

## Chapter 2: Inclusion in protection programmes

### 1. Contact between defenders and programmes (how cases are received)

- The defender makes direct contact with the programme.
- An intermediary body (such as an organisation, a church, etc.) puts the defender in contact with the programme, with the defender's consent.
- The programme contacts the defender or an intermediary organisation if it is made aware of a situation.<sup>1</sup>

Contacts such as these occur every day, and in practice it is difficult to know what factors may make the contacts easier or harder to make. Based on research and existing documentation we have produced the following two lists that present the obstacles and the aspects that may facilitate this first contact.

#### Barriers to establishing contact between defenders and protection programmes:

- Lack of information or publicity about the programme.
- A perception that the programme is biased or that it only accepts certain groups or persons.
- Lack of confidence in the programme or its results, especially in cases where a strong confrontation exists between government and defenders (in the case of governmental programmes).
- The physical isolation of defenders who work in rural areas with poor communications or in large countries.
- Many defenders do not identify themselves as such and therefore do not consider themselves among the target population of programmes, making it difficult for them to enter.
- Linguistic, cultural and economic barriers.

<sup>1</sup> The Colombian Constitutional Court has ruled that the authorities are obliged “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” (Sentence T-719, 2003). Nevertheless, Decree 1740 of 2010, which governs the Colombian programme, does not include this requirement to enter into contact with threatened individuals among the functions of the programme.

### Factors that facilitate contacts with the programmes:<sup>2</sup>

- Legitimacy: that the programme is felt to be legitimate by the public. This will depend on whether it has a sound legal or institutional basis or its acceptance by the community of defenders, if it is viewed as an institution that is serious about the protection and welfare of the people it covers, etc.
- Decentralisation: this depends on the presence of offices across the country (or their antennae, or contact points) and on whether the programme's employees travel outside the major cities where most of the work carried out by defenders occurs. Decentralisation is important, not only as it facilitates access, but also in order to guarantee effective measures are taken, because proximity to the target population makes it easier to understand the realities they face.
- An open organisational culture and a broad mandate: defenders should feel welcome in the protection offices they visit, and secure that they are going to be listened to seriously.
- Integrity, quality and diversity of the staff group: to a large degree the quality of the work of these offices depends on the people who work in them. Therefore procedures should be developed that guarantee that employees are selected on their merits in order to ensure that the offices are staffed by independent professionals. Furthermore, if the offices are to be open and accessible, staff should represent the social, ethnic, and linguistic and gender balance of society.
- Rapid, efficient and respectful procedures: if the office is to provide effective protection its procedures should be simple, accessible and free of charge (or very reasonably priced), and rapid. But the office should also be effective; when defenders attend the national-level offices they are entitled to expect them to have the authority to require answers of the bodies responsible for their protection. It is also of vital importance that the offices, whether governmental or non-governmental, should be able to monitor whether the recommendations have been fulfilled. It is of overall importance, too, to minimise the time defenders are forced to wait before protection measures begin, or even to guarantee an immediate protective response.

## 2. Opening and establishing a case

Once a defender has made contact with the protection programme, a decision needs to be made concerning whether they will enter the programme or not. Ideally, this decision will be made according to a flexible, clear, pre-established set of criteria.

### *Admissions criteria*

The criteria used by the Colombian protection programme to evaluate requests for protection are very general, specifying that the applicant should be a member of the programme's target population, that the threat is related to activities intended to defend Human Rights, and that too much time has not elapsed since the threat (the request must be made within the three months following the events in question).

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<sup>2</sup> For a more detailed discussion of access to protection programmes see chapter 4 of Part I.

The Guatemalan proposal includes the following criteria: that the applicant should be a member of the programme's target population and their application be supported by their peers, there should be a clear relationship between the case and the activities of the defender, a complaint should have been lodged with the legal authorities, the "local or regional" authorities should have been informed, and the case should not present "insurmountable obstacles to the security or protection scheme run by the Interior Ministry" (assuming, that is, that the security needs of defender go beyond the programme's capacity to protect).

