

# Chapter 1: Overview of the protection response

## 1. The programmes examined in this part

Various experiences have been examined in the preparation of this book, and considerable effort has been exerted to be as concrete as possible, and present the information succinctly. The principal (but not the only) experiences analysed have been the following, all developed at national level:

- Brazil:
  - The National Policy for the Protection of Human Rights Defenders (by the Presidency of the Republic's Special Secretariat for Human Rights).
  - The Monitoring Group on the National Programme for the Protection of Human Rights Defenders (by civil society: Justicia Global, Terra de Direitos and others).
- Colombia:
  - Decree 740 of 2010.
  - The Non-governmental Programme for the Protection of Defenders and Somos Defensores (both non- governmental).
- Guatemala:
  - The Catalogue of Measures for the Prevention of Human Rights Abuses and Protection of Human Rights Defenders and other Particularly Vulnerable Groups (of the Presidential Coordinating Commission of Executive Branch Policies on Human Rights, COPREDEH).
  - The Guatemalan Human Rights Defenders' Unit (UDEFEQUA, non-governmental).

The analysis of these programmes has made it possible to draw certain conclusions, which are indicated in the text using the following symbols:

 "Good Practice"

 "Bad Practice"

 "Warning, or Point of Concern"

 "Lesson Learnt"

## 2. The objectives and strategies of programmes for the protection of defenders


As has been stated elsewhere in the two parts of this book the protection offered to human rights defenders should be integral, that is, it should adhere to a series of principles, the principal aspects of which are presented in the (open) list presented below:

- There should be an adequate framework of laws and policies covering Human Rights and Defenders;

- Criminal investigation and trial for those who attack defenders in any way;
- Awareness of the social usefulness and legitimacy of work to defend Human Rights, and
- If necessary, specific protection programmes for defenders, including preventive and reactive measures.

However, in the three governmental protection programmes (or proposals) analysed here (from Brazil, Colombia and Guatemala), protection is, above all, reduced to the last point – that of protection measures – offering a fragmentary and reactive response.

In two of the three countries (Colombia and Guatemala) non-governmental organisations have developed solid and stable activities for protection, which have in fact acted as antecedents and models for the governmental programmes that have mirrored them. An overview of the protection activities of the non-governmental sector as a whole shows that it comes close to providing the integral protection model referred to earlier. Of course, NGOs do not pass legislation or decide on public policy, but their proposals and contributions have meant that it would have been possible to design much stronger laws and policies if only governments had taken their contributions more into account. NGOs are not judges either, but the contributions they make to investigations and the monitoring of legal processes have been fundamental in achieving the few convictions that have been achieved against individuals who attack defenders. Furthermore, NGOs have organised the broadest campaigns for the social legitimisation of defenders, and have initiated protection mechanisms that are comparable to governmental ones, despite the chasm between the resources available to governments and to NGOs.

 *The pioneering impulse and support, accompaniment, critiques and pressure provided by defenders' organisations have been fundamental to the construction of the informed viewpoint we have today concerning the model that should be adopted by an integral programme for the protection of defenders.*

Different national-level institutions have contributed over the years to the evolution and design of protection programmes. Looking at the national level, it is instructive to highlight the role of the Colombian Constitutional Court and the recognition it makes of the obligation of states in relation to the risks that citizens should not be obliged to withstand:<sup>1</sup> “...the authorities have the primary right to protect the fundamental rights to life and personal security enjoyed by all residents of the country”. The Colombian Constitutional Court also recognised the right to personal security as the “right to receive state protection against extraordinary risks that individuals do not have the constitutional duty to withstand”, and to advance the duty of the state to adopt protection measures appropriate to each concrete case, which “should be evaluated as a whole, employing an integral perspective, in order to establish the nature, reach, intensity and continuity of attacks affecting each individual”. This is why it is important to determine whether these are “specific, individualisable, concrete, current, important, serious, clear, discernible, exceptional and disproportionate for the subject”. The Court also specified that, faced with these kinds of risk, the constitutional authorities are obliged to preserve the right to personal security of the people exposed to them. This obligation includes the following aspects:

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1 Sentence T-719 of 2003.

