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CENTRE FOR LAW AND DEMOCRACY

# Supporting Freedom of Expression:

# A Practical Guide to Developing Specialised Safety Mechanisms

Discussion Paper – April 2016

Toby Mendel

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## Executive Summary

**Toby Mendel**[1]

Too many countries, in different regions of the world, are suffering from the blight of the problem of threats and attacks against individuals for exercising their right to freedom of expression. In one sense, these actions represent ordinary crimes, but their impact goes far beyond that as they affect everyone in society, in what has been termed 'censorship by killing'. Despite the very serious nature of these sorts of crimes, the overwhelming majority of those responsible are never brought to justice. This leads to a widespread sense of impunity, which in turn represents a major contributing factor to the problem in the first place.

Both the States involved and the international community have undertaken a number of measures in response to this problem, many of which are described in the UN Plan of Action on the Safety of Journalists and the Issue of Impunity. One measure which has enormous potential, and yet has actually been implemented in only a few countries, is to put in place a specialised safety mechanism, a body with dedicated responsibilities for providing protection and/or addressing impunity, either as a new stand-alone entity or as a specialised section or programme within an existing body. Despite a slow start, there is now, for good reason, growing interest in this idea.

The purpose of this Guide is to provide direction and support to those who are thinking of putting in place or revising an existing safety mechanism. The wide variance in local situations, as well as the fact that we are still very much at the beginning of the learning curve on this issue, mean that it is simply not possible to provide prescriptions as to how these mechanisms should be established. Instead, the Guide aims to help stakeholders to go through the process of establishing a mechanism, to ask the right questions and to think through the right issues. The Annex provides a flowchart of the decisions/assessments that need to be made when establishing a safety mechanism, and is designed to be used as a tool to assist in this process.

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[1] Toby Mendel is the Executive Director of the Centre for Law and Democracy, a Canadian-based international human rights NGO that provides legal and capacity building expertise regarding foundational rights for democracy. Thanks for comments and support to Eduardo Bertoni, then Director of the Center for Studies on Freedom of Expression and Access to Information (CELE) at Palermo University, Jesper Højberg, Director, International Media Support, Guy Berger, Director of Division Freedom of Expression and Media Development, UNESCO, Sylvie Coudray, Chief of Section Freedom of Expression, and Centre for Law and Democracy interns, Caterina Calleri and Federica Danesi.

The key issues to be considered can be grouped into three main categories, namely the scope of the mechanism, involving key stakeholders and institutional design. In terms of scope, a first question is whether to focus on one or both of the issues of providing protection and combating impunity. Both depend on having a good flow of information about safety issues, as well as a clear definition of what is included within the notion of safety, which can range from sexual abuse to assassinations. In most cases, the need for both is present, but there may be reasons to focus resources on one or the other. Another key scope issue is who should be covered, which in most cases would be either journalists (or media workers more generally) or those who are at risk for exercising their right to freedom of expression (which in some cases is cast as human rights defenders). Whether a mechanism extends to compensation for victims and their families is another issue.

A number of more specific scope issues arise in relation to protection. These include what specific measures of protection will be offered, who might be eligible for protection (beyond the person directly affected, such as his or her family or workplace) and whether urgent as well as longer-term protection will be offered. Consideration should also be given to whether to go beyond protection, strictly speaking, to include prevention.

In terms of impunity, a key issue is how the mechanism can seek to address failures by regular administration of justice actors to bring this particular set of criminals to justice. This may involve wider rule of law challenges, including incompetence or corruption, which are often difficult to address. A key issue here is how to secure evidence rapidly after a crime has been committed and careful thought needs to be given to who can be involved in this and how it can be done. Consideration may also need to be given to creating a wider supportive legal environment, for example by removing time limits to bringing charges in such cases and providing for heavier penalties.

Making sure that relevant stakeholders are effectively integrated into a safety mechanism can dramatically increase its chances of succeeding by harnessing the skills, resources and support of different stakeholders, and by promoting coordination as opposed to duplication or even competition. Structurally, different stakeholders can play a number of different roles. These include involving them formally in governance, decision-making and/or oversight bodies, and having them perform service delivery roles on behalf of the mechanism. The latter could either be under cover of a formal agreement or be done simply in a collaborative fashion. An important cross-cutting issue is the importance of building strong monitoring and information dissemination systems into the mechanism, and the role of external stakeholders in delivering this function cannot be overstated.

A number of different stakeholders should be considered. Civil society groups, including groups representing individuals who have been attacked or are at risk, are an obvious set of stakeholders. In many countries, the international community plays an important role as well. Both of these groups can provide credibility and resources, support operational goals, and help ensure that the mechanism is well connected to its target beneficiaries. Official actors play a key role in almost all of the existing mechanisms, in

terms of both the protection and impunity roles. This is due to the important resources and expertise they can provide, as well as the structural weight they offer. Media companies and media training institutes can also be important partners for safety mechanisms.

In very important ways, institutional design will flow, at least in part, from decisions relating to scope and the presence and role envisaged for external stakeholders. A key initial design issue is whether to create a new body or to locate the mechanism within an existing body. The former has the advantage of providing dedicated focus to this issue, but the disadvantage of needing to build something from the ground up. The latter is particularly challenging on the impunity side, and this is reflected in the fact that almost all of the mechanisms addressing impunity rely on existing bodies, at least at the operational level. However, an interesting design model is to create new governing structures for dedicated functions relating to the mechanism, but which are undertaken by existing bodies, sometimes in structured relationships with other State and non-State bodies.

Some of the key issues that need to be taken into account at the design phase include the following: undertaking monitoring and case referrals; whether urgent actions are envisaged; how to undertake longer-term risk assessments for protection purposes; dealing with situations where there are allegations of official involvement; putting in place appropriate governance systems; managing the running of internal functions, including staffing; funding; and coordination among different parts of the mechanism.

Ultimately, the key decisions relating to the establishment of a safety mechanism need to respond appropriately to local circumstances and needs. These will often vary considerably in areas such as the underlying need (i.e. the specific nature of the problem to be addressed), the availability of stakeholders with the capacity and interest to get involved, constitutional and legal considerations, political will, resources, and the existence of official institutions which can support or even host the mechanism. However, whatever the situation, it is important for those tasked with developing a safety mechanism to think carefully about how to do this. Hopefully this Guide will help them navigate this complex process more easily and ensure that they are at least alert to and think about the main relevant issues.

# Supporting Freedom of Expression: A Practical Guide to Developing Specialised Safety Mechanisms

**Toby Mendel**[2]

## Introduction/Background

Freedom of expression is a cherished right in democracies and countries striving to become better democracies around the world. But because of the power that speaking the truth can harness, as well as the influence of media outlets, a number of challenges often face the exercise of the right to freedom of expression. Government control over the media and unduly broad or harsh restrictions on what may be said are well-known and long-standing threats, while forms of commercial control are in many countries of more recent vintage. Another threat which has taken on increasingly sinister scope and proportions in recent years is the phenomenon of threats against and attacks on those exercising their right to freedom of expression with a view to silencing them, which has been referred to as 'censorship by killing'.[3]

The scale of the problem has remained troublingly constant over time. According to the non-governmental organisation the Committee to Protect Journalists (CPJ), the number of 'motive confirmed' killings of journalists (i.e. those who were specifically killed for their work) has not dropped below 42 per year for the last ten years (i.e. 2006 to 2015 inclusive), with an average during this period of over 60 per year, and no discernable trend in the figures during that time.[4] UNESCO's statistics also show a consistently high incidence of killings of journalists in recent years.[5] The scope of the problem is also

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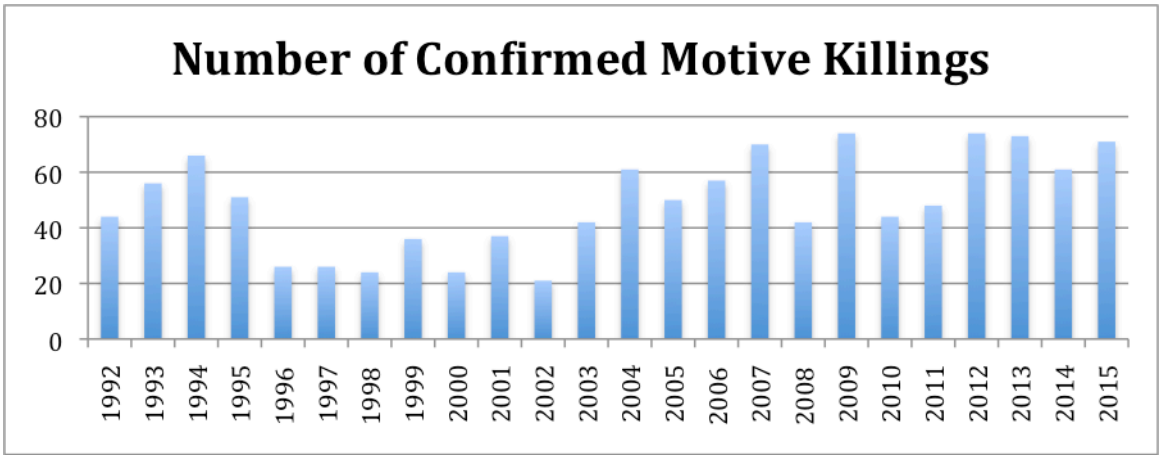
[3] See the Joint Declaration of the special international mandates on freedom of expression of 30 November 2000. The mandates have adopted a Joint Declaration annually since 1999 and all of these Joint Declarations are available at: http://www.osce.org/fom/66176.

[4] See their statistical tables at: https://cpj.org/killed/.

[5] See, for example, Table 3 on killings from 2006 to 2013 on p. 11 of the report The Safety of Journalists and the Danger of Impunity: Report by the Director-General to the Intergovernmental Council of the IPDC (Twenty-Ninth Session), 2014. Available at: http://unesdoc.unesco.org/images/0023/002301/230101E.pdf. See also the charts on p. 150 and

broad, and includes countries from different regions of the world.[6] These figures focus only on actual killings of journalists and it goes without saying that the number of attacks, let alone threats of attacks, is vastly higher.