The criteria used in the Brazilian programme are very general; they gauge whether the applicant is or is not a Human Rights Defender and if there is a causal connection between their activities and the threat. It should be noted that if the request is rejected the applicant has the right to appeal to the Programme's National Council. The other programmes do not provide a right of appeal.<sup>3</sup>

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<sup>3</sup> In response to complaints from applicants who were rejected by the programme the Colombian Constitutional Court has produced decisions and sentences that support the revision of such cases.

## Summary of acceptance criteria for the different programmes

Criteria included in at least two of the three programmes analysed	
Subject	Criteria
Target population	<p>The defender should belong to the target population.</p> <ul style="list-style-type: none"> <li>Colombia: the defenders should belong to legally recognised organisations, ranging from NGOs to community organisations.<sup>4</sup></li> <li>Guatemala: if a defender belongs to an organisation, it should support their application, or their leadership role should be demonstrated and confirmed by local organisations or bodies.</li> </ul>
Motivation for, or origin of, the threat or aggression	<p>The threat or aggression must be a direct consequence of the activities of the defender.</p>
Criteria included in just one of the three programmes analysed.	
Timescale	<p>Colombia: the request must be made within three months of the occurrence of the events.</p>
Action before other institutions	<p>Guatemala:</p> <ul style="list-style-type: none"> <li>The applicant must provide a copy of the complaint lodged before the authorities (police or a judge).</li> <li>The local or regional authorities should be aware of the situation of risk faced by the applicant.</li> </ul>
Place	<p>Colombia: the zone of risk has to form a part of the national territory.</p>

<sup>4</sup> Criteria for acceptance in the Colombian programme (2010):

1. Leaders or activists of social, civic, community, trade union and peasant organisations or of interest or ethnic groups.
2. Leaders or activists of human rights organisations or members of the medical mission.
3. Witnesses in cases of Human Rights violations and abuses of International Humanitarian Law, irrespective of whether the corresponding disciplinary, criminal or administrative cases have been initiated, in fulfilment of current guidelines.
4. Journalists and communications professionals.
5. Leaders and representatives of organisations of the displaced population or displaced people in situations of extraordinary or extreme risk.
6. Officials responsible for the design, coordination, or implementation of the National Government's Human Rights or Peace Policies.
7. Employees who have in the past been responsible the design, coordination, or implementation of the National Government's Human Rights or Peace Policies.
8. Leaders of the [demobilised guerrilla organisations] the Movimiento 19 de Abril (M-19), the Corriente de Renovación Socialista (CRS), the Ejército Popular de Liberación (EPL), the Partido Revolucionario de los Trabajadores (PRT), the Movimiento Armado Quintín Lame (MAQL), the Frente Francisco Garnica of the Coordinadora Guerrillera, the Movimiento Independiente Revolucionario Comandos Armados (MIR – COAR) and the Milicias Populares del Pueblo y para el Pueblo, Milicias Independientes del Valle de Aburrá and Milicias Metropolitanas de la ciudad de Medellín, who signed peace agreements with the National Government in 1994 and 1998, were reincorporated into civilian society and who, as a result of their political, social, journalistic, humanitarian or professional activities face extraordinary or extreme levels of risk.

<b>The objective of the request for protection</b>	Guatemala: the protection request should have no other motivation than preserving and protecting the life, integrity, security or freedom of the individual.
<b>Competence</b>	Guatemala: the protection requested should not be responsibility of another state body; if it is, the application should be made to this body.
<b>Programme capacity</b>	Guatemala: acceptance of a candidate for protection should not imply “insurmountable obstacles to the security or protection scheme run by the Interior Ministry”.