- “1. The obligation to identify the extraordinary risk affecting a person, a family or a group of persons as well as to inform those affected in a clear and opportune manner. It is therefore not always the case that protection is requested by the person directly affected:
2. The obligation to assess, on the basis of careful study of each individual case, the existence, characteristics. (...) and origin or source of the risk that has been identified;
3. The obligation to define in a timely manner the specific protection measures, and the means necessary, to ensure that the extraordinary risk identified does not occur;
4. The obligation to assign such means and adopt said measures (...) such that the protection offered is effective;
5. The obligation to monitor periodically the evolution of the extraordinary risk and to take the corresponding decisions to respond to that evolution;
6. The obligation to provide an effective response to indications that the extraordinary risk may become concrete or be realised, and to adopt the specific actions necessary to mitigate it or reduce its effects;
7. The prohibition according to which the administration is prohibited from adopting measures that create an extraordinary risk for persons as a result of their circumstances, and their consequent duty to protect those affected”.

In response to this sentence the Colombian programme has had to adapt its contents; furthermore the Constitutional Court has promulgated several resolutions that have obliged the programme to take or to reinstitute protection measures for leaders of the displaced population, such as Decision 107/08 (which order the Committee for the Evaluation of Risks “to apply the protection programme because of the constitutional assumption of the risk faced by women leaders, and by the displaced population”), or Sentence T-134 of 2010 which ordered the Ministry of Justice and the Interior to make a new determination of the level of risk faced by defenders, in order to take adequate protection measures.

This jurisprudence is very important in Colombia and internationally but, in practice, its results are incorporated into the Colombian protection programme, with all its successes and failures, as will be seen later in this book.

### **3. The principles behind the framework of protection measures**

Protection measures are granted according to a series of principles that may be summarised in the following list, which has been elaborated according to information drawn from the programmes:

- **Voluntary principle**

The decision of the beneficiary to enter into the programmes or to accept its measures will be free and voluntary. Beneficiaries will provide informed written consent.

- **Exclusivity**

The measures will be destined exclusively to beneficiaries of the programme. This does not imply that they refer only to the defender who has been threatened or attacked, as other persons, such as family members or partners, may also face risks and, therefore, qualify as beneficiaries.

- **Prevention**

The institutions responsible for providing protection shall adopt effective strategies to prevent attacks, intimidation or acts committed against defenders and other members of the target population.

- **The tutelary principle**

With the exception of requirements demanded as a result of ordinary jurisdictional procedures, protection measures will not prejudice situations but shall adopt measures immediately in order to guarantee the free exercise of Human Rights and universal freedoms, according to the *pro persona principle*;<sup>2</sup> as this refers to precautionary measures they are not to be ruled by the same requirements of rigorosity as other prevention and protection measures contemplated in national legislative frameworks.

Likewise, the measures necessary to implement legal protection measures at national level should be taken.

- **The principle of agreement and consultation**

It is indispensable that state bodies, beneficiaries and civil society should develop stable channels of consultation and dialogue in order to communicate needs and evaluate the performance of the programme.

- **Causality**

Protection measures will be based on the factors of risk and threat and on the activity or role developed by the beneficiary.

- **Proportionality**

The measures that are granted will correspond to the manner, time and place of the particular threat affecting each beneficiary of the programme.

- **Effectiveness**

The measures should provide effective protection to the users of the programme.

- **Sustainability of the measures**

The measures should be sustainable for the programme and for defenders.

- **Reversibility of the measures**

If the measures do not work, or the situation of risk changes, it should be possible to return to the prior situation of the defenders (as a minimum, if possible, an overall improvement in their security situation).

- **Confidentiality**

Because of its nature, all information connected with the protection of persons should be strictly confidential.

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<sup>2</sup> The term *pro persona* refers to the *pro homine* principle, which in international law means that when applying domestic legislation passed in reference to international law, the norm is to adhere to the the interpretation that most advances the respect for rights.

- **Temporary**

The protection measures shall be temporary, lasting as long as the situation of risk persists; and they shall be subject to periodic revision.

- **Responsibility and collaboration**

The programme's entire target population should respect and support the authorities and collaborate actively in its implementation and in their own self-protection (including providing information during the life of the programme that might affect the level of risk).

- **Equal treatment, non-discrimination and special treatment**

In offering its services, the programme should guarantee the principles of equal treatment and nondiscrimination on the grounds of gender, ethnic origin, social or economic circumstances, sexual preference or orientation, language, nationality, religion, political opinion or any other form of discrimination. However, it should adopt a gender perspective and, when necessary, practice positive discrimination as well as special treatment for defenders who may require such treatment because of the greater risk and vulnerability they face.

- **Timely**


The measures will be offered in a timely manner (when they are needed).

- **Complementarity**

The protection measures will be complementary to the measures adopted by other entities (specifically, the various state, departmental and local structures (entidades territoriales) vis a vis the regional authorities in a country).

