenders to strengthen democracy and the rule of law in Honduras, which implies that they must refrain from

any comments or statements that stigmatize their work, which puts them at higher risk.

That said, while we acknowledge the progress made on those points, we consider that there are several aspects that need to be further developed and deepened by the relevant enabling regulations and protocols.

In this section, we present our observations and proposals for each of the titles of the law.

#### **a. About Title I: General Provisions**

The law, in article 14, requires as a preventive measure the formation of discussion groups on the resolutions of the United Nations High Commissioner for Human Rights and the United Nations General Assembly in order to establish "new prevention strategies for human rights"<sup>12</sup>; in respect to this we consider that the relevant enabling regulation should indicate: i) who will form part of these groups (including members of civil society) and how they will be selected; ii) who will coordinate, and what will be the objectives, of this group; and iii) It should include a reference to the decisions of the Inter-American System of Protection of Human Rights, and not just to those of the United Nations.

On the other hand, given that it is a valuable tool for prevention, it is essential to develop and further study how the early alert system<sup>13</sup> will work and how it would be implemented.

As to the duty of the State to promote the teaching of human rights and a culture of peace at all levels of the Honduran education system and to public officials,<sup>14</sup> it is important to specify in the regulations how this provision will be put into effect as it is intended to support education and prevention. In this regard, it is further recommended that civil society be invited to contribute to the formulation and development of the curricula. Likewise, we suggest to include regulations to ensure that these contents be included not only within formal education, but to also cover people who do not have access to the formal system.

#### **b. On Title II: National Protection System for Defenders of human rights, journalists, social communicators and legal practitioners**

In the consultation process for the draft bill, one of the main requests from civil society organizations was that the body responsible for implementing the law were autonomous and decentralized from the (ministry) Secretariat of State in the Department of Human Rights, Justice, Interior and Decentralization. This recommendation was not implemented by Congress. Although these features would have strengthened these institutions, CEJIL and PI consider that the government

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<sup>12</sup> Decree No. 34-2015, article 14.

<sup>13</sup> *Ibid*, article 17.

<sup>14</sup> *Ibid*, article 18.

and other state institutions must act at all times to strengthen the action and response capacity of the authorities set up for such purpose, in order to generate greater confidence from the people protected and facilitate the achievement of the objectives.

It is true that the law creates through Article 19 the National System for the Protection of Human Rights Defenders. Nevertheless, it would be important for the enabling regulations to specify what the creation of such a system entails and whether it will have specific functions, given that the specific powers of protection are designed and implemented by other bodies such as the National Council for Protection, the General Directorate for the Protection System, the Technical Committee of the Protection Mechanism and the Human Rights Department of the (ministry) Secretariat of State for Security.

Similarly, with regard to the integration of the National Council for the Protection of Human Rights Defenders,<sup>15</sup> it is crucial to ensure that the appointment of the two representatives of human rights organizations is carried out through a public, open and transparent process. To this end, the enabling regulations should lay down clearly and specifically the parameters under which such designation shall be made. It should be noted that in the original proposal, the civil society organizations requested that there were five representatives in total, in order to ensure greater balance and representation. However, this recommendation was not taken into account. We suggest to explore the possibility of reforming this article of the law in order to grant more participation of civil society representatives.

Regarding the profile of the members of the National Council for the Protection of Human Rights Defenders,<sup>16</sup> it is necessary to specify the terms under which the requirement of "recognized integrity" [*reconocida honorabilidad*] will be assessed, that is, objective parameters must be specified to prevent excessive discretion, and thus lead to arbitrary decisions and, therefore, to the rejection of people who may be eligible to join the Council, or in the appointment of people who are not eligible for that office.

