

Chapter 4: Protection measures provided by the programmes: characteristics and duration

1. Ensuring the appropriateness of protection measures

Protection measures should be appropriate to individual defenders and to the risks they run. It is instructive to refer to Decision 200/07 of the Colombian Constitutional Court, which states that in order for protection measures to be effective they should be:

- “(i) Factually appropriate to the circumstances of the applicant, which should be subjected to careful study and whose preparation should not, however, delay the adoption of effective measures designed to deal with the risk;
- (ii) Effective in protecting the life, security and personal integrity of the individual and their family – an effectiveness that includes both the timeliness of the measure and its suitability, in achieving the objective of protection, and
- (iii) Temporally appropriate, that is, that they continue to be applied while the extraordinary risk they are designed to confront persists. (...) At the moment a protection measure is defined in response to a presumed risk, the competent authority should justify them expressly to the beneficiary, explaining how they fulfil the requirements of factual adequacy, effectiveness and temporal adequacy”.

It is important to highlight, in reference to paragraph (iii), above, that the explanation the authorities are required to provide of the appropriateness of a given measure offers a fundamental key to understanding: there should be agreement on the measures between the defender (and their organisation) and the protection programme. The work of human rights defenders has specific characteristics and this negotiation process will make it more likely there will be agreement on the appropriate protection measures that will allow the work of the defender to continue working if the situation of risk allows it. This topic of risk assessment is further explored in Chapter 3 and in Chapter 5 where specific measures are analysed.

2. The duration of protection measures

All the programmes specify that protection measures are temporary, but simultaneously establish fixed timescales during which defenders may benefit from the measures: up to 12 months in Colombia and six months in Guatemala (extendable in both cases at the decision of the programme committee). The measures may be suspended before the end of the period, but they should always be maintained while the risk subsists.

3. Periodic revision of protection measures

When measures are offered for a finite period of time a further assessment of risk should be carried out before the measures expire, in order to decide whether they should be maintained. Consequently, some of the programmes include provision for periodical evaluations of the cases (for example, every three to six months in the Colombian case, depending on whether the risk is ordinary or extraordinary).

In order to review the risk and the implementation of the measures the programmes carry out activities such as:

- Regular interviews with defenders and their organisations (if relevant).
- Reports compiled by programme officials or bodyguards (when these are employed).
- Inquiries into the progress of police or criminal investigations related to the case.
- Information on emerging incidents that are connected to the case or may affect the risks faced by defenders.

Overall, it may be affirmed that the programmes have little capacity to monitor protection measures or to review the levels of risk faced by defenders. In many cases the measures are maintained formally for long periods, years even, without the levels of existing risk or the due implementation of the measures in place to combat it being reviewed.

 In all cases regular reviews of risk and of the appropriateness of the measures conceded should be carried out during the period covered by the protection measures, and in all cases before they expire. Furthermore, whenever new incidents occur against a protected defender an extraordinary re-assessment of risk should be carried out

 *The absence of monitoring is in many cases justified by the scarce human resources that are assigned in relation to the volume of work facing the programmes.*

 The contribution and accompaniment provided by defenders' organisations is fundamental to the monitoring, implementation and effectiveness of protection measures. This can and should be formally integrated into the monitoring provided by the programme (both by the affected defender and by the mechanisms for monitoring involving the defenders' organisations that support the programme: in the three countries in question defenders actively contribute to the processes established to monitor and accompany the institutional protection programmes, combining, as a result, a critical focus with necessary levels of support)

 *The Brazilian programme organises, as a minimum, one annual national level meeting to treat topics related to the protection of defenders; a wide range of defenders, technical staff and politicians, and at times outside invitees, participate.*

It should be noted that there are frequent delays in the initiation of protection measures and that they may be suspended for a range of reasons, the most common including the following:

- The refusal of the responsible body to implement; the police may, for instance, argue that they do not have available agents at a given time or that they have other priorities, or local or regional authorities may not share the priorities of central government or may be engaged in power struggles with them.
- Liquidity and funding problems.
- Delays in bureaucratic procedures.