Table 1: Journalists Killed by Year




Source: CPJ statistics available at: https://cpj.org/killed/.

The figures also highlight the extremely high percentage of these cases that go unpunished. For example, the UNESCO report, World Trends in Freedom of Expression and Media Development: Special Digital Focus 2015, indicates that the, "cumulative cases which are reported as being judicially resolved was 5% in 2012, rising to 8% in 2014. …it is evident that impunity continues as the predominant trend."[7] The 2014 Report by UNESCO's Director-General to the Intergovernmental Council of the International Programme for the Development of Communication (IPDC) indicates that, according to reports from States, only 39 of the 593 cases of journalists listed as having been murdered between 1 January 2006 and 31 December 2013, or less than seven percent, had been resolved.[8] According to CPJ, 1188 journalists have been killed since 1992, of whom 785 were confirmed murdered for their work; 680 of these cases took place with complete impunity.[9] CPJ's Impunity Index measures countries where there are at least five unsolved cases of murders of journalists which took place over the last ten years. The number of countries meeting this grisly standard has remained remarkably constant since the index was first published in 2008, remaining within the narrow range of 12 to 14 countries.[10]

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following of the UNESCO report World Trends in Freedom of Expression and Media Development: Special Digital Focus 2015. Available at: http://www.unesco.org/new/en/world-media-trends-2015.

[6] CPJ's top 20 countries for killings since 1992 includes countries from Africa, Asia, Eastern Europe, Latin America and the Middle East, but not from Western Europe. See https://cpj.org/killed/.

[7] See footnote 5, p. 154.

[8] See Table 4 on p. 20 of the Report, footnote 5.

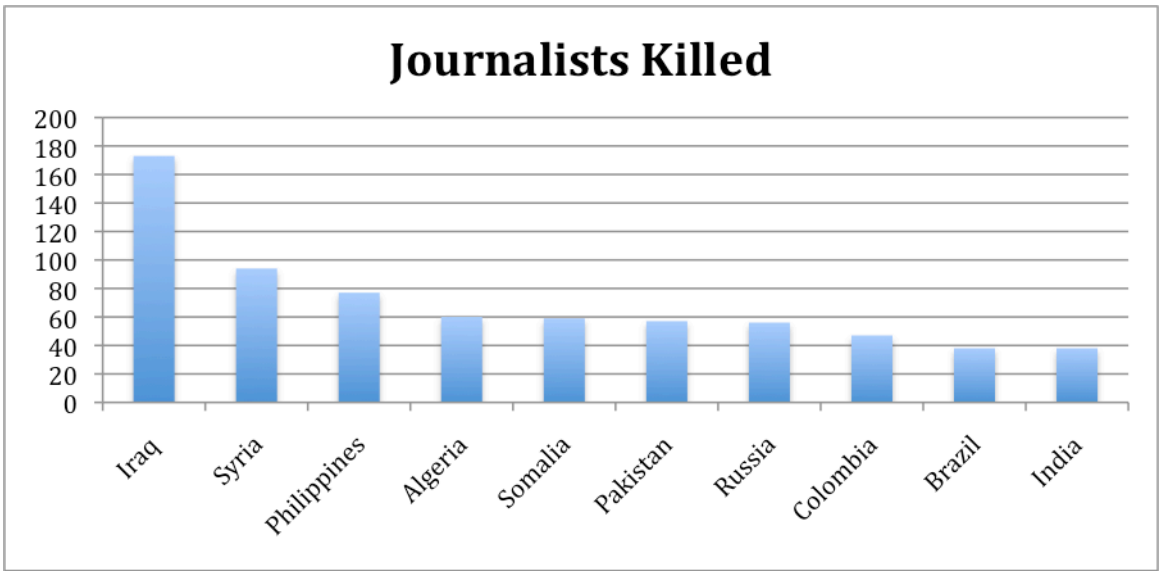
[9] Statistics as of 15 April 2016. See: https://cpj.org/killed/impunity.php. See also paragraph 1.3 of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity. Available at: http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/un-plan-of-action/.

[10] The different reports are all available on the CPJ website at: https://cpj.org/.

Profile of the Problem

Many of the countries which demonstrate the most serious problems of both killings and impunity are countries experiencing violent conflict, with Iraq at the head of lists for both issues by a long way. Obviously conflict situations present special challenges both in terms of securing the safety of journalists and in terms of investigating those responsible for attacks.

Table 2: Ten Worst Countries for Journalists Killed Since 1992




Source: CPJ statistics available at: https://cpj.org/killed/.

However, murders of journalists are also associated with other contexts, most notably where journalists report on organised crime, corruption and abuse of political power.[11] In these contexts, a variety of factors may come into play. State actors, such as police or security officials, may be involved in perpetrating the attacks, sometimes at the behest of senior political figures. Given that the police are normally responsible for both protecting citizens and investigating crimes, this can seriously exacerbate an already troubling situation. Corruption, whether linked to politics or not, may be very widespread, implicating a broad range of actors, again presenting special barriers to addressing the problem of attacks. The same may be true of organised crime, where it is sufficiently widespread.

The figures suggest that most of these journalists work for the traditional media – roughly equally divided between print and broadcast journalists – but that there is a growing trend of attacks against online journalists, which has escalated recently.[12] This may present special problems, especially in the area of protection, given that this type of journalist can often count on less backing from a support organisation, in the form of a traditional media outlet. Online journalists may also not have the same degree of formal

[11] These types of causes are highlighted in paragraph 1.6 of the UN Action Plan, footnote 9. Details on the cases logged by CPJ are available at: https://cpj.org/killed/.

[12] See, for example, Figure 8 on p. 85 of UNESCO's *World Trends in Freedom of Expression and Media Development*, 2014. Available at: http://www.unesco.org/new/en/world-media-trends. 2015 witnessed a number of killings of bloggers in Bangladesh, for example.

journalism training, including in the area of safety, as some other journalists. Importantly, the overwhelming majority of those killed work for local media outlets, which also tend to be far less well resourced than international media companies.

At some level, these attacks are crimes, just as any physical attack on someone would be. However, they are far more serious than 'ordinary' crimes due to their particular goal, namely to silence individuals who make public statements about a matter of public importance, such as corruption, crime or war. This idea was captured well in the preamble of the 25 June 2012 Joint Declaration on Crimes Against Freedom of Expression, adopted by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information (special international mandates on freedom of expression), which stated:

> *Noting* that violence and other crimes against those exercising their right to freedom of expression, including journalists, other media actors and human rights defenders, have a chilling effect on the free flow of information and ideas in society ('censorship by killing'), and thus represent attacks not only on the victims but on freedom of expression itself, and on the right of everyone to seek and receive information and ideas.[13]

International Responses

The international community has not been silent in the face of this heinous threat to freedom of expression. Numerous international actors have made statements about attacks on journalists and the obligations of States to take action to address this problem. On 12 November 1997, UNESCO's 29th General Conference adopted Resolution 29, asking the agency's Director-General "to condemn assassination and any physical violence against journalists as a crime against society, since this curtails freedom of expression and, as a consequence, the other rights and freedoms set forth in international human rights instruments".[14] These sorts of condemnations have also been included in several of the declarations adopted at the UNESCO annual conferences held on World Press Freedom Day, 3 May.[15]

Another important UNESCO initiative in this area was the promotion of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity (UN Plan or Plan of Action), which has been welcomed by the UN General Assembly and was endorsed by the UN Chief Executives Board.[16] The Plan sets out a number of principles governing action in this area, as well as a number of proposed actions for UN bodies to address the problem.

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[13] Available at: http://www.law-democracy.org/live/wp-content/uploads/2012/08/mandates.decl_.2012.pdf.

[14] Available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Brussels/pdf/ipdc_resolution_29.pdf. The lists of condemnations are available at: http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/press-freedom/unesco-condemns-killing-of-journalists/.

[15] See Eduardo Bertoni, *Prevent and Punish: In search of solutions to fight violence against journalists* (2015: Paris, UNESCO), p. 8. Available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/Events/IDEI_2014/Prevent-and-Punish_Bertoni.pdf.

[16] See footnote 9.

International law establishes a number of formal State obligations in this area, including as part of humanitarian law (for example as reflected in the Geneva Conventions and their Additional Protocols)[17] and as part of human rights law, in particular the right to freedom of expression. The latter is perhaps best captured in the 2012 Joint Declaration of the special international mandates on freedom of expression.[18] This sets out a number of general principles and then focuses on States' obligations to prevent and prohibit attacks, to protect those at risk, to conduct independent, speedy and effective investigations when crimes do occur, and to provide redress for victims in appropriate cases. A very clear statement of States' obligations is found in the 2000 Joint Declaration as follows:

> States are under an obligation to take adequate measures to end the climate of impunity and such measures should include devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression, investigating such attacks when they do occur, bringing those responsible to justice and compensating victims.[19]

There are also a number of high-level UN statements and commitments in this area. These include, among others, UN General Assembly Resolution 70/162 on The safety of journalists and the issue of impunity, 17 December 2015;[20] Security Council Resolutions 1738 of 23 December 2006 and 2222 of 27 May 2015;[21] Commission on Human Rights Resolution 2005/81 on Impunity, 21 April 2005;[22] and Human Rights Council Resolution 21/12 on Safety of Journalists of 9 October 2012.[23]

Yet another important statement on this issue is found in Sustainable Development Goal 16.10, which calls on States to "Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international

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[17] Available at: https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions.
[18] See footnote 13.
[19] See footnote 3. Other important statements on the human rights implications of this issue include: the Declaration of the Committee of Ministers of the Council of Europe on the protection of journalism and safety of journalists and other media actors, 30 April 2014, available at: https://wcd.coe.int/ViewDoc.jsp?id=2188999; the EU Human Rights Guidelines on Freedom of Expression Online and Offline, 12 May 2014, available at: http://eeas.europa.eu/delegations/documents/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf; Principle XI of the Declaration of Principles on Freedom of Expression in Africa, available at: http://www.achpr.org/sessions/32nd/resolutions/62/; Principle 9 of the Inter-American Declaration of Principles on Freedom of Expression, available at: http://www.cidh.oas.org/declaration.htm; and the report by the OAS Special Rapporteur on Freedom of Expression, *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators*, 31 December 2013, available at: http://www.oas.org/en/iachr/expression/docs/reports/2014_04_22_Violence_WEB.pdf.
[20] See http://www.un.org/en/ga/70/resolutions.shtml and http://en.rsf.org/rsf-welcomes-a-new-positive-step-21-12-2015,48679.html.
[21] Available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Civilians%20SRES1738.pdf and http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2222.pdf.
[22] Available at: http://www.refworld.org/docid/45377c930.html.
[23] Available at: http://www.refworld.org/docid/50adf4812.html.

agreements".[24] A related indicator for this Goal is "Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months". There is also increasing attention to safety in the Universal Periodic Review (UPR). The UNESCO Director-General continues to request information from Member States on judicial follow-up to cases of killings. These all create stronger incentives for States to have systems and mechanisms in place to address these issues domestically.