 The main criteria for acceptance in a protection programme are the demonstrable membership of the individual in the programme’s target population and that the threat or attack were a consequence of the defender’s activities

 *It has proved useful to ensure the participation during the design period of defenders in discussions concerning the inclusion criteria for the programmes and in subsequent revisions aimed at incorporating lessons learnt.*

It should be borne in mind that the Colombian protection programme covers other population sin addition to defenders and that, apart from the programme run by the National Police (dedicated to the protection of ranking government and state officials), the Programme of the Ministry of the Interior and Justice, which is the programme dealt with in this chapter, includes former guerrilla combatants, witnesses, journalists, and others (see footnote on the previous page). This this has caused concern among Human Rights organisations because it is difficult, given the limited resources available, for a programme intended to cover such disparate target groups to respond adequately to the specific needs of human rights defenders.

It may be observed that the acceptance criteria exert a clear influence on the decision to accept requests for inclusion, as follows:

<b>Few, ill-defined or ambiguous admission criteria</b>		<b>Clearly defined / restrictive criteria</b>
More laxity in decision-making	←	Clear criteria: transparency
Flexibility		Legitimacy of decisions, greater support available if there are problems
Risk of errors	→	Less risk of errors
Risk of arbitrariness and discrimination		Reduced flexibility to differing cases and realities of defenders
Risk of low levels prioritisation		

## Criteria for excluding applicants from programmes

The only programme that contemplates excluding applicants is the proposed programme in Guatemala, when they are shown to: “[c]arry out, or have carried out, illegal acts or [who] are subject to legal proceedings in the national justice system. This applies to individuals covered both by national and supranational protection”. A clarification is provided that “[the programme] does not cover people who have been deprived of liberty in circumstances that constitute a threat to the right to life”.

👉 *This clause has the potential to negatively affect protection for defenders, because if there are laws on the statute book that discriminate against or criminalise defenders protection programmes will not favour them, with the result of facilitating legal attacks against defenders.*

Other unwritten criteria that have been taken into account by the various evaluation committees have included the question of whether the defender has resorted to violence, and the “sustained bad name” they may acquire (the ambiguity and the adaptability of this concept should be remembered).

## The collective nature of the decision to accept an application

The fact that a considerable number of people have positions of responsibility in the programmes and are involved in deciding whether people should or should not be offered protection brings with it advantages and disadvantages, as will be shown later. Joint decision-making is the norm in all the programmes examined.

In the Colombian programme the Comité de Reglamentación y Evaluación de Riesgos (Committee for the Regulation and Assessment of Risks - CRER) was created as the programme’s “advisory body”; it is defined as a “participatory, democratic and pluralist [space] in which representatives of the state, in collaboration with representatives of the target population, evaluate each case individually, taking into account the nature, time, place and degree of threat and the level of risk faced by the applicants, and recommending the protection measures that should be adopted”.

In the Guatemalan proposal the Comité de Evaluación de Riesgo (Committee for the Assessment of Risks), also collective, determines its membership and the responsibilities each should assume. The Brazilian programme does not enter into much detail on the matter, though it does establish that decisions concerning who should be admitted to the programme are the responsibility of the state coordination body or “depending on the circumstances” (which are not specified), by the National Coordination. The guidelines also recommend that the interview with the defender to determine whether they should be included in the programme should be conducted “by more than one member of the technical team, preferably in the presence of a lawyer”.

### 3. Composition of the bodies responsible for the various protection programmes

Programa/ Entity	Colombia <sup>5</sup>	Guatemala <sup>6</sup>	Brazil <sup>7</sup>
Name of Body	<ul style="list-style-type: none"> <li>Committee for the Regulation and Evaluation of Risks, CRER (advisory body)</li> </ul>	<ul style="list-style-type: none"> <li>Committee for the Assessment of Risks and Protection Measures (CERPM)</li> </ul>	<ul style="list-style-type: none"> <li>State and National Deliberative Councils</li> </ul>
Government	<ul style="list-style-type: none"> <li>Minister of the Interior and Justice (may delegate the Deputy Minister); chairs the CRER</li> <li>Director of the Presidential Agency for Social Action and International Cooperation</li> </ul>	<ul style="list-style-type: none"> <li>Presidential Coordinating Commission of Executive Branch Policies on Human Rights –COPREDEH- (who functions as chair)</li> <li>Delegate of the Office for the Analysis of Attacks against defenders, attached to the Vice-Ministry for Security in the Ministry of the Interior</li> </ul>	<ul style="list-style-type: none"> <li>Representatives of the Government (not specified, other than the National Executive Coordinator of the Programme)</li> </ul>
Participating Bodies	<ul style="list-style-type: none"> <li>Director of the Presidential Human Rights Programme<sup>8</sup></li> <li>Director of the Human Rights Programme of the Ministry of the Interior and Justice</li> </ul>	<ul style="list-style-type: none"> <li>Director or delegate of the Directorate of Civilian Intelligence.</li> <li>Representative of the International Relations Unit of the Ministry of Labour and Social Security</li> <li>Representative of the prosecuting authorities (special invitation)</li> </ul>	

