

Chapter 2: Description of national legislation and institutions for the protection of human rights defenders

Under article 12 of the UN declaration on human rights defenders, states must guarantee their protection:



Article 12 of the declaration on human rights defenders

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The state shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Despite the fact that the declaration on human rights defenders is not legally binding and does not impose any obligation on states in the strict sense of the word, it is nonetheless the result of a consensus of the United Nations General Assembly and entails a strong commitment by states to enforce it.

It is therefore politically binding and as such includes a series of principles and rights based on existing human rights standards enshrined in other international instruments which *are* legally binding such as the International Covenant on Civil and Political Rights.

In response to this and encouraged by national civil society and the international community, states have developed internally applicable laws. These include legislation aimed at bringing national law into line with their obligations, and others which create national protection mechanisms or implement the measures they propose. Some states have established programmes or offices to protect human rights defenders and others have even considered the possibility of adopting the declaration itself as a binding piece of national legislation.¹

¹ See fact sheet N° 29. *Human rights defenders: Protecting the right to defend human rights*. UN Secretary General's representative for human rights defenders, page 28.

We can now turn to case studies that best reflect the mechanisms used by states to improve the protection of human rights defenders.²

Colombia

Colombia was one of the first countries in the world (along with Mexico) to come up with a specific programme to address the protection of human rights defenders. In 1997 article 81 of **Law 418 which creates instruments intended to promote coexistence and the efficiency of the judiciary as well as other provisions**¹ ordered the Ministry of Home Affairs to introduce a protection programme for persons at risk from political or ideological violence or from internal armed conflict.

The law subsequently underwent several amendments³ and this gave rise to the current **General Protection Programme of the Directorate of Human Rights in the Colombian Ministry of Home Affairs and Justice**.⁴ It is intended to support the government “in safeguarding the lives, integrity, freedom and security of the target population” – i.e. anyone exposed to imminent and exceptional risk as a direct consequence of political, public, social or humanitarian activities. Human rights defenders are within this target group.

Decree 2816 of 2006⁴⁻⁶³ forms the basis for the drafting and management of the Programme for the Protection of Human Rights at the Ministry of Home Affairs and Justice. The work was coordinated by the Committees for Regulation and Risk Assessment, governed by **Decree 2788 of 2003**.⁵⁻⁶⁴

One of the institutions responsible for providing security to human rights defenders, the Ministry of Defence, set out its obligations towards them in its **Directive 09 of 2003 entitled, “Policies of the ministry of defence regarding the protection of the human rights of trade unionists and human rights defenders.”**⁶⁵

Subsequently, the Ministry of Home Affairs and Justice through Resolution 2138 adopted a manual of definitions, usage and procedures for the Human Rights Protection Programme, thereby regulating the measures to be adopted by the programme and determining the appropriate mechanisms.

2 Part I constitutes a legal analysis of the protection programmes; Part II of this work will be an operational analysis of protection methods and outcomes.

⁶¹ <http://www.disaster-info.net/desplazados/legislacion/LEY418de1997.pdf>

3 Law 418 Act of 1997 was extended, modified and reinforced by laws 548 of 1999, 782 of 2002 and 1106 of 2006.

⁶² <http://www.mij.gov.co/eContent/CategoryDetail.asp?idcategory=142&IDCompany=2&Name=Derechos+Humanos&idmenucategory=142>

4 See annexes.

⁶³ http://www.presidencia.gov.co/prensa_new/decretoslinea/2006/agosto/22/dec2816220806.pdf

5 See annexes.

⁶⁴ http://www.presidencia.gov.co/prensa_new/decretoslinea/2003/octubre/02/dec2788021003.pdf

⁶⁵ <http://www.hchr.org.co/publico/comunicados/2003/cp0318.pdf>

An assessment of the programme

The Colombian government's protection programme is one of the oldest and most extensive compared to others (it had a budget of 40 million dollars in 2009 and covers hundreds of human rights defenders). This programme has several positive aspects; for example, it has facilitated dialogue at the very highest levels with public institutions and has made it possible for representatives of the target population to participate in decision making within the programme and in the implementation of measures. Similarly, the actions and attitudes of the civil servants at the Ministry of Home Affairs have been positively assessed by those they regularly work with. However, it is to be noted that the continuing conflict between the government and civil society has led some to adopt different conclusions.