National Safety Mechanisms

These international developments have been matched by a variety of actions at the national level. Among many other such actions by different national actors – which include legislative reform, monitoring, training and the provision by media companies of protective equipment – has been the idea of developing formal mechanisms to promote the safety of those who are targeted for exercising their right to freedom of expression. Such safety mechanisms tend to focus on one or both of two main issues, namely providing protection to those who are at risk and tackling the problem of the impunity which perpetrators all too often enjoy. A strong base of information on what is happening in this area is an important underpinning of both of these.

Some of the more established and well-known safety mechanisms are those found in Mexico and Colombia, and there are also mechanisms in a number of other countries, including Guatemala, Honduras and Serbia.[25] In Mexico, a number of different mechanisms exist, including some that focus on protection and others that address impunity, while in Colombia the dominant focus has been on protection and this is also the approach in the recently establish system in Honduras. In Guatemala, the focus is not exclusively on journalists, or those who have been targeted for exercising their right to freedom of expression, but, rather, on illegal security organisations. The Serbian mechanism focuses exclusively on investigating the killings of three journalists.

There are also a number of countries – including Nepal and Pakistan – where discussions and even commitments to establish mechanisms are relatively well advanced. In Nepal, for example, civil society groups and the international community has been calling for a mechanism for some time,[26] and the National Human Rights Commission included this as a priority commitment in its 2015-2020 Strategic Plan.

Every country should at least have in place a system for tracking threats and attacks on freedom of expression. Specialised safety mechanisms in the sense that term is used in this report are not needed in every country, and are more relevant in countries with a higher incidence of serious attacks. In their 2012 Joint Declaration, the special

[24] Available at: https://sustainabledevelopment.un.org/?menu=1300.

[25] A detailed assessment of the mechanisms in Mexico, Colombia and Guatemala is found in Natalia Torres, *Institutional Design and Effectiveness of the Agencies Charged with Protecting Journalists and Investigating Crimes against the Press: Mexico, Colombia and Guatemala* (2012: Buenos Aires, Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE)). Available at: http://www.palermo.edu/cele/pdf/english/Internet-Free-of-Censorship/Institutional-Design.pdf.

[26] See, for example, the February 2012 Joint Statement of the International Fact Finding and Advocacy Media Mission to Nepal. Available at: http://www.law-democracy.org/live/international-media-mission-to-nepal-issues-joint-statement/.

international mandates on freedom of expression called for the establishment of specialised protection mechanisms, "where there is an ongoing and serious risk of crimes against freedom of expression". At the same time, it seems likely that the number of countries seriously considering some such mechanism will increase over time.

Although there are a number of established mechanisms, this remains an emerging area of practice and we are still very much on a learning curve as to what works, what does not and what really depends on the particular circumstances. There have been a number of analyses of the existing mechanisms, especially those found in Mexico and Colombia, pointing to their strengths and weaknesses. While there is a lot to be learned from these experiences, in both countries design has been driven in important ways by the particular local legal, historical and social context, so that only very general lessons can be drawn for other countries from these examples.

What can be said from the experience so far is that specialised safety mechanisms have the potential to play a very important role, as noted along two main directions, namely providing protection and addressing impunity. Although there is quite a bit of discussion, and criticism, in the literature about how the different mechanisms could be improved, there is very little questioning of the basic premise that safety mechanisms can help bolster safety. There is also some indication that these mechanisms can actually work in practice. For example, Colombia, which had been on CPJ's Impunity Index since it was first launched in 2008, finally dropped off in 2015.

There is also some support for the idea of specialised safety mechanisms in international standards. The UN Plan of Action focuses mostly on action at the UN level. However, it includes a section on Cooperating with Member States which refers to the idea of UN bodies assisting Member States to develop mechanisms guaranteeing freedom of expression and encouraging States to establish national emergency mechanisms.[27]

Purpose of this Guide

The main aim of this Guide is to provide support to those who are thinking about establishing or planning to establish a safety mechanism in their country. Specifically, it aims to provide stakeholders with a mapping of the issues they need to consider when establishing such a mechanism, a sort of analytical framework to guide them in their decision-making around this issue.

The main issues that need to be considered when establishing a safety mechanism are grouped into three main areas in this Guide, as follows:

- the scope of the mechanism (including in terms of who is covered, the type of threats that are covered and various issues relating to both protection and impunity);
- involving relevant stakeholders (including the possible types of stakeholders and their potential roles); and

[27] See paragraphs 5.6 and 5.8 of the Plan.

- institutional design (including whether the mechanism needs to be specially established and how to deliver the desired outcomes efficiently while involving all relevant stakeholders in an appropriate manner).

The Guide assesses each issue and discusses the various possible options, presenting pros and cons linked to different contextual factors.

It should be stressed that the role of the Guide is to provide support and input into local choices, rather than to serve as a manual or set of directions for establishing a mechanism. The range of possible local situations and other contextual factors is simply too wide for any template to be able to work in all of them. Furthermore, the extent of our learning from previous experience is still too shallow and tentative for firm conclusions to be drawn from it. Readers will therefore be required to apply the learning presented in this Guide to their own situations and contexts. At the same time, the Guide will hopefully help them think through the process of establishing a mechanism, and facilitate their decision-making processes as they do so.

## Design Considerations

This part of the Guide focuses on the key choices that face those seeking to establish a safety mechanism. It is divided into three sections, reflecting the three main types of decisions that need to be made. First, it looks at the focus or scope of the mechanism or, to put it differently, what it will actually do. This is obviously a key consideration and decisions at this level will impact directly on other decisions. Second, it looks at the role to be played by different stakeholders. In the context of any particular country, this needs to take into account which stakeholders are already or should naturally be involved in the area in which the safety mechanism will work, as well as issues such as capacity, interest and obligations. Finally, the Guide focuses on issues relating to institutional design, which will be driven by the assessments arrived at in the previous sections, as well as practical considerations, based on both the situation in the country and learning from other contexts.

### 1. Focus or Scope

From a thematic perspective, different safety mechanisms focus on one or both of two key issues, namely providing protection and addressing impunity. Some also focus on prevention, by which we mean here wider activities designed to limit the overall extent of attacks (i.e. not just aimed at specific actors, which is covered by protection). It may also be useful to take advantage of the expertise and representative power it would marshal to engage the safety mechanism in wider initiatives in its area of work, such as assisting in the formulation of, or at least commenting on, policy and law development processes. A good based of information is important for the efficient functioning of both the protection and impunity functions and the need for information will be linked to the scope of the mandate of the mechanism that is finally agreed upon.

Choices also need to be made in terms of who is covered by the mechanism – i.e. journalists or some wider set of actors, such as human rights defenders or those

exercising their right to freedom of expression – and what sorts of measures it will provide. Choices regarding scope will impact on the design of the system. For example, where more substantial protection measures are being offered, there will also be a need for more attention to be given to decision-making processes around eligibility for protection, to prevent abuse of the system and to ensure appropriate allocation of resources.

It may be tempting to define the mandate of the mechanism broadly, so as to ensure that all needs are addressed. At the same time, this may result in resources being spread thinly and insufficient resources being available to address the main priorities, as well as a failure to develop focused expertise. It is, therefore, worth spending some time on this question and, where necessary, ensuring that the political capital needed to make hard choices is brought to bear.

The highest order issue in terms of scope is whether to focus on protection, addressing impunity or both. It terms of needs, these two almost by definition go together. There is only a need for protection if there are threats of or actual attacks, and in this case there is a need to prosecute the perpetrators. Unfortunately, high rates of impunity in most countries suggest a need for special measures in this area. And where there is a need to bolster efforts to address impunity, this is because there have been attacks and/or threats. Unfortunately, in such cases there is almost always a risk of further attacks, i.e. a need for protection.

In some countries, sufficient institutional measures may already be in place to address one of these issues, more probably impunity, namely where the administration of justice is already covering this effectively. There are cases, for example Colombia, where the Programme for the Protection of Journalists and Social Communicators, which falls under the general National Protection Unit (UNP) system, focuses exclusively on protection, as its name suggests, although it has been criticised for this.[28] On the other hand, the main initial special mechanism in Mexico, the Special Prosecutor for Crimes Against Journalists (FEADP by its Spanish acronym), later the Special Prosecutor for Crimes Against Freedom of Expression (FEADLE), focuses exclusively on addressing impunity, which has also been recognised as being too limited.[29]

Regardless of whether a mechanism focuses on protection or impunity or both, an effective system of monitoring, recording and reporting on threats and incidents is essential. The operation of the mechanism – in the sense of what would trigger protective or impunity addressing measures – depends on a flow of reliable and, to the extent possible, comprehensive information about situations of risk and of course

[28] See Natalia Torres, footnote 25, p. 48. The Programme was created by Decree 1592/2000 under the authority of Law No. 199/95, which authorised the Ministry of the Interior to develop programmes to provide protection in response to threats to citizens, and Law No. 418 of 1997, which authorised the Ministry of the Interior and the Attorney General to establish programmes to protect populations that were specifically at risk.