#### **4. General aspects of the relationship with protected defenders**

The relationship between the protection programmes, defenders, and associated organisations is not always an easy one. This is not surprising, given the difficulties and tensions affecting the situations of risk that affect defenders, and the number of players – at times with opposing interests – who are variously involved in a protection programme. Thus, there are a series of good practices, as well as challenges, and actions that should be avoided, which are present in the relations between protection programmes and defenders that, as a result of the research carried out, it is important to highlight.

 *Defenders collaborate in the construction of protection responses, and participate in decisionmaking concerning every case.*

It is important that defenders at risk who enter a programme, or those who collaborate generally with it, should participate actively in the construction of the protection response. As in any programme, this participation will improve the levels of co-responsibility affecting the defenders and the quality, efficiency and effectiveness of the response.

It is clear that participation will not always be uniform. At times a programme may promote participation, but the principle might be ignored by one of the bodies involved (the police for example). A participatory culture needs to be allowed to develop naturally within the overall framework of the programme, and by its parts.

👉 *The programme offers responses adapted to the varied protection needs and different circumstances of defenders.*

Different kinds of defenders, who face varied risks, have different protection needs to which the programmes need to adapt their protection responses. To pick two examples at random, a lawyer living in a major city who receives a death threat does not have the same needs as a community leader who is being pressured by local landowners.

📖 **It is important to take into account at least the following categories of defenders:**

- Women<sup>3</sup>
- Isolated rural defenders
- Groups with distinct characteristics: e.g. indigenous groups
- Groups of defenders that might suffer particular discrimination: sex workers, defenders of sexual and reproductive rights,<sup>4</sup> etc.

👉 *Specific support (positive discrimination) should be offered to groups of defenders who are susceptible to habitual discrimination; they should be offered protection measures appropriate to their particular circumstances.*

👉 *Rurally-based defenders should be fully taken into account in the activities of programmes: they need to cover rural areas, consider establishing antennae : local contact points or offices to facilitate access to their services (which might include dedicated offices, or be shared with other institutions or individuals, either through formal agreements or informally); they should also consider communications campaigns aimed at the rural sector, etc.*

👉 *Programmes should not limit themselves to one rigid response that is incapable of responding adequately to the varied protection needs of defenders: “we have lots of other cases – this is all we can offer”, “take it or leave it”...*

📖 During the research process a relationship was detected between the protection responses imposed on defenders, and that were not fully accepted or adhered to, and dissatisfaction with the protection programme, alongside a possibility that the protection measures would be improperly used

📖 The defender has a right to protection; it is not a service provided by the state, rather the state has a duty to provide it

3 On the risks faced by Women Defenders, see section 1.9 of the New Protection Manual for Human Rights Defenders (Protection International, 2009).

4 On the risks faced by Defenders of Sexuality Rights, see the New Protection Manual for Human Rights Defenders (Protection International, 2009).

 Occasions when defenders or organisations refuse to collaborate with the programme.


On occasion defenders or organisations may refuse to collaborate with a programme, either following the first contact made, or when the protection response begins. This possibility should be contemplated in the protection agreement signed at the point the terms are agreed. There may be many reasons why organisations or defenders may refuse to collaborate; the next section deals with some of the most important of these and attempts to propose answers.

- A defender rejects the assignation of an armed bodyguard provided by the state.

There have been cases when defenders have rejected the assignation of an armed bodyguard, for example for ethical reasons such as a rejection of the use of violence, or for practical ones, such as when they realise that the bodyguard is carrying out intelligence activities against them. In other cases defenders argue that the presence of police bodyguards leads to mistrust among the people or communities they work with, or might even place them at risk – in the case of victims or witnesses of cases of police violence, for example.

- A group of defenders rejects a set of protection measures in protest because they consider them insufficient or useless.





There have been several cases in which groups of defenders have rejected a set of protection measures in protest because they consider them insufficient or useless (some refer to placebo measures). For example, in Colombia a group of defenders returned their bullet proof vests, cellular phones and even bullet proof cars because attacks continued to be committed against defenders and the state was not acting duly in response, failing to investigate, arrest or try those responsible.

 *In these cases, a basic consideration is that the state should not be absolved of its responsibility to protect defenders, and should carry out all the appropriate measures necessary both socially and politically to re-establish the protection agreements (for example, coming to alternative agreements if a bodyguard has been rejected, or renegotiating them if the measures have been rejected because of state inaction).*

 *Avoid the re-victimisation of defenders.*

When defenders have suffered attacks it is fundamentally important to ensure that during the protection response they are not re-victimised, that is, forced repeatedly to experience the traumas suffered, to recount their experiences to different bodies or to explain their situations to the authorities more than once.