Serious shortcomings have also been observed. Some of these are due to delays in risk assessment (which in turn delays implementation) and to the way risk assessments are done. In many cases, civil society and some public institutions take a different view to the security forces regarding risk assessment. This could be due to a lack of training among civil servants with regard to human rights and the situation of the defenders as well as the contexts they work in. Obstacles like this prevent measures from being taken or lead to measures which fail to take account of the vulnerable situation of the defender.

The fact that it is the 'Administrative Security Department' that does risk analysis and orders protection measures has generated a good deal of mistrust, especially since it transpired that this institution was carrying out intelligence activities **and a dirty war against groups of human rights defenders**.⁶ For this reason those requesting protection often refuse to provide the necessary information for this institution to carry out a risk assessment, or they reject any measures involving escorts from this department.

Faced with this situation and without consulting the target group, the Ministry of Home Affairs and Justice proposed the privatization of the protection schemes. This alternative involves private security agencies being entrusted with the protection schemes and ignores the conclusions of the 2002 assessment of the Protection Programme⁶, which proposed the establishment of a Special Directorate for Security and Protection, to operate under the vice-ministry for Home Affairs or under the directorate general of the national police (i.e. part of the Civic Public Police). The alternative proposal was for a Department of Security and Protection at the Directorate of Human Rights at the vice-ministry for Home Affairs.⁷

There are several arguments against privatizing protection schemes. Among them is the fact that some of the elements in these firms come from paramilitary groups or state security agencies with a record of human rights violations or which maintain a confrontational stance against human rights defenders, or even have records of previous attacks and intimidation against the very groups they are supposed to protect.⁸ Another argument against privatization is the fact that it is incumbent upon the state to provide protection and

⁶ <http://www.elespectador.com/node/177212/print>

⁶ Sponsored by the Office of the High Commissioner for Human Rights in Colombia and the International Labour Organisation.

⁷ See Luis Alfonso Novoa Díaz. Opinion on the establishment of a state-run Special Directorate on Protection and Security. Bogota DC, September 2009.

⁸ Ibid.

that it should not delegate its functions and duties to private institutions that do not offer the necessary guarantees and are subject to legal limitations when performing these tasks. This situation also implies less responsibility for those protecting the target groups in the programme (as they are not civil servants) and waters down the responsibility of the state.⁹

Shortcomings have also been observed in the prevention of attacks and this can be addressed through an inter-institutional approach for effective preventive action.

In September 2009, member organizations of the international campaign for the right to defend human rights recalled in writing and for the umpteenth time the existence of chronic problems in protecting human rights defenders in a country where activists are still under serious threat, in spite of the size of this programme. They highlighted the importance of addressing strategic threats to the work of human rights defenders, for example attacks against defenders with complete impunity (proposals include the centralization of investigations of these cases and the separation of civil from military justice in other cases), using the intelligence services and even the escorts themselves against human rights defenders, systematic accusations including from the President's Office stigmatizing their work, malicious prosecutions etc.

Additionally the organizations propose measures intended to revise some aspects of the protection programme itself in consultation with the defenders such as:

- the creation by the Ministry of Home Affairs and Justice of a special unit to coordinate protection schemes in cooperation with human rights defenders
- a mechanism to ensure that escorts or drivers have no links present or past with illegal armed groups and that they do not carry out intelligence work against their charges
- ensuring risk studies and the implementation of the programme take into account the leadership profiles, functions or support work carried out by the persons under threat as well as the reports drawn up by bodies such as the ombudsman's Early Warning System, the Inter-American Commission on Human Rights, social organizations and others
- provision by the Ministry of Home Affairs and Justice of temporary and immediate protection (within 48 hours of receiving the request) to the persons/organizations who request it while their risk situation is assessed
- protection to persons at risk not being provided by private security firms
- ensuring that, once adjusted and reviewed, the Protection Programme of the Ministry of Home Affairs is provided with the requisite funding to ensure the effective implementation of the measures assigned to it for the protection of human rights defenders.