👉 A reality affecting all the programmes examined is the lack of funds, liquidity problems, bureaucratic difficulties, frequent delays in initiating measures, or their suspension.

4. Modification and termination of protection measures

Protection measures may be formally terminated for the following reasons:

- Fulfilment of allotted timescales (if the risk is no longer present).
- The risk faced by the beneficiary no longer exists.

The risk may diminish for a variety of reasons:¹

- Because the threat is no longer present (for example because the actions of the threatening party have been reduced by effective police or judicial action).
- Because of changes in the activities of the beneficiary (for example, if the defender no longer works in defence of Human Rights or takes on other activities that imply lower levels of risk).
- Changes in the place of residence of the beneficiary (moving to another place where the risks are absent).
- At the request of the defender. In this case it is usual for a written request to be required.
- Improper use of the measures. (see the final section of this chapter).
- Leave of absence (except maternity leave) (Colombia).
- Imprisonment or house arrest (Colombia); or if a defender “carry out or have carried out illegal acts or are subject to legal proceedings in the national justice system” (Guatemalan proposal).

As has been mentioned in other sections of this book, if defenders suffer discrimination or are criminalised by ad hoc laws they may lose the protection of the programmes that have been established to provide necessary protection, resulting in the closing of a circle of attacks against Human Rights activities.

- The Colombian programme adduces a further reason for the suspension of protection measures, namely a “reasoned and unanimous recommendation of the CRER”. A similar ambiguity of criteria is present in the Guatemalan proposal which provides an additional motive: “any other reason defined by the CERPM”. Given the complex relations involved in matters of protection, it is perhaps understandable that a programme may wish to provide a “blank cheque” to decision makers but it is in any case important that such decisions are properly transparent (that the motives are clearly explained, at least to the bodies involved in monitoring the measures). These *ad hoc* decisions may also be incorporated into the programme in the form of criteria or lessons learnt (in this sense it is instructive to examine the list of improper uses made of the protection measures offered by the Colombian programme: see the final part of this chapter).

1 See Chapter 3, on the assessment of risk.

Protection measures may be modified (increased or reduced) in response to changes in the level of risk faced by the defender:

Reduced Measures: Protection measures may be reduced when the level of risk wanes; this may occur for the reasons presented in the previous paragraph (because the level of threat has declined or because the defender has changed their activities or place of residence).

Increased Measures: Similarly, protection measures should be increased when the risks faced by a defender increase. This is the case, for example, when fresh incidents occur (new threats, attacks on associates or on the defender, etc.)

Various factors may complicate the decision-making process concerning the withdrawal of protection measures:

- All the programmes share a profound concern at the consequences and costs that may occur when a defender whose protection measures have ended suffers a direct attack. In an interview conducted during the research for this book, an official with a governmental protection programme argued that “it is better to invest in security than to leave someone unprotected”.
- Some defenders may face more than one source of threat that can lead to different levels of threat that are not easily reconciled; for example, a defender might also lead an opposition party and face threats that result from their work as a defender or because of their political activity.
- When defenders themselves participate in programme decisions there may be conflicts of interest when they are required to decide on the withdrawal of protection measures either for themselves or their colleagues, especially if the programme is financed externally, as defenders may not be aware of the limits to the resources available.
- In some cases certain defenders may be interested in retaining measures that provide them with direct benefits, such as , for example, when they are provided with a bullet-proof car and a driver, or when the fact of “having bodyguards” is associated with the idea that the individual is “important” or “politically significant”.

 *If protection measures are continued indefinitely without clear justification it is likely that programme resources will be squandered and it will be hard for other defenders to gain access to its benefits.*

 **In order to facilitate decision making on the withdrawal of protection measures a programme should have in place:**

- A system capable of guaranteeing the adequate assessment of risks.
- Clear, agreed, pre-established criteria governing decision making (based on the risk assessment).

Pre-established criteria reduce differences of treatment and arbitrariness, enable prior agreement to be reached between parties, and speed up decisionmaking.