<sup>5</sup> According to Decree 1740 of 2010.

<sup>6</sup> See the proposal “Catalogue of Measures for the Prevention of Human Rights Abuses and Protection of Human Rights Defenders and other Vulnerable Groups” (February 2008).

<sup>7</sup> The information that appears in this table has been drawn from the Draft Law which was awaiting approval by Brazilian Congress during the preparation of the current text (December 2010).

<sup>8</sup> The full name is: the Presidential Programme for the Promotion, Respect and Guarantee of Human Rights and the Application of International Humanitarian Law.

<p><b>State Bodies</b></p>	<ul style="list-style-type: none"> <li>• Representatives (voice not vote) of the office of the Solicitor General (Procuraduría General de la Nación) and the Human Rights Ombudsman</li> </ul>	<ul style="list-style-type: none"> <li>• Delegate Human Rights Ombudsmans</li> <li>• Delegate of the Solicitor General</li> </ul>	<ul style="list-style-type: none"> <li>• Representatives of “the Authorities” (not specified)</li> </ul>
<p><b>Security Forces</b></p>	<ul style="list-style-type: none"> <li>• Director of Protection and Special Services, National Police</li> <li>• Coordinator of the Human Rights Group, National Police</li> </ul>	<ul style="list-style-type: none"> <li>• Representative of the Division for the Protection of Public Figures and/or Division for the Protection of Public Safety and/or the Human Right Office of the National Civilian Police, on a case by case basis</li> </ul>	<ul style="list-style-type: none"> <li>• Representatives of “the Authorities” (not specified)</li> </ul>
<p><b>Justice System</b></p>	<ul style="list-style-type: none"> <li>• Representative of the office of the Public Prosecutor (voice not vote)</li> </ul>	<ul style="list-style-type: none"> <li>• Representative of the Judicial Bodies or a delegate of the Security Unit</li> </ul>	
<p><b>Defenders’ Organisations</b></p>	<ul style="list-style-type: none"> <li>• Four Representatives of each of the Programme’s target population groups special invitation – only attend sessions examining the target group in question)</li> </ul>	<ul style="list-style-type: none"> <li>• Two national-level representatives of civil society organisation (Human Rights organisations, trade unions, interest groups and administrators and other servants of the justice system)</li> <li>• Two national-level representatives of journalists and the communications profession</li> </ul>	<ul style="list-style-type: none"> <li>• Representatives of civil society organisations (not specified, except that they will participate “on equal terms” with representatives of “the Authorities”)</li> </ul>
<p><b>International organisms</b></p>	<ul style="list-style-type: none"> <li>• Representative of the Office of the UN High Commissioner for Human Rights (special invitation)</li> </ul>		

It is clear from the table that judicial authorities participate only in the Colombian and Guatemalan programmes, and that the Colombian programme is the only one with participation by an international body.