[29] FEADP was created in 2006 and transformed into FEADLE in 2009. In 2012, in recognition of the shortcomings of an exclusive focus on prosecutions, this was supplemented by a second institutional arrangement, the Mechanism to Protect Human Rights Defenders and Journalists, which focuses on protection.

attacks when they do occur. This is a huge challenge in most countries and, to try to address it, efforts are needed to involve as wide a range of stakeholders as possible. This monitoring and reporting can also be very important to ensure a reliable flow of information to relevant international strategies and actions.

Three cross-cutting scope issues come up. The first is the scope of the mechanism in terms of who is covered. One option here is just to cover journalists or more broadly individuals engaged in journalistic activities (sometimes referred to as acts of journalism). This might be defined more or less broadly, in the latter case to include bloggers, camera teams and potentially even citizen journalists (or those spreading information via social media platforms). In the modern world, focusing on a narrow definition of traditional media workers is less and less relevant and justifiable. While a broader focus could potentially involve a very wide range of people, the fact that the mechanism would only cover those targeted for attacks or threats of attack for what they disseminate would in most cases act as an important filter. To keep the focus on protection of public interest communications, the system might also wish to filter out personal disputes (i.e. so as to exclude arguments and family matters).

A different approach is to cover those targeted for exercising their right to freedom of expression. Although the media is the primary target of such attacks in most countries, experience suggests that others, such as book authors and those writing reports for civil society organisations, may also be subject to attack. This approach has the merit of focusing directly on the underlying value which is being protected, namely freedom of expression. A variant of this would be to cover human rights defenders, which covers journalists. The Honduran protection mechanism covers human rights defenders as well as journalists, social communicators and legal practitioners.[30]

In some countries, the mechanism is not limited to expressive activities. Thus, in Guatemala, the mandate of the International Commission Against Impunity in Guatemala (CICIG) is, broadly speaking, to monitor and dismantle illegal, clandestine security groups and to promote legal responsibility for the crimes they commit.[31] In Italy, protection extends to those who are attacked or threatened because of the exercise of their profession. In other countries, the mandate is narrower, focusing only on a few specific cases of journalists who have been killed. This is the case, for example, with the Serbian Commission for investigating journalist murders, established in

[30] This is clear from the title of Decree No. 34-2015, 15 May 2015, which is the Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Legal Practitioners. Available at: http://www.sdhjgd.gob.hn/biblioteca-virtual/documentos-de-interes/298-ley-de-proteccion-para-las-y-los-defensores-de-derechos-humanos-periodistas-comunicadores-sociales-y-operadores-de-justicia/file. See CEJIL and Protection International, Observations to the Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Legal Practitioners. Available at: http://www.ishr.ch/sites/default/files/article/files/analisis-ley-de-proteccion-para-defensores-as_translated_final.pdf.

[31] See Article 2 of the Agreement Between the United Nations and the State of Guatemala on the Establishment of an International Commission Against Impunity in Guatemala. Available at: http://www.wola.org/publications/cicig_text_of_the_agreement_between_the_united_nations_and_the_state_of_guatemala_on_th.

2013,[32] which is only tasked with combating historical impunity for the murders of three journalists, namely Dada Vujasinovic, Slavko Curuvija and Milan Pantic.

Issues also arise in terms of the types of incidents the mechanism will cover. This would obviously include attacks and attempted attacks, but it should also cover credible threats, noting that most attacks are preceded by threats.[33] In most cases, it will be appropriate to define attacks broadly, to include sexual assaults and perhaps even psychological violence. Careful thought needs to be given to whether or not to go beyond that. In some cases, for example, the mechanism might cover legal harassment, such as in the form of illegitimate arrests, detentions, prosecutions, and/or other legal measures (such as deportation or seizure of equipment or property), although in many countries legal systems do offer their own internal systems for redress for these sorts of abuse.

In some cases, it might be appropriate to limit the geographic scope of the mechanism to certain areas of a country where the problem is concentrated. There may, among other things, be jurisdictional reasons for doing this (see below).

Protection Issues

A number of more specific scope issues come up in relation to protection. The first is what sort of protection is being considered. A balance needs to be struck here between ensuring that what is being offered is sufficient and effective, and measures which are realistic, given resource constraints and taking into account likely demand. The protection offered by the French authorities to magazine *Charlie Hebdo* did not match the threat that eventually emerged.[34] However, it is much easier to look back at such incidents than to plan for them in advance. The Colombian UNP mechanism has been credited with its broad and generous protection measures, but it is also very costly,[35] and the Italian system also offers strong protection measures, albeit also at a high cost.[36] Neither of these two systems are limited in scope to journalists.

Some of the specific protection measures that are offered under different systems include: relocation, whether temporary or permanent, potentially with a new identity, which may include a system of safe houses; safety equipment such as alarms, panic buttons, satellite phones, protective vests or even armoured cars; training; bodyguards,

[32] See Balkan Media Watch, "Serbia Forms Commission into Journalists' Killings", 25 January 2013. Available at: http://www.balkaninsight.com/en/article/serbia-to-investigate-mystery-killings-of-journalists.

[33] In the case of the Charlie Hebdo attacks, one of the attackers, Chérif Kouachi, issued a warning some three months before the attack. See http://www.telegraph.co.uk/news/worldnews/europe/france/12085887/The-series-of-French-police-misses-that-could-have-warned-Charlie-Hebdo-staff-of-attacks.html.

[34] See, for example: http://www.telegraph.co.uk/news/worldnews/europe/france/12085887/The-series-of-French-police-misses-that-could-have-warned-Charlie-Hebdo-staff-of-attacks.html.

[35] According to news reports, the whole system, which provides protection to a number of different groups deemed to be at risk, costs well over USD200 million per year to operate. See Alina Dieste, "High price of keeping Colombians alive", 14 November 2014. Available at: http://news.yahoo.com/high-price-keeping-colombians-alive-041525106.html. See also Eduardo Bertoni, footnote 15, p. 22.

[36] Law, No. 133/2002, establishing the Italian system, and its related Decree, are available at: http://www.camera.it/parlam/leggi/02133l.htm#decreto.

whether official or private; hotlines and other responsive tools; police monitoring and visits; and emerging high tech tools.[37] Specific decisions regarding the allocation of protection measures should be based on a holistic assessment of needs and a realistic assessment of resources. They also need to be done in a procedurally fair and sound way, because otherwise there are likely to be complaints on the part of those who are rejected or who receive less generous protection packages.

Consideration should also be given to offering support after an attack to mitigate the impact of the attack (which is, strictly speaking, different from protection). This might include health measures, both physical and psychological, and special assistance to address any harm suffered (such as help with daily needs in case of an injury). Another issue which warrants consideration is the question of compensation. This could be in the form of financial compensation, whether for victims or their families, or potentially other measures (such as alternative employment).

It may not be necessary to come to a firm decision on exactly what protection measures will be available in the design phase of a mechanism – instead, the specific allocation of measures could be worked out along the way in the context of specific requests for protection – but considerations of fairness, predictability and appropriate warning require that some framework for this be agreed upon and made public. Furthermore, the system should allow for any specific allocation of protection measures to be tailored to the needs and desires of the victim, who should clearly have a say in the matter, at least to the point of refusing available measures where he or she feels that they are not helpful for one reason or another (which might, for a journalist, include the inhibiting effect of protection measures on his or her ability to do the job). Attention should also be given to providing for a systematic evaluation of the impacts that protection measures are likely to have on both the safety of the actor concerned and any wider impact on colleagues, employers, sources, and so on.

Another issue is who, specifically, might be eligible for protection measures. Obviously this would cover the person directly at risk but, in appropriate circumstances, it might also cover close relatives, work colleagues and/or the workplace. Once again, the exact scope of this does not necessarily need to be spelt out in great detail in the design phase, but at least some framework for allocating protection does need to be in place (for example, criteria for deciding who or what might be eligible). In extreme cases, protection may even need to extend to administration of justice officials involved in a high-profile case, such as investigating magistrates, prosecutors and even judges.

Many systems have in place procedures for allocating protection measures on an urgent basis, where necessary, for example because the threat is urgent and because the assessment process for longer-term measures takes too long. In this case, there needs to be a system for transitioning between urgent and longer-term measures. There should also be a system for transiting people out of protection when it is no longer needed.

[37] See, for example, http://pfotech.globalmouth.com/gpsbracelet/gps-tracking-bracelet-proposed-at-unesco-to-safeguard-journalists/.

Closely related to, but distinct from, protection measures are prevention strategies. There is a wide range of possibilities here and often responsibilities for this fall outside of the mandate of the safety mechanism, although it may also bear some responsibilities in this area, such as building public awareness and condemning the attacks. Where there is some suggestion that official actors have been involved, condemnation of the attacks at a senior political level can be helpful, and the mechanism may play a role in motivating such condemnations.

Impunity Issues

The key issue on the impunity side, almost by definition, is the failure of the regular administration of justice actors – police, prosecutors, investigating magistrates, judges – to bring those responsible to justice. Such failures may occur at different and often at several levels, with an important concentration of problems in most countries occurring at the initial investigation stage. In some cases, the direct perpetrators of the attacks are successfully prosecuted but the masterminds behind them are not, which is clearly problematical.