In this vein, it should be noted that the law does not set out the manner in which the General Directorate for the Protection System will be formed, as there is no indication of its exact place within the organizational structure of the Secretariat of State in the Department of Human Rights, Justice, Interior and Decentralization; of its internal structure (centralized or decentralized entity within the secretariat); of the amount and profile of its members nor of their selection process.<sup>17</sup> In response to this, and due to the importance of the powers granted to this body, the regulations must clarify these matters and, most importantly, that appointments for this must be made on the basis of their knowledge and professional experience in these areas. Also, it is essential to use public, open and transparent selection processes, and that human rights organizations are allowed to comment on the

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<sup>15</sup> *Ibid*, article 21.

<sup>16</sup> *Ibid*, article 23.

<sup>17</sup> *Ibid*, article 28.

candidates.

Similarly, it is important to establish the profile that the members of the Technical Committee of the Protection Mechanism<sup>18</sup> and their expert advisers must have, as well as the procedure for their appointment (particularly in relation to the latter),<sup>19</sup> as it is essential that they are sufficiently trained people to perform risk analysis. Furthermore, it is essential that the enabling regulations require these people to receive training on a regular basis.

On the other hand, when preparing the regulations it would be advisable to include the possibility that civil society is allowed to exercise some kind of monitoring over the decisions of the Technical Committee, or over the appeals filed against such decisions, for example, allowing civil society organizations to submit additional information to the General Directorate for the Protection System about appeals under review in relation to decisions of the Technical Committee, or the obligation for the Directorate to ask the Council for its opinion when deciding appeals.

Finally, it would be important to analyze the possibility of including additional administrative, civil and/or criminal liability in case the members of the Technical Committee do not respect the confidentiality of any information related to the protection system procedures,<sup>20</sup> as the law provides only for a suspension of the person holding office in the Technical Committee.

### **c. On Title III: protective measures**

One of the main aspects [of the Protection Law] that must be developed by the enabling regulations is the way in which the risk analysis will be made, as well as the methodology and criteria that will be applied. In this regard, the regulations will have to consider using criteria with a differentiated approach, taking into account gender, interculturality, and context, among others.

Also, the regulations must specify the methodologies, standards, criteria and international standards to which the law refers<sup>21</sup> and that will be taken into account to perform the risk analyses. The adopted methodology must always respond to the principles mentioned in Article 3 of the Law, and to the principle of transparency, both in the process of risk assessment and in its results. As such, it is advisable that the beneficiary in question participates in its risk analysis process, through interviews, and that is at least consulted about the final determination of the level of risk, in order to reach an analysis that is adjusted to the realities and the needs of the human rights defender in question, and to facilitate challenge procedures in

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<sup>18</sup> Although the Law sets out the institutions that will form this committee, the people appointed by such institutions must meet a profile necessary for the position that they will assume.

<sup>19</sup> *Ibid*, article 31.

<sup>20</sup> *Ibid*, article 31.

<sup>21</sup> *Ibid*, article 33.

case of disagreement (as it is mentioned above and below).

On the other hand, in relation to the deadlines established in the Protection Law for the risk analysis,<sup>22</sup> we note that in certain situations, four weeks could be far too long for a potential beneficiary who may be at risk. It is suggested that regulations should require that best efforts must be made to ensure that all analyses are carried out in the shortest possible timeframe. In the case that the deadline is not met, there should be a legal consequence (administrative or criminal disciplinary measures, etc.) to prevent delays.

As for the ordinary or extraordinary proceedings for the issuance of protective measures, we note that the law does not provide for those cases in which the risk arises in places where there is no office of the General Directorate for the Protection System.<sup>23</sup> Also, the Law does not make clear what measures would be taken in case the aggressors belong to state security forces.

Furthermore, the enabling regulations should take into account the situation of people living in rural areas and the difficulties that these people might face when applying for protective measures, or when ratifying such applications in writing.<sup>24</sup> For this reason, simple and accessible procedures for these people should be proposed.

In relation to the role of the Attorney General when faced with complaints concerning facts that could constitute felonies,<sup>25</sup> the regulations should require the Attorney General to produce an investigation protocol for felonies committed against human rights defenders.