At the end of 2009, following her visit to Colombia, the Special Rapporteur, Margaret Sekaggya, made a number of statements and recommendations for the improvement of the Protection Programme which echoed the sentiments expressed by the human rights defenders themselves. Sekaggya stated that she: *"...welcomed the notable increase in funds earmarked for the National Protection Programme for human rights defenders (from 13 million dollars in 2002 to 40 million dollars in 2009). She added, I support the work of the national and regional ombudsmen, in particular the early warning system, and I believe that their reports should*

⁹ Ibidem.

be made public and taken into account more frequently by the Inter-institutional Committee on Early Warnings". She emphasized the specific needs of certain groups of defenders: "As for the safety of human rights defenders, I have been informed that the government is in the process of reforming the Protection Programme for human rights defenders under the Ministry of Home Affairs and Justice. The reform should accommodate the special needs of women, indigenous peoples and Afro-descendants. I strongly suggest that state officials defending human rights (magistrates, national and regional ombudsmen) be included". She went on to emphasize the need for the "process for requesting protection to be simplified and made more efficient. The issue of spying on human rights defenders by the escorts assigned to protect them should be resolved. Furthermore, the scope of the programme's preventive measures should be widened. Finally, human rights defenders have expressed concern about the privatization of the programme and this matter should be jointly debated and resolved".

Guatemala

Owing to the political violence generated by internal armed conflict, the issue of human rights defenders was included in the Peace Agreements. As such **Commitment 7 of the Comprehensive Agreement on Human rights (CAHR)**,¹⁰⁻⁶⁷ signed on 29th March 1994 between the government of Guatemala and the National Revolutionary Unit of Guatemala (URNG), acknowledged the importance of the work done by human rights activists and the need to protect them and their work. This document is important not only because it is the first protection instrument for human rights defenders in the country but also because it preceded the declaration on human rights defenders.

As a result of this and in the wake of considerable local and foreign pressure, in 2004 the government of Guatemala approved Internal Agreement II of the Presidential Commission for Human Rights in Guatemala (COPREDEH),¹¹ which led to the setting up of the Coordination Unit for the protection of human rights defenders, law enforcement officers and administrators, journalists and other media personnel. This unit is authorized to coordinate (with government institutions providing protection to the beneficiaries) the protection measures granted by the Inter-American system or by the United Nations.

In order to provide a more complete response, a Protection Programme for Human Rights Defenders and other vulnerable groups was proposed. On 2nd November 2004, the government tabled a Proposal for Public Policy governing Prevention and the Protection of Human Rights Defenders, Accused Persons and Witnesses, Journalists and Media Personnel, plus a National Plan of Action for Protection and a list of protection measures.¹²

10 VII. Guarantees and protection for persons and entities working in the field of the protection of human rights.

1. The Parties agree that all such acts as are likely to affect guarantees to those individuals and entities working in the promotion and protection of human rights are to be condemned.
2. To this end the government of the Republic of Guatemala shall adopt special protection measures for the benefit of those persons or entities working in the field of human rights. Similarly, it shall thoroughly investigate any complaint concerning acts or threats to them.
3. The government of the Republic of Guatemala reiterates its commitment to effectively guarantee and protect the work of those individuals and entities defending human rights.