A key issue is how the mechanism is going to address these failures. It is clear that the design of a national mechanism in this area needs to take carefully into account how it will relate to the wider administration of justice system. Broader challenges in terms of the rule of law are also very relevant. There may be little point focusing resources on getting powerful defendants to court if it is relatively simple to buy off judges, for example. There may be wider structural reasons why police investigations are failing and, unless the system put in place by the mechanism can address these challenges, and safeguard its mandate and autonomy to fulfil this, it is unlikely to be successful. Often, these underlying problems are not easy to resolve or address.

There may be constitutional considerations that need to be taken into account. For example, in federal States jurisdiction over criminal matters may vest in sub-national players, such as provinces or states, precluding national actors from getting involved. This has, for example, been a major factor inhibiting the effectiveness of the (national) impunity mechanism in Mexico.[38] In some countries, such as Guatemala, only the Attorney General can initiate prosecutions in criminal cases, with the result that the mechanism can only provide investigative support to the Attorney General, who retains decision-making power and control in relation to actual prosecutions.[39] In Nepal, the courts have held that when the National Human Rights Commission, where the proposed mechanism will be housed, forwards a human rights case to the Attorney General, the latter does not have the power to refuse to prosecute that case, essentially negating the constitutional rule that only the Attorney General can bring a case. There may also be rules on re-initiating investigations and/or cases which need to be taken into account where such actions are envisaged as part of the mechanism.

[38] See Natalia Torres, footnote 25, pp. 23-24. This eventually led to the Constitution being amended. See Article 19, "Mexico: Constitution amended, federal authorities given powers to prosecute crimes against free expression," 14 June 2012. Available at: https://www.article19.org/resources.php/resource/3330/en/mexico:- constitution-amended,-federal-authorities-given-powers-to-prosecute-crimes-against-free-expression.

[39] *Ibid.*, p. 77.

In their 2012 Joint Declaration, the special international mandates on freedom of expression highlighted the need for investigations to be "independent, speedy and effective".[40] One aspect of the independence of investigations is the idea that there needs to be a clear separation between those responsible for investigating and those against whom criminal allegations are being levied, which can be difficult where there is evidence of involvement of State actors in attacks. Ensuring the independence of administration of justice actors – most obviously judges but also police and prosecutors – is an established principle in a democracy, but there may be problems with this in practice, especially where senior officials or politicians are involved. Where allegations are actually made against administration of justice actors, most problematically the police, securing the independence of investigations can be even more challenging. This can also come up in a milder form where the attacks are against a journalist who has been active in reporting on, including in a critical fashion, actors involved with the administration of justice. In such cases, special arrangements may be necessary to ensure the independence of investigations.

In terms of speedy investigations, one issue is the need to secure evidence, including from witnesses, on a timely basis which an early warning system and rapid response mechanism may be able to do more effectively than the regular criminal justice system (i.e. the police). Careful thought needs to be given here to who can and should be involved. For example, actors who may be on the scene and therefore able to act quickly may not have the powers or skills to secure evidence properly. There may need to be a difference between those who play a role in terms of early warning and sending alerts and those who actually conduct evidence gathering operations.

In addition to the systems and powers built into the mechanism, there may be a need for a number of supportive legal rules and arrangements. In their 2012 Joint Declaration, the special international mechanisms called for the law to provide for heavier sanctions for crimes motivated by a desire to silence the victims (which they called crimes against freedom of expression), based on the serious consequences of such crimes, not only for the victims but for society as a whole. They also called for longer or unlimited statutes of limitations (i.e. the time beyond which prosecutions may no longer be brought). Finally, they called for systems to be put in place to help victims claim redress, including a right to bring a civil case for compensation, regardless of whether or not criminal responsibility has been established (noting the different standard of proof that applies in these two legal systems in most countries) and the provision of appropriate remedies – compensation but also rehabilitation – following a criminal conviction.[41]

## 2. Involving Relevant Stakeholders

[40] 25 June 2012. Available at: http://www.osce.org/fom/66176.

[41] See footnote 18. Resolution 29 adopted by UNESCO's 29th General Conference, also called on Member States to do away with statutes of limitations for crimes against freedom of expression and to refine their legislation in this area so as to make it possible to prosecute and sentence those responsible for such crimes in civil courts.

The State bears primary responsibility for protection and prosecution/punishment in relation to criminal matters. This does not, however, mean that the State needs to work alone on these issues. Indeed, experience demonstrates clearly that involving relevant stakeholders is absolutely essential to the success of any safety mechanism. There are several reasons for this. First, safety mechanisms need to build on the strengths and institutional capacity of as many stakeholders as possible if they are to be effective. In many cases, for example, networks already created by different stakeholders can be invaluable to the work of the mechanism. Second, if key stakeholders are left out, they may ignore or even oppose the work of the mechanism, once again undermining its ability to achieve its full potential. Third, engagement of different stakeholders may be essential to creating trust among those whom the mechanism seeks to support, namely those who are targeted for exercising their right to freedom of expression. Finally, involving a range of stakeholders, and especially groups who represent victims, is essentially to ensuring that the approach and decisions taken by the mechanism are sensitive to the needs of victims, without which it is unlikely to be successful.

At the same time, there are many different ways to involve stakeholders. In some cases, stakeholders may be incorporated formally into the work of the mechanism, for example by sitting on its oversight or decision-making bodies or by delivering operational tasks on behalf of the mechanism. This takes on a special tenor where the mechanism is housed in an existing body, such as a national human rights commission or ombudsman, which is also a stakeholder.

In other cases, stakeholders may in effect operate alongside the mechanism, albeit through special arrangements or understandings. A journalists' association might, for example, play a special role in providing early warnings or alerts about attacks or risks thereof. The mechanism might incorporate formal systems for taking this information flow into account in its internal decision-making processes. Finally, in some cases stakeholders might simply operate in parallel to the mechanism, with good lines of communication with, but without any particular arrangements or links to, it.

As a first step, those involved in designing a safety mechanism should undertake a scan of the environment to see who is or should be involved. In many cases this will be fairly obvious, in the sense that the key stakeholders will be active in the areas in which the mechanism will be working. But in some cases it may be necessary to think outside the box to see if there are civil society actors, for example, who have characteristics or skill sets that the mechanism is looking for – such as a network across the country – which are not yet directly involved in this work but which have a natural interest in it. UNESCO's *Journalists' Safety Indicators: National Level: Based on the UNESCO's Media Development Indicators*[42] provide a useful methodology for identifying relevant actors in a given country. Temporary teams could be set up as advisory bodies for the design of the mechanism.

It is not enough just to identify stakeholders. There will also need to be a process of building trust with and among them so that they are willing to work with and

[42] UNESCO, 2013. Available at: http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/journalists-safety-indicators.

participate in the mechanism and with each other. Such trust may be particularly difficult to create between those in need of protection and the official actors who would provide that protection, such as the police and other security officials. Absent trust, those at risk may be unwilling to accept protection or may not cooperate fully with protection services.

A number of stakeholders will almost always need to be involved in the mechanism. Some of the key types of stakeholders are listed below.

Civil Society and Media Organisations

There are a number of different types of civil society organisations that might naturally play a role in or support the work of a safety mechanism. This includes, among other things, groups which are created by the media or journalists and media workers, including their representative bodies, non-governmental organisations (NGOs) that focus on or work with the media, human rights groups, groups focusing on legal issues, such as lawyers' associations, and witness protection groups.

There are also a number of potential roles for these organisations. In many cases, for example, civil society groups will have early warning information about a possible threat or risk, or an actual attack. Indeed, in most cases the addition of a civil society component to monitoring activities will be invaluable. Civil society groups may also have access to locations and perhaps evidence and/or witnesses that could be important to an investigation. It is clearly useful to build structures so as to facilitate the flow of information from these groups to safety mechanisms and to have build strong information systems into the mechanisms.

In many cases, civil society groups sit on the formal bodies which oversee the safety mechanism. For example the Governing Board (the highest governing body) of the Mexican Mechanism to Protect Human Rights Defenders and Journalists includes civil society representatives.[43] Although this form of involvement for civil society is more common for bodies which provide protection than for those which focus on addressing impunity, an exception to this is Serbia. There, the Commission for investigating journalists' murders is made up of representatives of journalists, of the Ministry of Internal Affairs and of the Security Information Agency (BIA, the national security body).[44]

Colombia provides an example of another role for civil society, namely in the body which assesses risk and which assigns protection measures. Under the current system, the Committee on Evaluation of Risk and Recommendation of Measures (CERREM or Comité de Evaluación de Riesgo y Recomendación de Medidas), formerly the Committee for the Regulation and Evaluation of Risks (CRER), is responsible for making a final decision on risk assessment in particular cases, which is then referred to UNP for action. CERREM includes four guest representatives, who come from the target population of

[43] See also the National Protection Council for the National System for protection of Human Rights defenders, journalists, social communicators and legal practitioners, which includes seven non-governmental representatives. Article 21 of the Decree, footnote 30.

[44] See CPJ, "Sidebar: A new start on old murders in Serbia", 28 October 2014. Available at: https://cpj.org/reports/2014/10/the-road-to-justice-curuvija-murders-serbia.php#more.

the case being analysed and other relevant entities. The Preliminary Assessment Group (GVP or Grupo de Valoración Preliminar), which conducts the preliminary assessment, also includes representatives of the relevant community.[45]

While it is clearly important, for the reasons noted above, to include relevant civil society groups on these bodies, care also needs to be taken to ensure that the selection of these groups is done in a fair and appropriate manner. Otherwise, the credibility of the mechanism may suffer and there may be complaints from groups that are not included. This is particularly true where the body concerned, as in the case of Colombia, is directly responsible for assessing risk and recommending protection measures (i.e. for allocating benefits under the programme).