Another aspect which merits revision in the enabling regulations and protocols relates to the appeals against decisions of the Technical Committee.<sup>26</sup> It must be clarified who will be the specific authority in charge of deciding the appeal. It should be noted that the General Directorate cannot decide and review its decision at the same time. It is suggested that the person appointed as director must not be a part of the Technical Committee, and such role should be delegated to the deputy director, so that s/he can review the decisions adopted by the Technical Committee and thereby avoiding conflict.

It should be analyzed whether it would be correct to establish administrative responsibilities in the regulations for breach of the obligations set forth in the Law.

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<sup>22</sup> *Ibid*, article 47.

<sup>23</sup> *Ibid*, article 43.

<sup>24</sup> Considering, for example, language barriers, or the level of education of indigenous or peasant defenders, among others.

<sup>25</sup> *Ibid*, article 51.

<sup>26</sup> *Ibid*, article 54.

While the Law makes reference to the crime for breach of duty of public officials,<sup>27</sup> this crime does not cover all the ways in which a breach could take place and, in addition, there are actions or omissions that would merit an administrative disciplinary measure and not necessarily a criminal one.

#### **d. On Title V: Final and transitional provisions**

Regarding this title of the Protection Law, it is essential to ensure that the National System of Protection<sup>28</sup> will enjoy adequate and sufficient funding for the implementation of the law. The creation of a Protection Fund and the obligation of the Secretariat of State in the Finance Department to allocate sufficient and necessary financial resources are welcomed developments.<sup>29</sup> However, as provided in Article 66, the description and implementation of the Protection Fund will be subject to special regulations. Such regulations should clarify the institution that will be responsible for preparing the budget, which institutions will administer the fund, the procedure and deadline for transferring funds. Also, in order to include specific budget items for the protection of the beneficiaries under the Law, it will be necessary to urgently amend Decree 199-2011 (Law for the Trust for the administration of the People's Protection and Security Fund [*Ley de fideicomiso para la administración del Fondo de Protección y Seguridad Poblacional*]). This is because the latter mentions that "the resources of the 'People's Protection and Security Fund' will fund the prevention and control actions against common or organized crime".<sup>30</sup> Therefore it is necessary to include the financing of measures to prevent attacks against, and the protection of, human rights defenders, journalists, social communicators and legal practitioners.

In addition, Decree 199-2011 stipulates that the trust funds must be allocated to activities by "the judiciary, the Attorney General, the Secretariat of State in the Department of National Defense and the National Electric Energy Company",<sup>31</sup> excluding the Secretary of State in the Department of Human Rights, Justice, Interior and Decentralization, and therefore the activities of the newly created General Directorate for the Protection System as well as the Technical Committee for the Protection Mechanism. For this reason it is necessary to include such entities as new Trustees institutions.

On the other hand, it is important to draw attention to the protection mechanism provided for legal practitioners (judges and prosecutors), given that Article 64 directs the judiciary and the Attorney General to create a specific mechanism to protect these operators so that their independence from these bodies is also guaranteed. However, there is no deadline set for this, which could delay this process indefinitely.

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<sup>27</sup> *Ibid*, article 56.

<sup>28</sup> *Ibid*, article 66.

<sup>29</sup> *Ibid*, article 65.

<sup>30</sup> Decree No. 199-2011, article 4.

<sup>31</sup> *Ibid*, article 4.



It is then suggested that the enabling regulations and protocols set a deadline for these institutions to create the corresponding mechanism.

In conclusion, CEJIL and PI welcome the approval of the Protection Law and consider it as an important step to recognize the important work that human rights defenders carry out in Honduras. However, the key to its success lies on its effective implementation, for which, in addition to sufficient financial resources, it is required that all state authorities –from the highest political level downward– comply with their obligations to respect and guarantee the human rights of these groups and demonstrate their political will with concrete actions.

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