- Clear support on the part of the community of defenders and the relevant institutions for the decisions taken.
- An *ad hoc* system for monitoring risk in the period following the withdrawal of measures (lasting several months).

In this way it is possible to guarantee a special monitoring process that will make it possible to detect increases in the level of risk and to act in a timely manner. This monitoring process may be the responsibility of the body responsible for coordinating the programme, but in order to optimise available resources the system might also be implemented by the defender's organisation or by members of their immediate circle.

- A flexible system enabling protection measures to be re-initiated when necessary.

 As a practical minimum, a decision to establish timescales for the protection measures that are established might help to guarantee that they do not continue indefinitely when the programme has limited capacity to re-assess risks that have fallen to medium or low levels. In any case, it should never be forgotten that priority should always be given to protecting the defender at risk for as long as necessary should the situation of risk continue.

5. The improper use of protection measures

The programmes generally compile a list of reasons for the withdrawal of measures, related to their improper use. This is a controversial topic which shows, on the one hand, how difficult it is to reconcile the needs of defenders with the schemes developed by protection programmes, and on the other, the need of the programmes to ensure that their resources are put to proper use.

The outline of the proposed Guatemalan programme, and the Colombian programme present lists detailing the improper use of protection measures, while in the Brazilian programme these are gathered together under one heading. As the programmes are available to be consulted in the annexes included with these two parts, the focus here is on enumerating and analysing the most important ones, in the light of the practical experience of the authors and the research that has gone into producing these texts.

Improper use of protection measures by beneficiaries is generally held to have occurred when they:

- Go to places that constitute a risk to their security and ignore the observations or recommendations on self-protection and security that have been formulated by the security details assigned them or by state security personnel.

As has been stated at various points in this book there is a need to reconcile the continuing work of defenders with the restrictions that may be imposed if they are working under conditions of elevated risk. Additionally, perceptions, and even the reality, of risk may vary between individuals and institutions. Those “places that constitute a risk to their security” may be the areas where defenders habitually work and they may reasonably feel that they should continue to do so. In order to find the correct balance, defenders should participate in risk assessments (it might be easier for a defender to persuade a colleague of the risks they run), and the protection programmes should endeavour to identify with the work of defenders so that they end up doing everything possible to ensure – whenever possible – that security measures do not constitute a barrier to their work.

- Abandon or evade the protection scheme, travelling to [dangerous] zones without the accompaniment of their assigned security personnel.
- Impede the attempts of the protection detail to provide accompaniment in closed or public places, thereby placing their lives in danger. Or, if a protected person has decided to end a protection scheme, they leave the place where they were, or return to the zone of risk without informing the relevant authorities.

In addition to the comments concerning the previous point it is important to take into account the fact that defenders sometimes work in socially deprived social sectors among a population that is suspicious of the police. A defender will not be able to carry on their normal activities if the interviews conducted with witnesses are accompanied by the police. Furthermore, in some countries such as Colombia there are serious antecedents of the security forces using bodyguard duties to gather information on the activities of defenders. This definition, then, should not qualify as an improper use of protection measures, especially if the responsibility for the actions is assumed by the defender.

- Authorises the use of the measures by other than those determined by the authorities, or seeks to gain commercially from the protection measures assigned them.
- Orders drivers, bodyguards or others to develop activities that have nothing to do with the development of their security activities.
- Attacks the personnel assigned to their protection detail either physically or verbally.
- Behaves in a manner that puts at risk their personal safety or that of their security detail, such as:
 - Drive vehicles under the effects of intoxicating liquor or hallucinogenic substances.
 - Fail to respect the road safety norms (or pressure the security detail to do so).
 - Carry arms without authorisation.

- Authorise leave or rest periods for the security detail without the knowledge of the body responsible for the protection scheme.
- Commit punishable or disciplinary acts or misdemeanours making use of the physical and human resources made available for their protection.
- Cause intentional damage to the physical and human resources assigned by the programme.