In addition to these oversight and risk assessment roles, civil society and media organisations might potentially be involved directly in the downstream work of the mechanism, whether in terms of assisting with the provision of protection measures or in terms of supporting the investigation of crimes. As regards the former, if this is to be done on a reimbursement or fee basis, the selection of such 'service providers' needs to be undertaken in a fair and competitive way. If protection services are to be provided without charge by civil society or media groups, the mechanism may need some form of quality control system before they can formally be associated with the provision of those services.

Specific care needs to be taken before involving civil society and media groups formally in investigations, for example by authorising them to collect evidence, interview witnesses and so on. There are several potential risks with this. They may not be properly trained, which may result in the loss of quality evidence, including evidence that would be admissible in court. It might create confusion among external players. There may be formal barriers to this (one cannot deputise policepersons at will). And there may be conditions associated with this that act as disincentives. For example, the rules of the Nepal National Human Rights Commission impose strict requirements of confidentiality on investigators until an investigation is completed, which may conflict with the desire of journalists to report on ongoing investigations.

Finally, it could be useful to include representatives of civil society on any complaints bodies relating to the safety mechanism (i.e. bodies to which those who are dissatisfied with the performance of the mechanism may appeal). In such a role, those representatives may bring special sector knowledge, which could be important to understanding the situation and properly deciding the appeal. They may also provide credibility to the appeal body.

<u>Official Actors</u>

In all of the existing safety mechanisms, official actors play a very important, even dominant, role. For example, the UNP in Colombia operates under the tutelage of the Ministry of the Interior. In Mexico, the FEADLE is part of the Attorney General's office

[45] See Inter-American Commission on Human Rights, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, 31 December 2013, paras. 152-163. Available at: http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf.

and the protection mechanism essentially operates under the Human Rights Unit of the Ministry of the Interior (SEGOB), which chairs the Governing Board. Even the CICIG, in Guatemala, a formally independent body created through an agreement between the United Nations and the government of Guatemala, works very closely with the Special Prosecutor's Office Against Impunity (FECI), which has the exclusive power to bring cases.

In terms of addressing impunity, if the safety mechanism, or the part of it which works on impunity, does not already have administration of justice actors hard-wired into its structure, very close collaboration with existing actors – including the police, judges, and prosecution services and the office of the Attorney General, but potentially others, depending on internal structures and responsibilities in this area – will at a minimum be required, among other things to avoid overlap and duplication of roles, to respect core constitutional and institutional arrangements in this area, and to avoid conflicts. It will also almost inevitably be an efficiency, given the considerable powers and expertise vested in these actors, and the cost and difficulty of duplicating these in a parallel structure. At the same time, there may be cases – for example where traditional administration of justice actors are alleged to be involved in abuse – where separate, parallel systems are needed.

In Mexico, the core approach of FEADLE has been to allocate more powers, including through a constitutional amendment,[46] to central prosecution authorities to address crimes against freedom of expression, in part to address corruption and a lack of capacity on the part of local authorities. In Guatemala, the approach has been, in part, to create a parallel investigation body to support the national prosecutorial authorities. In Serbia, mixed teams of police and representatives of the security services investigate the crimes.[47]

On the protection side, as well, government ministries play a key role in some of the mechanisms, as noted above. In other cases, such as Nepal, the mechanism is being developed within the National Human Rights Commission, while ombudsmen play a role in some countries, including in Mexico.[48]

International Community

The international community plays and could play a number of roles in different safety mechanisms. As noted above, in Guatemala, CICIG is formally a joint project of the government and the United Nations, with the Commissioner, the director of the body, being appointed by the United Nations Secretary-General.[49] The Mexican protection mechanism is the product of an agreement between the Mexican President and the United Nations High Commissioner of Human Rights.[50] Such agreements can lend credibility, independence and capacity to the body, although they also obviously involve

[46] See Article 19, footnote 38.
[47] See CPJ, footnote 44.
[48] See Natalia Torres, footnote 25, p. 20.
[49] See Article 5(1)(a) of the Agreement Between the United Nations and the State of Guatemala on the Establishment of an International Commission Against Impunity in Guatemala, footnote 31.
[50] See Eduardo Bertoni, footnote 15, p. 23.

significant costs and risks for the United Nations, and a need to share a degree of power and control on the part of the participating State.

In other cases, the international community – including inter-governmental organisations but also bilateral donors and international NGOs – provides support in the form of money and expertise, as well as political and moral support, to safety mechanisms. The CICIG, for example, is funded entirely by international donations.[51] Safety mechanisms will often be in great need of international expertise, especially in the early days as they are establishing themselves.

Other roles for the international community include raising awareness about the issue of safety and existing safety mechanisms, disseminating better practices, monitoring and reporting, and potentially trial observation, to make sure trials are conducted fairly and in an independent manner. International NGOs may also offer direct services – such as training or other forms of support – for journalists who may be at risk. The International Committee of the Red Cross, for example, runs a hotline service for journalists on dangerous assignments.[52]

Other Actors

A number of other actors may also play a role in this area, either formally contributing to a safety mechanism or playing a supportive role. There is clearly a role for media companies and professional media associations to support protection in various ways, including training and forms of social protection, such as health and life insurance,[53] and it might be useful to link this to the work of the mechanism. Training bodies focusing on the media and communications can also work to build an understanding of risks and how to mitigate them, including by offering dedicated courses in this area and by integrating safety modules into more general courses. There is also a need to provide appropriate training in this area to police, prosecutors and judges.[54]

## 3. Institutional Design

In a very real sense, the question of institutional design is where issues become very real and concrete, and where those considering the establishment of a safety mechanism will want the most direct advice. At the same time, institutional design needs to flow, among other things, from the many considerations already raised in the preceding sections of this part of the Guide. The decisions and approaches to these issues are likely to vary considerably in different contexts. This section of the Guide

[51] See Article 7(1) of the Agreement, footnote 31 and http://www.cicig.org/index.php?page=frequently-asked.

[52] Information about this is available at: https://www.icrc.org/eng/resources/documents/publication/p0394.htm.

[53] See, for example, para. 5.22 of the UN Plan of Action, which calls on these actors to do exactly that.

[54] As an example of this, in 2015 UNESCO collaborated with the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) and the Knight Center for Journalism in the Americas at the University of Texas at Austin to provide training on safety and other freedom of expression issues to judges. See: https://knightcenter.utexas.edu/blog/00-16360-judges-can-take-online-course-freedom-expression-offered-unesco-and-knight-center.

therefore focuses on a general discussion about the considerations that need to be taken into account, as opposed to providing specific direction as to how to go about institutional design. The latter needs to be tailored to local circumstances and needs, as was noted at the beginning of the Guide.

A preliminary issue is whether to create a safety mechanism at all. As noted earlier, this is costly and there are threshold barriers to the need to do this. There needs to be assessment of budget for the mechanism and where this funding will come from. The problem of attacks or threats thereof needs to reach a certain degree of seriousness before the creation of a specialised safety mechanism would be effective. In particular, absent this, it may be difficult to secure sufficient resources to ensure that the mechanism will be viable rather than merely serving a symbolic function.

Once this preliminary threshold has been met, a key initial decision is where to locate the safety mechanism. This, in turn, may be broken down into issues of where to locate or how to arrange the oversight or governance (or main decision-making) structures of the mechanism and its operational wing(s). And part of this is whether, particularly at an operational level, there is a need for a new body or whether adding an expanded or dedicated mandate to that of an existing body will suffice.

These issues play out differently for the protection and impunity sides of the equation. In terms of impunity, it takes a lot of resources and capacity to create an entirely new operational body to investigate and prosecute crimes of any sort, including crimes against freedom of expression. With the exception of the CICIG in Guatemala, which has a very strong international presence and is an extremely costly endeavour,[55] on the impunity side all of the mechanisms which have been created so far rely on existing bodies, at least at the operational level. Thus, FEADLE in Mexico is part of the Attorney General's office while the Serbian Commission for investigating journalist murders uses teams of police and representatives of the security services to investigate the crimes. An interesting twist on this is found in Nepal, where the mechanism, which is likely to have an impunity role, will be based at the National Human Rights Commission. However, the Commission there already has an investigative role and capacity, albeit of a different nature and structure than the legacy actors in these areas of work, namely the police and prosecutors (Attorney General).

However, in Mexico and Serbia the establishment of the mechanism led to important changes in the way these matters were dealt with. In both countries new, dedicated units were created within existing bodies to focus on the crimes in question and in Mexico the jurisdiction of the unit was gradually increased to make it more effective. Something similar is envisaged in Nepal in the sense that a dedicated safety unit or focus area will be established within the National Human Rights Commission.

In terms of governance of impunity measures, the Serbian model is interesting inasmuch as it creates new governance structures, in the form of the Commission, which

[55] In its 6th and latest Annual Report, covering September 2012 to August 2013, the CICIG reported that it had 162 national and international officials working for it. See *Sixth Report of Activities of the International Commission against Impunity in Guatemala (CICIG)* (September 2012 - August 2013), p. 4. Available at: http://www.cicig.org/uploads/documents/2013/COM-045-20130822-DOC01-EN.pdf.

oversees the operational programme. This also includes civil society representation, in a unique approach on the impunity side.[56] In these cases, the creation of dedicated bodies has, to a greater or lesser extent, led to more engagement on the part of external stakeholders, including civil society, even where this is not reflected formally in governance arrangements.

On the protection side, the approach has often been to create new bodies, with new governance structures, but either based in or having strong links to an official body for staffing and operational purposes. This is no doubt due to the challenge and cost of creating an entirely new body. Thus, as noted above, the National Protection Unit (UNP) in Colombia is formally an independent body but with close links to the Ministry of the Interior, which chairs its Management Board. In Mexico, the protection mechanism essentially operates under the Human Rights Unit of the Ministry of the Interior (Secretaría de Gobernación or SEGOB), which again chairs the Governing Board. In Honduras as well, the National System for the Protection of Human Rights Defenders is created as a new body, but the Department of Human Rights, Justice, Interior and Decentralization of the Ministry of the Interior is designated as its 'governing body'.[57]

In each of these cases, new governance structures have been created for these protection bodies – the Committee on Evaluation of Risk and Recommendation of Measures (CERREM) in Colombia, the National Council in Mexico and the National Protection Council in Honduras – which involve outside actors, including civil society.