⁶⁷ <http://www.congreso.gob.gt/Docs/PAZ/ACUERDO GLOBAL SOBRE DERECHOS HUMANOS.pdf>

11 COPREDEH: http://www.minex.gob.gt/index.php?Itemid=39&id=1225&option=com_content&task=view

12 These documents together with others of interest can be found in Focus (PI's observatory for national legislation on the protection of human rights defenders) at <http://focus.protectionline.org/-Focus->. Excerpts of the most relevant portions of these documents can be found in the annexes to this work.

These documents were debated and agreed upon by several state organizations and with various human rights organizations and although in 2007 the Presidential Commission on Human Rights (COPREDEH) tried to activate the process through a governmental agreement, this failed and the programme has been postponed without any decision having been made in 2009.¹³

On 10th January 2008, a further step was taken with the **Ministerial Agreement no.103-2008**,¹⁴ by which Guatemala established a unit to analyse attacks against human rights defenders in Guatemala with the intention of studying patterns of violence against activists. Perhaps the outstanding feature of this body is the participation of various investigative bodies (the Directorate General for Civil Intelligence, the Public Prosecutor's office and the National Civil Police) with the participation (by invitation) of representatives of national and international human rights NGOs. This has led to a certain degree of coordination in investigative activities and more practical steps in protecting human rights defenders at risk.

An assessment of the programme

The opinions of human rights defenders suggest that the defenders' unit COPREDEH is endeavouring to reconcile the official response to protection with precautionary and provisional measures and urgent appeals from international bodies; however, although there are some proposals we cannot conclude that there is an actual protection policy or programme in place.

Similarly, the inability to influence decisions taken by the Ministry for Internal Affairs constitutes a serious limitation since most of the protective measures are provided by the National Civil Police and the Ministry decides on all aspects of their application.

On the other hand, it is important to point out that the representatives of the Ministry of Internal Affairs in the Department of Analysis on Attacks Against Human Rights Defenders in Guatemala have no institutional support and this has placed serious restrictions on what the department can do.

Mexico

Human rights defenders and the Offices of the Ombudsmen

In 1997, through its Council, the Mexican Ombudsman's National Human Rights Commission (NHRC)¹⁵ began to coordinate the **Programme of the National Human Rights Commission on offences against journalists and civilian human rights defenders**.¹⁶ The directorate general of the programme on offences against journalists and civilian human rights defenders¹⁶ was set up in 2005 under the programme with the

13 See: *En el nudo de la impunidad (In the knot of impunity): A report on the situation of human rights defenders*, January to December 2008. Protection Unit for Human Rights Defenders (UDEFEQUA).

14 See annex for the text.

¹⁴ <http://www.congreso.gob.gt/archivos/acuerdos/2008/gtamx103-2008.pdf>

15 The Ombudsman system in Mexico is made up of 32 State Commissions on Human Rights and the National Human Rights Commission (NHRC).

¹⁵ <http://www.cndh.org.mx/progate/agoperio/presenta.htm>

16 The National Directorate on the Programme on Offences was set up within what is known as the Fifth General Inspectorate: <http://www.derechoshumanos.gob.mx/Portal/PtMain.php?pagina=def-organismos-nac>

objective of addressing the complaints relating to human rights violations committed against both groups.

Mexico did not only deal with this through its national institutions. In 2007, the Federal District Human Rights Commission (HRCFD)¹⁷ set up the **Rapporteur's Office for Freedom of Speech and the Protection of Human Rights Defenders**.¹⁸ This body was formally established on 30 May 2007 with the publication of the HRCFD Council's agreement, and on 16th June 2007 began work with the objective of collecting information in Mexico City on matters relating to free speech and human rights defenders, as well as organising training and raising awareness about prevention.¹⁸ However the rest of the State Commissions have no specific department to deal with the protection of human rights defenders nor do they make any distinction between them and other categories when they receive complaints.