### Situations involving the risk of re-victimisation resulting from an obligation to repeat their testimony or respond to repeated interviews:

-  *In order to enter the protection programme;*
-  *During the risk assessment (with other bodies such as the police);*
-  *To other institutions (such as other state bodies, the legal authorities, international bodies, etc.);*
-  *Norms designed to reduce the risk of re-victimisation:*
  - *Develop protocols to minimise the number of interviews required, whether within the programme or with other habitual collaborators;*
  - *Reach agreements with the programme and other bodies;*
  - *Training of staff in how to deal with victims;*
  - *Accompany defenders during their acceptance in the programme and the evaluation of their case;*
  - *Assign a single official to accompany the defender during the whole process, including during negotiations with other institutions;*
  - *If necessary, ensure continuous contact with the same designated official;*
  - *Include specialist psycho-social support from the start;*
  - *Anticipate and deal with linguistic and cultural obstacles.*

## 5. Written agreements

The implementation or delivery of protection measures is generally formalised with the signing of a written agreement by the beneficiaries, detailing the security measures agreed (for example bullet proof vests) and the condition in which they were handed over, the expected benefits and commitments, the duration of the measures, and the consequences of their improper use.

An example of this kind of agreement is provided in the annexes, which reproduce the agreement signed by the beneficiaries of the Brazilian programme. Below, a list of commitments expected of beneficiaries of the Colombian programme is presented. This list of commitments has evolved over time as a result of the experiences accrued during its implementation. It reflects a considerable number of the prohibited, anomalous or difficult circumstances that emerge when protection measures are implemented. Consequently, several of these norms are analysed in Chapter 5, which deals with protection measures.



### **Examples from the Colombian programme: commitments of beneficiaries**

It should be borne in mind that the majority of cases subject to protection measures do not merely involve benefits agreed on entry into a programme, but, if the measures are to be effective, a series of commitments should be entered into. The Colombian programme is the only one that has regularised these commitments in detail:

#### ***Decree 1740 of 2010, Article 34. Commitments of the Beneficiaries.***

*Beneficiaries are required to commit to the following:*

1. *Accept the recommendations formulated by the state security bodies and the protection programme.*
2. *Neither seek nor accept entry into a different state protection programme during the lifetime of the measures.*
3. *If included in more than one state protection programme, withdraw from one of them.*
4. *Maintain the elements handed over in good condition and maintain them in good order.*
5. *Use the elements or assistance offered exclusively for the purpose of protection.*
6. *Collaborate with state investigatory, supervisory and security bodies in order to clarify the events that led to the threats, respecting the Constitutional Exception that obliges them to testify.*
7. *Attend the self-protection sessions suggested by the officials responsible for each of the programmes, which will be realised in the place determined by the institution responsible for the measures.*
8. *Inform with a minimum of 24 hours notice any travel arrangements that require coordination between official bodies in different parts of the country.*
9. *Avoid maintaining contacts that might endanger their security.*
10. *Respond to any requirements that may be made by the respective Committee, the Human Rights Directorate of the Ministry of the Interior and Justice, the National Police and/or the authority that has assigned the measures concerning the improper use of the protection measures, in order to explain or clarify the information or evidence concerning the implementation of said protection measures.*
11. *Report immediately any loss, theft or damage of any element provided by the protection programme.*
12. *Collaborate with the authority that has assigned the protection measure in order to confirm their correct use.*
13. *Collaborate with the National Police in the realisation of the risk assessment. If such collaboration to prepare the risk assessment is not offered or is refused, a written minute will be prepared to that effect and the situation will be passed to the respective Committee for its consideration.*
14. *Maintain confidentiality concerning information related to their situation.*
15. *Sign an agreement of principle that details the elements supplied, and their condition, the benefits and commitments agreed, the duration of the measures and the consequences of their improper use.*
16. *Return the elements supplied for the protection of the beneficiary once they cease to be connected with the protection programme.*
17. *Inform the state security or supervisory bodies of the facts that cause them to fear for their lives, integrity, liberty and security.*
18. *Pay the deductible amount due under the terms of insurance covering any element provided by the programme, in the event that it has to be replaced as a result of loss, theft or damage, in cases where the responsibility of the protected party is proven.*
19. *Any other commitments inherent to the quality of the individual as a beneficiary of the protection service, and such as may be recommended by the relevant Committee.*