Once again, the importance of having a new body at least in terms of governance to which cases can be referred as a way of engaging external actors in a new and hopefully more energised and structural fashion, has to be stressed. And the role of governance systems as a way of fostering such engagement needs to be taken into account. Thus, a mechanism which incorporates civil society actors in its governance structures is far more likely to benefit from the active engagement of civil society than one which does not.

Careful thought needs to be given to how to organise the formal structures of a safety mechanism. A balance needs to be maintained between keeping things as simple as possible, which limits coordination challenges and avoids undue bureaucratisation – something which some of the existing bodies have been criticised for – and ensuring that the mechanism operates in a procedurally sound and fair manner.

Some of the functions which will probably need to be undertaken, and which therefore need to be factored into the governance and operational structure, include:

- Putting in place the necessary information systems to be sure to receive reports about cases of potential protection or investigation need, whether these come in via complaints, referrals (i.e. from external monitoring bodies) or internal monitoring by the mechanism.

[56] It remains to be seen what will be done in the case of Nepal, where strong civil society involvement is envisaged.
[57] See Article 19 of the Decree, footnote 30.

- Putting in place urgent actions whether related to protection or impunity, in which case the focus would be on investigations and securing evidence.
- Longer term assessments of risk and the allocation of protection measures.
- Longer term investigations and bringing legal cases.
- Special systems where there are allegations of official involvement.
- Governance functions in the sense of oversight, which might also include complaints and redress systems.
- Internal administrative functions, including attracting and training staff, communications (and outreach), accessibility and financial management.
- Systems for ensuring appropriate coordination among and the engagement of different stakeholders and parts of the system.

A core governance issue which needs to be taken into account in systemic design is the need for the mechanism to operate independently of the cases which it is handling, in terms both of investigations/prosecutions and of allocation of protection measures. For this, relatively strong conflict of interest rules should apply to individuals sitting on governance and decision-making bodies. The problem of more structural conflicts of interest (i.e. where allegations are levied against individuals associated with core operational players in the system, such as the police) is addressed below.

A number of considerations should be taken into account when designing a mechanism so as to engage stakeholders and execute the functions of the mechanism in an efficient and appropriate manner. Some of these are as follows:

- Monitoring and case referrals:
    - This is a big task which will need to mobilise a wide range of external players through communications, outreach and other means. More formal governance systems may help with this, for example by putting in place systems for collecting information and referring cases. A primary need here is also to facilitate the flow of information to the mechanism (including by making sure the system for referrals is as accessible as possible). Among other things, it is useful to ensure that civil society, media organisations and local government bodies are properly plugged into the system, both to enlist them in this task and so that they are made aware of what is going on in their localities. Information collected may also be used as part of State reporting systems to the United Nations and/or regional bodies where they have such commitments.
- Urgent actions:
    - This needs to start with a decision and then be followed up operationally. Due to the need, by definition, to make decisions in such cases quickly, they are often made internally (i.e. on an operational basis). Thus, in Colombia, the UNP makes urgent protection decisions, informing the multi-stakeholder risk assessment body, CERREM, and then acts on them. At the same time, there is a need to ensure that decision-making processes at this level are fair. Consideration needs to be given to the potential role of external actors in delivering urgent actions, once it has been established that there is a need for them. In terms of impunity, care needs to be taken when allocating any formal roles to external actors, but collaborative arrangements can be put in place (for example in the form

of training actors which have a local presence about what they can do to secure evidence within the confines of the law and setting up systems for handing over any evidence thus collected). Collaborative arrangements may also facilitate the provision of urgent protective measures.

- Longer-term risk assessments:
  - Some mechanisms have established formal oversight/decision-making bodies for risk assessment and taking decisions regarding protection measures which involve external stakeholders, including representative groups for those claiming to be at risk. Where demand is high, and due to the work pressure this creates, an internal initial screening process may need to be put in place. In Colombia, a Risk Matrix has been developed as a tool that assesses risk across three key variables: threat, risk and vulnerability.[58]
- Cases alleging official involvement:
  - Where there are structural allegations of a conflict of interest – i.e. where a key participant in the structure of the safety mechanism is implicated in a case – special processes may need to be put in place. For example, although a particular police force would normally investigate criminal cases, if a member of that force is implicated in a particular case, the investigation may need to be handed over to another body, if that is possible. Similarly, on the protection side, if the police are implicated in attacks, they clearly cannot be responsible for providing protection.
- Governance systems:
  - It is common to include a range of external stakeholders on oversight or governance bodies for safety mechanisms. This has multiple benefits, including ensuring that a range of perspectives is present at the governance level, promoting the credibility of the mechanism and engaging different communities in the mechanism. For complaints or redress bodies, it is essential to include independent members, ideally in a dominant number. Careful thought also needs to be given to the individual who will run the operational arm of the body, if it is a new body, and who will appoint that person. A lack of either credibility or competence at this level – which has plagued some existing mechanisms – can have a serious impact on the success of a mechanism.
- Internal functions:
  - Where a new body is being created to host the safety mechanism, a key issue will be where the staff come from, their terms and conditions of work, and so on. One solution could be to recruit from within the civil service, which simplifies matters in administrative terms. At the same time, this can limit the flexibility of the mechanism to recruit people with the specific competencies it requires and there may also be implications in terms of independence and perhaps also motivation. Another possibility would be to rely on the terms of conditions of service for the civil service, but give the body the freedom to recruit staff more broadly. A third possibility would be to give it full freedom to recruit staff and to set its own terms and conditions of service.

[58] See: https://journalistprotection.wikispaces.com/How+is+risk+assessed%3F+(Colombia).

  - Regardless of whether the mechanism is a new body or is hosted by an existing body, there will be a need to provide training to staff, especially during the early days, as they take on new responsibilities. This can be challenging given that there is often limited expertise on these issues in the society. Thus, police forces know how to investigate crimes, but they may not have specialised knowledge about investigations in this particular area, given that the reasons for crimes against journalists are often distinctive. Similarly, knowledge about what works in terms of protection may not easily be available. To some extent, this is a matter of learning by doing, but international expertise may also be needed.
  - Special attention may need to be given to the issue of external communications, which is also relevant to the first point above, on monitoring and case referrals. This may require dedicated attention and focus within the mechanism. There may also need to be clear rules about who may speak on behalf of the mechanism, given the sensitive matters is it going to be dealing with.
- Funding:
  - Ensuring adequate funding for the body is essential and there has been criticism of some existing mechanisms on this front, while some of the more successful ones, notably the UNP in Colombia and CICIG in Guatemala, have historically benefited from significant funding support. At one level, this is fairly simple: these are new tasks and they cannot be delivered without resources. Special investigations, and the capacity to undertake them, cost money as does providing protection measures to those who are at risk. Ultimately, most funding needs to come from either local public sources or the international community, noting that absent clear institutional arrangements, such as are in place in Guatemala, the latter can prove to be unreliable over the longer term.
  - It may be important to separate out funding for the general operation and running of the mechanism and the funds to be allocated for protection measures, as a way of ring fencing the latter and ensuring that it remains at desired levels. If this is done, it might be necessary to provide a link between this and the system for allocating protection measures, because these need to remain within the scope of the resources of the fund.
- Coordination:
  - It is important to promote coordination between the different parts of the mechanism and also to manage the roles, responsibilities and expectations of different parts of the structure and of different stakeholders. For example, if there is a gap between the capacity of the system to deliver protection measures and the expectations of external stakeholders, problems could ensue. There may also be a risk of functional overlaps between the mechanism and the default or legacy players operating in its areas of responsibility (i.e. protection and investigation/prosecution), leading to inefficiency or even conflicts. Such overlaps can occur in relation to the police, prosecutors and lawyers, and potentially other actors, such as civil society and witness protection programmes. There may also be conflicts between different levels of government, including potentially with constitutional implications such

as who has authority over criminal cases. Systems need to be put in place to manage these sorts of risks, where they are likely to arise. Part of this is allocating clear and disaggregated roles to different players and part of it is making sure that there are open lines of communication.

## Conclusion

The incidence of threats and attacks against individuals for exercising their right to freedom of expression has remained at unacceptably high levels in far too many countries around the world for at least the last ten years. The impact of these activities goes far beyond those who are directly targeted, and affects everyone in society, in what has been termed 'censorship by killing'. A serious contributing factor to this terrible phenomenon is the fact that the overwhelming majority of those who commit these crimes are never prosecuted, leading to a widespread sense of impunity.

A number of measures can be taken to address this problem, many of which are set out in the UN Plan of Action on the Safety of Journalists and the Issue of Impunity. One which has been implemented in a few countries, but should arguably be put in place in many more, is the establishment of a specialised safety mechanism or body. At present, most safety mechanisms are found in Latin America, with the longer-standing and more developed systems being found in Colombia, Mexico and Guatemala, but a number of other countries, most notably Nepal and Pakistan, are currently working to put in place safety mechanisms.

The safety challenges in different countries are very different indeed, and they require different solutions. Furthermore, the circumstances which gave rise to existing mechanisms are often rooted in particular historical and social contexts. At the same time, based on the growing body of experience with these mechanisms, a number of general lessons can be drawn and it is possible to identify a number of considerations to be taken into account when developing a new mechanism.

A first issue is the scope of the mechanism. Thematically, these have tended to focus on one or both of two issues, namely providing protection to those at risk and combating impunity. In both cases, a strong information base is important for the success of the work. Emerging better practice suggests that a focus on those who are under attack for exercising their right to freedom of expression, rather than a narrower focus on journalists, will usually be appropriate. A number of mechanisms also focus on a wider set of actors, depending on who is in fact at risk.