Government bodies and human rights defenders

For its part, the government established the Programme for the Protection of Human Rights Defenders through an internal regulation from the secretariat of the Ministry of Home Affairs, which was housed under its Unit for the Promotion and Defence of Human Rights (UPDHR).¹⁹ The unit has little information to offer, though its website features a "register of human rights defenders"²⁰ seeking protection, hardly an appropriate way to present this kind of information.

On the other hand, in strategy 1.4²¹ of the decree introducing the National Human Rights Plan 2008-2012, there is a list of defenders' protection needs and the organisations responsible for meeting them. The bodies shall:

- "...Define the assumptions and modalities in accordance with which special protection can be granted to human rights defenders. (The Public Security Office, the Prosecutor-General of the Republic – PGR, the Ministry of Home Affairs)
- Develop a specific protocol to enable the investigation of illegal acts committed against human rights defenders (PGR)
- Train civil society organizations in human rights (the Federal Public Administration – FPA)
- Seek support from various sources to enable civil society organizations to undertake projects for the promotion and defence of human rights (FPA)..."

17 This Commission acts as the Office of the Ombudsman for the Federal Capital.

¹⁸ <http://www.cdhd.org.mx/index.php?id=bol10907>

18 Human Rights Commission, Federal District Press Bulletin 109/2007: <http://www.cdhd.org.mx/index.php?id=bol10907>. The HRCFD announced the opening of the Rapporteur's Office for freedom of speech and protection of human rights defenders - 2 June 2007.

19 <http://www.gobernacion.gob.mx/Portal/PtMain.php?pagina=upddh> Established in 2002 "to design and implement state human rights policies".

20 See: <http://www.derechoshumanos.gob.mx/Portal/PtMain.php?nIdHeader=1&nIdPanel=61&nIdLateral=2&nIdFooter=3>

21 See <http://www.sre.gob.mx/derechoshumanos/images/docs/pndh20082012.pdf>

Some figures

The information we have, albeit limited, includes the 2009 end-of-year report on Mexican human rights defenders,²² in which the Office of the High Commissioner for Human Rights highlights the low number of complaints lodged with the Ombudsman's office relating to allegations of violations of the human rights of defenders. Over the last four years and taking all 12 public human rights bodies which responded to the questionnaire from the Office of the High Commissioner for Human Rights, only 11 complaints of this nature were registered. The HRCFD in particular received 6 complaints during 2007-2008 alleging violations of their human rights. The NHRC received a total of 65 complaints from January 2006 to May 2009. Similarly there were few recommendations made addressing specific violations committed against human rights defenders. Out of all 12 state ombudsmen offices which responded to the questionnaire, only 2 recommendations have been issued over the past four years and the National Human Rights Commission issued a total of five from 1998 up to May 2009.

An assessment of the programme

The above mentioned UNOHCHR report notes that among the defenders there is a "generally negative opinion of the work done by the public bodies responsible for human rights and a feeling of mistrust. Sometimes the underlying reasons are the institutional and budgetary limitations of these bodies, although their inefficiency can also arise from a lack of sensitivity and interest on the part of the management or a lack of autonomy. There have even been cases where the leaders of these public bodies have adopted hostile attitudes towards certain human rights defenders critical of their management".

The report acknowledges "the efforts made by the Mexican state to guarantee the right to defend human rights and in particular its commitment to the National Human Rights Programme" but goes on to note "the unbalanced state response to human rights defenders". There is a need for it to "adopt the issue as a priority and for a strong, comprehensive policy in this field" and the report recommends among other measures, "the consolidation and/or establishment of specialized programmes within public human rights bodies", "the creation of a national protection mechanism" and the "adoption of special protocols to investigate attacks". In general this fully reflects the outcome of the interviews conducted for this survey. The same is true of problems regarding protection measures which are due to "the slow response by the authorities, reluctance in acknowledging the gravity of the situation and the fact that in most cases measures basically involve giving people phones and other means of communication or assigning escorts to 'look after the defenders.' Occasionally the institutions they fear are the very same ones entrusted with their protection." There is no mechanism for risk assessment in the unit based at the Ministry of Home Affairs, nor a protocol defining the procedure to be followed or setting clear criteria on whether the measures are to be maintained or lifted; there are no clear rules for coordination between the federal and local levels either, nor is there a budget to shoulder the costs of the protection measures.