In general, it is true that there are advantages and disadvantages associated with collective decisionmaking processes according to the numbers involved:

Decision taken by a very small number of people		Collective decision taken by a larger number of people
Flexibility, dynamism, immediate response	←	Slower decision making
Risk of arbitrariness and discrimination	→	Less risk of arbitrariness and discrimination
Risk of mistakes		Less risk of mistakes

👉 It is both useful and important that the members of these bodies should have decision making capacity concerning overall decisions on the adoption and implementation of security measures (because if they have to consult their superiors information is lost in transmission, timescales are stretched, and the decision itself is taken at a remove from the defenders).<sup>9</sup>

### Procedures and timescales for deciding admission to the programmes

The **ordinary** procedures followed at the start of the programmes generally follow the following stages:

- Reception of a written request directly from the defender or a third party.
- Analysis and verification that the applicant is a member of the target population, as well as the existence of a causal relation between the threat and their activities, the ongoing nature of the threat, the location of the defender, etc. If necessary, a personal interview will be conducted with the applicant in order to expand on relevant information.
- Completion of an assessment of the level of risk, to be carried out by the corresponding body (police or other).
- Once the level of risk has been determined, the specific case is presented to the body responsible for the programme, which determines the level of risk and assesses the situation before recommending the pertinent security measures.
- Discussion of the recommendations and measures with the beneficiaries, and preparation of a written agreement setting out their terms.
- Implementation of the agreed security measures.

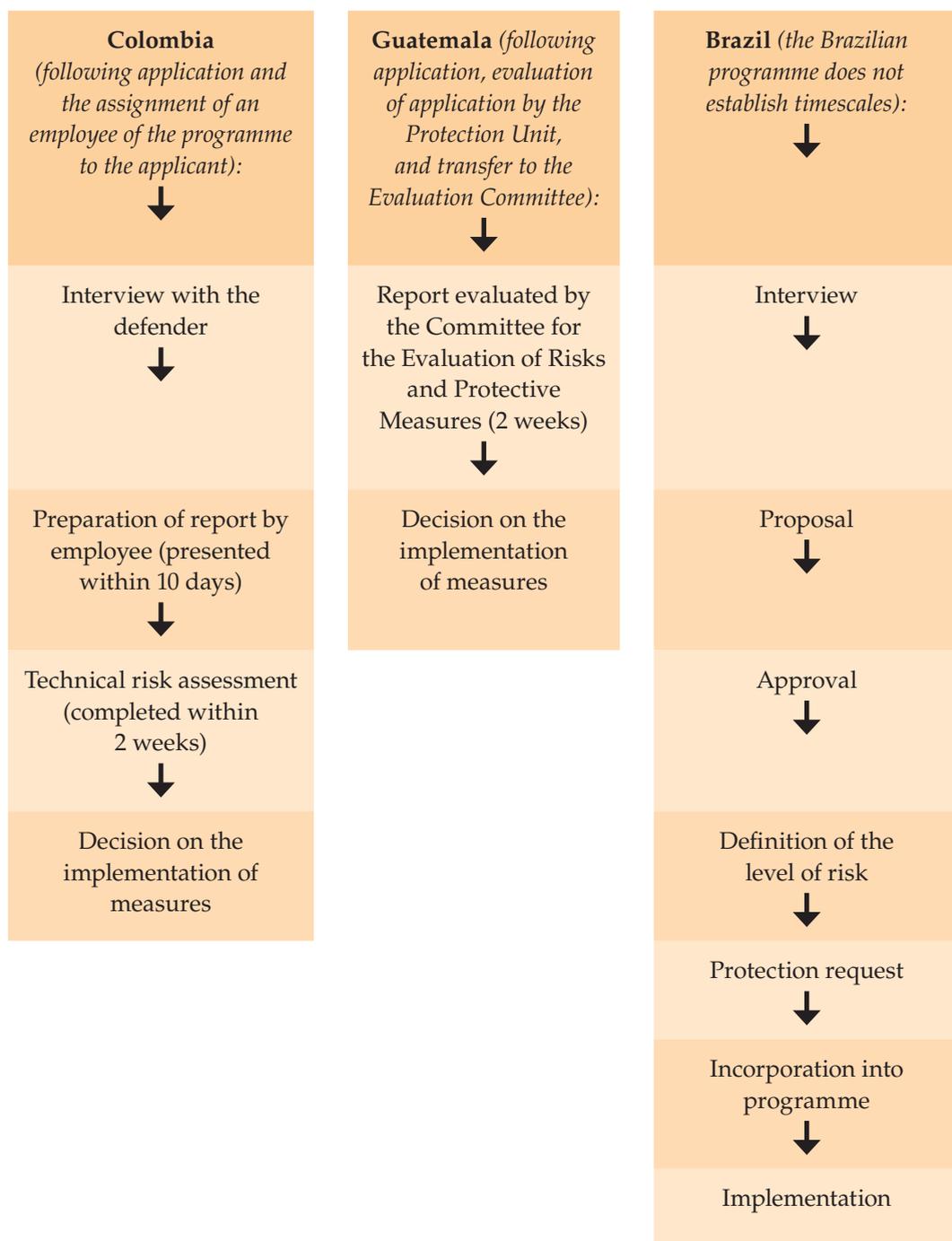
When it comes to defining timescales it is important to take into account the frequency with which the decision-making bodies meet:

- CRER (Colombia): monthly (with extraordinary meetings of the committee “when the protection needs require it”).

<sup>9</sup> Decree 1740, covering the Colombian programme specifies that if one of the members has been delegated to participate they should be employees with decision-making capacity, and that the delegation should be in writing (article 7).

- CERMP (Guatemala): fortnightly (and “extraordinarily when necessary, and according to the extreme gravity and the circumstances of the case”).
- National Deliberative Council (Brazil): not specified.

In the Colombian and Guatemalan cases the timescales for admission to the programmes under ordinary circumstances are set at several weeks long. Deadlines are not always clear; nor are they necessarily respected.



 *In some cases weeks or even months may pass between the acceptance of the defender in the programme and the implementation of protection measures, especially when the measures are to be the responsibility of institutions that do not form a part of the programme, such as the local police, for example.*

 In such cases it may be useful to establish cooperation agreements (with a commitment from the higher echelons of the organisation) so that that the obligatory nature of the measures and the duty of the implementing body to fulfil them are made clear

### *Procedures and timescales for urgent cases*

None of the programmes defines what it means by “urgent cases”, though they do specify procedures that should be followed in such cases. The Brazilian programme establishes the need in these cases to take a decision immediately after the application has been made (though once again no timescales are set). The proposal to establish the Guatemalan programme states that measures in these cases will have the duration of two months after which they will be subjected to the same assessment as an ordinary case. The Colombian programme mentions the transfer or relocation of the defender as an initial measure, after which they should present themselves to the “competent authority” for the procedures to be initiated.

Emergency procedures provide protection measures in situations of high or very high risk, in accordance with the decision made on the case by the person or body responsible for such decisions. In these cases a programme may adopt or request measures without any requirement to carry out an initial assessment of threat or risk levels, or to make initial recommendations. Subsequently, the risk evaluation committee should be informed with a view to proceeding, as soon as possible, with the ordinary procedures and the adoption of definitive measures. In any case, as with ordinary procedures, it is important that an agreement (or document) should set out the emergency measures agreed with the defender or the organisation advising them. This agreement may take the form of a written document, a fax or email or, even, a recording of a telephone call providing this procedure has been agreed upon verbally during the phone call.

Precisely because of the lack of time available to assess risks and actions during the emergency procedures it is easy to make mistakes that might affect the programme or the defender in question. To reduce these risks it may be useful to do the following:

- Use pre-established protocols of action designed to prioritise the “reducing the exposure” of the defender to the threat.
- Ensure that the protection measures granted should be conservative; that is, that they prioritise the safety of the defender according to the assumption that the threat is real. In this way doubts will not get in the way of rapid and effective protection.

It should be clear that an emergency protection response should not necessarily condition subsequent actions, since once the risk has been analysed it should be possible to take more informed decisions. That is, it may become apparent in a given case that the evacuation of

the defender was not in fact necessary; or the opposite may be the case: that in the emergency situation the measures adopted were not sufficient.