The chance that a safety mechanism will be successful can be increased dramatically by harnessing the skills, resources and support of different stakeholders, as well as by ensuring coordination, as opposed to overlap among or even competition between different stakeholders in terms of operational functions. Civil society groups, including groups representing individuals who have been attacked or are at risk, are an obvious stakeholder group to engage, as is the international community. These groups can lend credibility and resources to the mechanism, bolster its ability to reach out to target populations, and help ensure that its decision-making processes are well aligned with

actual needs. Almost all of the existing mechanisms build official actors into their very structures, to take advantage of the resources and expertise they can bring.

The question of institutional design needs to start with decisions relating to these two other issues, namely the scope of the mechanism and the different stakeholders with which it expects to interact. Institutional design should take into account a number of different factors including outreach to affected individuals, appropriate decision-making systems and processes, especially as to the allocation of protection measures, including on an urgent basis, governance structures and internal, administrative arrangements. A key institutional design question is where to locate the mechanism and, in particular, whether to create a new body or to locate it within an existing body.

Ultimately, decisions in all of these areas depend on local circumstances and needs. It is not possible to develop a template for establishing a safety mechanism that could work in different countries facing very different challenges and with different resources, including in terms of local stakeholder support networks. But asking the right questions and thinking through the right issues will help ensure that a safety mechanism is robust and efficient, that it focuses on the actual needs of those at risk and that it responds to those needs in an appropriate manner. Hopefully this Guide will help those tasked with establishing new or reviewing existing safety mechanisms as they go through this difficult and challenging process.

**ANNEX**

## Flowchart of Sequential Decisions/Assessments to Make When Establishing a Safety Mechanism

1. To what extent is a specialised safety mechanism needed?
   - Does the situation rise to the level of need established under international standards? Note the standard set out in the 2012 Joint Declaration of the special international mandates on freedom of expression of an "ongoing and serious risk of crimes against freedom of expression". This focused on protection but a similar standard could apply to impunity, namely an "ongoing and serious risk of impunity for crimes against freedom of expression".
   - Are there local demands for establishing such a mechanism? Is there local political will to establish one?

2. What are the more important thematic needs for a safety mechanism to address (i.e. providing protection and/or combating impunity)?
   - Are systems currently in place which are addressing one or another of the two main needs (noting that these tend to arise in tandem and noting further that while administration of justice actors are sometimes able to address impunity, sufficient protection is rarely built into existing systems)?
   - Even if the answer to the above is no, is there an overriding need to focus on just one need (noting that normally this would be protection)?
   - Should the mechanism go beyond these two needs and also focus on wider prevention measures?
   - What information is required to service this/these function(s) and how will it be sourced and validated?

   2.a What sort of protection measures will be available?
      - Possible measures include relocation; safety equipment of various sorts; training; bodyguards; hotlines and responsive systems; police monitoring; and others (such as high tech tools).

   2.b Is there a need for parallel legal reforms to support the process of combating impunity?
      - These might include increasing penalties for these crimes, removing or extending limitation periods for these crimes, creating civil redress rules for victims and establishing appropriate remedies for victims where criminal responsibility is established.

3. Who and what should be covered by the safety mechanism?
   - While there is a range of legitimate possible answers to the first part of this question, common answers include: journalists or those engaged in journalistic activities (defined more or less broadly); those attacked for exercising their right to freedom of expression; and/or human rights defenders. In some countries, safety mechanisms go beyond this and cover

different populations at risk (Colombia), those attacked for exercising their profession (Italy), or those targeted by certain groups (such as illegal or clandestine security groups, as in Guatemala).
- Regarding the first part of the question, another issue is how far protection should go, for example to cover relatives, work colleagues, the work location.
- As regards the second part of the question, it is normal to cover physical attacks and threats thereof, normally defined to include sexual assaults. In some cases, psychological attacks are also included, and in some cases forms of legal harassment are too.

4. Which sorts of stakeholders should be involved in, or taken into account in the design of, the mechanism?
   - A scan of the environment should be undertaken to assess which sorts of stakeholders should be involved in the mechanism. There are two main reasons for involving or taking into account stakeholders: to incorporate them into the structure of the mechanism to make it stronger; and/or to minimise competition or overlap with those stakeholders.
   - At least the following types of stakeholders should be included in the scan: civil society groups (groups created by media outlets or journalists, groups that focus on the media and/or freedom of expression, human rights groups, groups focusing on legal issues, witness protection groups); the international community; relevant official actors, including those working within the administration of justice (police, prosecutors, judges and so on); media companies and media associations; and training bodies.
   - There may be a need to build trust with or between certain stakeholders, for example between media support organisations and the police, before they would be willing to cooperate together within a mechanism.

5. What roles are envisaged for different stakeholders?
   - This will depend on the stakeholders but possibilities include: supporting the monitoring and information collection process in relation to risks, threats and actual attacks; participating in the formal decision-making bodies of the mechanism (such as the governing board or body which undertakes risk assessment and/or assigns protection measures); participating in the provision of protection or measures to address impunity, either formally or informally; participating in complaints and redress bodies; providing funding or other forms of support (such as technical assistance, bolstering credibility, enhancing outreach); providing training; providing social protection to those at risk; and/or evaluating, possibly through multi-stakeholder participation, the success of the mechanism.

6. Where will the mechanism be located?
   - The macro issue here is whether to locate it in an existing body or to create a new body. A gloss on this is to locate operational matters within an existing body but create a new or special governance structure for a dedicated operational unit dealing with safety functions.
   - A number of considerations will need to feed into this very important decision, including capacity, funds and the availability of a suitable existing

body. It may also depend on the answer to Question 2, namely whether the body will focus on protection, impunity or both.

7. What sort of governance structures are envisaged for the mechanism?
   - This will depend on the answer to Question 6 and a variety of other issues. The specific design of the governance system needs to build in appropriate roles for different stakeholders, depending on the answers to Questions 4 and 5. The governing structures need to have conflict of interest rules built into their operations. The following questions need to be addressed, potentially among others.

   7.a What does the main governing body do and who sits on it?
      - Questions to be answered here include: what is the role or function of the governing body (which will depend, in part, on whether the mechanism is an independent body or operates out of an existing body, even if just for operational purposes); and who will sit on the body (which will depend in part on the answers to Questions 4 and 5).

   7.b Is there to be a separate decision-making body relating to risk assessment and the allocation of protection measures and, if so, who sits on it?
      - This may depend in part on the design and functions of the governing body, as well as the package of protection measures available. The more significant the measures (in terms of cost and desirability), the more important it will be to have such a body. In particular, if the measures are very substantial in nature, there may be a lot of attention and pressure on the process of assessing risk and allocating measures.
      - Regardless of this, those being afforded protection measures need to have some input into what they are getting and at least the power to refuse certain measures.

   7.c Will there be a complaints or redress body and who will sit on it?
      - For larger mechanisms, and especially those which allocate significant benefits in terms of protection measures, it may be important to have a complaints or redress body. If so, it will be important for the body to provide a properly independent review of the original decision or process complained of, and this in turn will need to be taken into account in its design and composition.

   7.d How will the mechanism be funded and what oversight system will exist for this?
      - Options for funding include local public sources (government budget, special tax) and the international community, although the latter should probably only be relied on for exceptional or project expenses rather than core funding (unless it is hard wired into the establishment of the mechanism, as is the case with CICIG in Guatemala). Consideration should be given to treating the funds to be allocated to protection measures separately, at least at an accounting level.

- In some cases, mechanisms have special governance-level bodies to deal with funding, while in others this issue falls within the competence of the general governance bodies.

8. How will the operational capacity of the mechanism be provided?
   - This is a complex matter which goes to the root of how the body will function. A number of aspects of this are outlined below but others are bound to arise as the process of putting in place a specific mechanism moves forward:

   8.a How will the mechanism ensure that it has the capacity to provide the services for which it was created?
   - This will depend in important ways on whether the body is a new body or based in an existing body.
   - In either case, it involves questions relating to staff, including where they come from (i.e. are they civil servants or hired from among the wider population) and how they will receive the training they need to discharge the new functions that are being placed on them.
   - What structure is needed for the operational wing of the mechanism? This will depend on its functions and the governing structure. In most cases, the body will need administrative and financial wings, and perhaps also a communications function, given the importance of this to the success of the mechanism.
   - Who appoints the director of the operational wing of the mechanism and what are his/her responsibilities?
   - What systems are in place to ensure strong both internal coordination but also coordination with other players who may be providing analogous services or undertaking similar or potentially overlapping functions to the mechanism?
   - How will external stakeholder capacity be built into the functions of the mechanism in terms of delivery of the services it is tasked to provide?
   - How will the mechanism monitor risks and attacks, and facilitate the provision of information and claims in relation to both to external actors?

   8.b Special questions arise in relation to how the mechanism will address impunity issues, taking into account that this would only be necessary because existing administration of justice actors had failed to do this.
   - There may be many possible answers to this challenge, which are closely bound up with other issues relating to institutional design, but if the mechanism is going to address this it needs a clear and viable plan for it. Possible options are to shift responsibility to a more high-powered investigation unit (for example based in an existing institution), to increase the resources flowing to a dedicated investigation unit, and/or to enhance the securing of evidence in one way or another, including by enabling more rapid evidence collection processes, potentially by engaging other actors in this process.

8.c Special questions also arise regarding the manner in which the mechanism will allocate protection measures and/or initiate investigations on an urgent basis.
- Considerations to be taken into account here include who will make decisions about this (i.e. will they be taken internally or by the external or governance-level body that is normally responsible for this) and how will urgent measures or evidence collection take place (and what might be the role of external stakeholders in this process).

8.d Will the mechanism have a special procedure and systems for providing protection/undertaking investigations where the official actors who normally do this are implicated in a particular case?
- This may be important to avoid structural conflicts of interest, both real and in terms of perceptions. But it can also be quite expensive and complex.