22 "Defending human rights: between commitment and risk": <http://www.hchr.org.mx/documentos%5Cinformes%5Cinformepdf.pdf>

Brazil

Following sustained pressure from national human rights NGOs and after several working group meetings (for over a year), the National Programme for the Protection of Human Rights Defenders (PPDDH in Portuguese) was finally officially launched by the government on 26th October 2004 in Brasilia during a public hearing of the Human Rights Commission of the Chamber of Deputies. This programme is run by the **Special Secretariat for Human Rights (SEDH)**¹¹ - part of the **Office of the President of the Republic**¹². **Decree N° 6.044, of 12 February 2007**²³⁻¹³ led to the approval of the National Policy for the Protection of Human Rights Defenders. Its objective is to establish protection principles and guidelines as well as assistance to natural and legal persons, groups, institutions, organizations and social movements that promote, protect and defend human rights and which in exercising these functions find themselves exposed to risk or in a vulnerable position.

Originally a chapter on the protection of defenders was to be included in a law on victim and witness protection,²⁴ in order to create a legal protection framework for human rights defenders. This project did not materialize and instead a debate took place on elevating the National Protection Programme to the category of a law. The issue is still under discussion at the time of writing and will be dealt with later in this text.²⁵

The PPDDH has initiated a decentralization process with pilot programmes in the states of Pernambuco, Pará y Espirito Santo (and the State coordination office is based in Brasilia). In each state a coordination unit and a programme office have been set up with representatives of various sectors such as the Civil, Federal and Military Police, the Ombudsman's Office (which handles programme coordination in the state of Pará, for example), the Public Prosecutor's Office as well as civil society representatives (NGOs, trade unions, etc).

While the programme was being developed national coordination meetings were held in rotation in the various states included in the programme, with the participation of all of the sectors involved.

The programme budget was initially 500,000 Reales in 2004, rising to 2.5 million Reales (almost one million euros) in 2008, during which time the Special Secretariat had 45 defenders under its protection.²⁶

¹¹ http://www.presidencia.gov.br/estrutura_presidencia/sedh/

¹² http://www.presidencia.gov.br/estrutura_presidencia/sedh/protacao/defensores/

²³ Decree N° 6.044, dated 12 February 2007. Approval of the National Policy for the Protection of Human Rights Defenders - PNPDDH, defines the stages in the elaboration of the National Plan for the Protection of Human rights defenders and presents further steps.

¹³ http://legislacao.planalto.gov.br/legisla/legislacao.nsf/Viw_Identificacao/DEC_6.044-2007?OpenDocument

²⁴ Bill No 3.616/2004 presented before the Chamber of Deputies – the intention was to include a chapter on the protection of human rights defenders under threat in law 9.807/99 (Act pertaining to the programme on victims and witness protection).

²⁵ See full text of the bill in the annex.

²⁶ See accompanying note to this bill in *Focus* (PI's observatory on national protection policies for human rights defenders at: <http://focus.protectionline.org/-Focus->).

An assessment of the programme

At the end of 2009, during a series of debates on the aforementioned Human Rights Defenders Bill, the Brazilian Committee for Human Rights Defenders sent an open letter to the Brazilian government with an assessment of the programme plus a set of recommendations.²⁷ Among other things, the Brazilian defenders pointed out structural problems leading to attacks on defenders (such as the struggle for land and an economic development model based on mega-projects). They also pointed out that chronic problems have dogged the programme since its inception that can be categorized as follows:

- At the institutional and structural level: lack of coordination and demarcation of responsibilities between the central and state levels and excessive bureaucracy
- Extension of networks: a need for legal advice, psychological support and effective protection of defenders, prioritising local protection for defenders and strengthening of the ombudsman's offices (*inter alia*)
- The legal framework: the need to make the programme state policy
- The need for a national analysis
- Programme management: civil society/state participation and good staff retention since 2007 are recognized as strengths. The letter mentions the need for clearer work plans, coordinated visits at local level and a better definition of methodology. It highlights structural weaknesses and lack of resources.