📖 If there is well-founded fear that the life of a defender is in danger, the quickest, most effective and, in principle, least damaging measure is immediate transfer to a safe place. It is perfectly feasible to prepare a protocol covering this eventuality in advance in order to ensure maximum safety levels for defenders and their families should it be necessary to implement the measure

👉 *A security measure may be necessary, but bring with it levels of risk for defenders. All programmes should, therefore, prepare protocols covering their emergency measures; these should be well defined and include on-going monitoring, and prompt evaluation.*

### Documentation necessary to open a case

All the programmes require a written application requesting inclusion. This is the only aspect they have in common. (And is the only initial documentary requirement of the Brazilian programme). The Guatemalan programme requests in addition the presentation of a copy of the complaint that was lodged detailing the facts of the case, while the Colombian programme provides, additionally, a list of six documents, ranging from the criminal record to a certificate of employment covering the previous three years. The programme specifies a deadline of between five and ten days to provide the required documentation).

📖 Documentary support is required in order to justify the decisions on a given case, but it should not become a barrier to the initiation of protection measures, especially in cases where the risk levels are high or when the defender has had to be evacuated from their habitual residence. Only documents specifically related to the case should be requested, and reasonable timescales should be established for their presentation

## 4. Verification of cases

Once a case has been received by a programme it is fundamental to verify the information that has been provided, both in order to understand the circumstances properly and to confirm that the attack is a result of the applicant's activities as a Human Rights Defender as well as to be able to assess the risks and to take adequate protection measures. The programmes follow different criteria (some of which are regulated and others not) in order to confirm the information related to a case.

Some of the regulated verification procedures have already been mentioned, for instance those governing acceptance by the programme: membership of an organisation, an expression of support for the application from their organisation, knowledge of the case by the local authorities, or that a formal complaint has been lodged with the authorities. This last requirement is rooted in the fact that the presentation of a false complaint may have profound legal consequences, and the requirement reduces considerably the possibility of baseless applications being made.<sup>10</sup>

<sup>10</sup> As will be seen later, this requirement also seeks to establish legal mechanisms aimed at reducing impunity and preventing the programme from becoming a mechanism of refuge without the participation of the legal institutions.

Other verification procedures require greater investigation in order to understand the case. Such a study may be carried out by employees of the programme, as is habitually done by the nongovernmental programme UDEFEGUA in Guatemala, or by a trusted organisation in the zone where the defender has been threatened or attacked. If it is not possible to carry out the study in situ the programmes do so at a distance, using a variety of means to contact a range of sources. It will be apparent that the latter kind of assessment is likely to be less trustworthy than the former, and may contain errors.

-  *Defenders should provide written confirmation that they are willing for the information to be used by the programme. Opportunities could be designed into the programmes to ensure consultation with the defender over which information may be used and which should not.*
-  *When an institution belonging to committee requests information on a case, a confidentiality agreement should be signed to protect the information in question.<sup>11</sup>*

 When additional investigation is required, the safe handling of information becomes even more important. Communications with third parties may break confidentiality and the consent of the defender must be obtained (especially if this is their first contact with the programme). It is of fundamental importance to know what it is possible to ask each person interviewed and to determine exactly what information is sought

-  *Programmes should establish a mechanism to filter the information contained in the case files which may contain confidential information - and to provide information to third parties (during the verification stage, the risk assessment or the implementation period). One difficulty here is to provide justification for a protection measure if it is not possible to cite confidential information.*

In general, defenders are honest and appropriate in the use they make of protection programmes. However there have been cases when defenders have asked to be included in a programme because they are anxious for recognition or because they wish to travel to another part of the country. On other occasions fear leads a defender to misinterpret events or to manipulate them in order to access a programme. The few proven cases when fraudulent access has been gained become notorious within programmes and may lead to the erroneous perception that it occurs more frequently than is actually the case.

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<sup>11</sup> Article 50, Decree 1740 of 2010, Colombia.