It is worth mentioning that the bill proposed by the Brazilian government is the only one of its kind in the world given that all the other protection programmes are based on decrees or policy measures without attaining this level of institutionalization.

The current bill on protecting human rights defenders

According to the SEDH, the current bill is intended to institutionalize the protection of human rights defenders and overcome contradictions and gaps affecting the programme (constitutional matters, and conflict of powers between various state and federal bodies). Likewise its intended legal status, its cross-cutting nature (covering different state bodies dealing with human rights issues) and decentralized structure must be underlined. State protection offices are to have a wider scope (currently only in states of Pernambuco, Pará, and Espírito Santo with 45 defenders on the programme) and an analysis of the national situation of human right defenders will be completed. The bill seeks greater international cooperation regarding the protection of defenders and the sharing of experience at that level (see below for an assessment of the contents of the bill).

²⁷ This document and other relevant will be available in *Focus*: <http://focus.protectionline.org/-Focus->

Peru

On 22 February 2007, the Ministry of Justice by official notice requested that the chairman of the Commission on Justice and Human Rights of the Congress of the Republic adopt bill 175/2006 on the “Benefits of effective co-operation and a system for the protection of informers, wronged persons, witnesses and experts.”²⁸ The objective of this initiative was to modify **Law 27378 relating to the benefits of effective collaboration in the field of organized crime**,²⁹ adding informers, victims, witnesses and experts who may be involved in investigations or legal action against human rights violations, close family, parents/grandparents, descendants, siblings or other related persons such as lawyers or human rights defenders to the list of people protected by the law.

However at the time of writing the project had not yet been adopted.

The Democratic Republic of Congo (DRC)

Despite there being no law in force, the Democratic Republic of Congo is a pioneer in this field on the African continent. In 2007, civil society drew up a draft bill on the Protection of Human Rights Defenders. It was debated but never passed.

Due to the fact that the text²⁹ incorporates essential elements of the Declaration on Human Rights Defenders, its adoption and entry into force presupposes the transposition and full application of the declaration at national level, thus invoking the direct obligation of the state to protect defenders. However, in contrast to legislation in other countries, this bill does not have a special protection mechanism and there are gaps in the defenders’ rights.

This process has also been addressed at provincial level in the Democratic Republic of Congo: in 2007 human rights organisations in South Kivu submitted draft regional legislation to the provincial legislative assembly. Unfortunately on the 14th February 2009 it was rejected by the assembly without debate.³⁰ As the South Kivu organizations prepare to resubmit it a similar initiative is being prepared in North Kivu for the provincial legislative assembly.

28 This document and other relevant ones are available in *Focus* (observatory on national policies for the protection of human rights defenders) at: <http://focus.protectionline.org/-Focus->

29 http://74.125.45.104/search?q=cache:rSFtAHwBu4QJ:www.oas.org/juridico/spanish/mesicic2_per_ley_27378_sp.pdf+Ley+N%BC+27378,+que+establece+beneficios+por+colaboraci%97n+eficaz+en+el+%87mbito+de+la+crim+inalidad+organizada&hl=es&ct=clnk&cd=2

29 See this document in annex.

30 Initiative Congolaise pour la Justice et la Paix (ICJP) - Congolese initiative for justice and peace - Press statement 17 February 2009.

Other African countries

Although the majority of African countries have no laws or institutions dealing specifically with the protection of human rights defenders, in some like Kenya there is legislation covering the protection of certain individuals including certain types of human rights defenders. The purpose of the law is primarily witness protection but it can also cover the protection of whistleblowers on corruption, human rights violations and other crimes.³¹ The mandate of the ombudsman in both Kenya and Uganda includes the protection of human rights defenders, although this has only actually been practiced in a few cases.³²

Nepal

In Nepal, an organization known as the **Informal Sector Service Center (INSEC)**^{Ⓔ15} presented a draft decree³³ on human rights defenders for discussion by the Nepali authorities in the second half of 2009.

- The draft includes an express reference to the UN Declaration on human rights defenders and includes a definition of the defender and his/her rights and responsibilities which complies with the declaration
- It advocates the establishment by the government of a Commission on Human Rights Defenders (sic) as an “autonomous” institution that would be made up of a government representative (Ministry of Home Affairs), another from the Judiciary (but appointed by the government), a legal expert from the Bar,³⁴ a journalist appointed by the Federation of Nepali Journalists and four defenders (with at least one woman) appointed by the government (on recommendation by the National Human Rights Commission). Apart from the government’s substantial participation in decisions regarding the composition of the Commission, the representatives must also meet certain requirements such as holding university degree and being between 25 and 70 years old. Nevertheless, this Commission does not include any representative from the security forces, which deprives it from the opportunity of communicating with them directly, building trust and proposing action regarding human rights defenders at risk. There is also no representative from the National Human Rights Commission
- As regards resources, several possible sources of funding are acknowledged, ranging from government funds to NGOs including questionable sources such as “fees” from the defenders themselves or funds from “any other source”. The staff is to be provided by the government who will also pay their salaries

31 Information from interviews.

32 Information from interviews.

Ⓔ15 <http://www.insec.org.np>

33 Human Rights Defenders Bill 2066, First Draft (see annex).

34 Nepal Bar Association.

- The responsibilities of this Commission entail taking action or making others take action to provide defenders with the protection they need, drawing up a “code of conduct” for the defenders, developing protection policies and assisting the National Human Rights Commission and the government to enforce the Defenders’ Declaration, etc. However, it does not specify mechanisms for coordination or action, or the source of authority for all this. There are no details on the scope or use of the code of conduct in defining the work of defenders (for example the non use of violence) or in excluding certain groups of defenders
- The draft includes a chapter on safety measures for defenders which highlights the responsibilities incumbent upon all government, administrative and security bodies in supporting the work of defenders, such as the fact they cannot be detained or prosecuted while carrying out their duties (unless they commit a crime). They cannot be made to testify or make a statement based on information they have as a result of their role as defenders. Both measures are important in order to safeguard defenders from being criminalised.

The analysis of this draft is interesting in that it is the most recent attempt to establish a legal instrument for the protection of a country’s human right defenders. Though drafted in the spirit of the UN Declaration, it reproduces many of the mistakes and gaps highlighted by human rights organizations and the reports of the Special Rapporteur on the situation of human rights defenders covered here. However, the inclusion of the rights of defenders in the course of their work is an innovation.

Initiatives by European Union countries

The legislation and initiatives of the European Union usually provide guarantees regarding the rights of those defending human rights. Several states have taken initiatives regarding the situation of defenders beyond their respective borders. The German Bundestag (Parliament) drafted a **motion on the protection of human rights defenders under threat**;¹⁶ the Spanish Congress of Deputies issued a **non-legislative motion on the protection of human rights defenders**¹⁷ and in Belgium the Senate issued a **resolution on the protection of human rights defenders**¹⁸ while the **House of Representatives adopted a resolution on defenders**.¹⁹

As always civil society initiatives have been fundamental in achieving this progress.

¹⁶ <http://www.protectionline.org/Motion-on-the-protection-of-human,220.html>

¹⁷ <http://www.protectionline.org/Non-legislative-motion-about-the,3920.html>

¹⁸ <http://www.protectionline.org/Resolution-on-the-protection-of,217.html>

¹⁹ <http://www.protectionline.org/Resolution-on-Human-Rights,188.html>