

Chapter 6: The overall protection response

1. The protection response

As was argued in the previous chapter, protection programmes should widen the focus of their protection response beyond the mere physical measures analysed up to now. The objectives of integral protection should include ending the impunity enjoyed by the abusers, and granting defenders the respect and social recognition they deserve. As the Brazilian draft legislation states, it is of fundamental importance to “adopt measures intended to overcome the causes that led to [the defenders’] inclusion in the Programme.”¹ For this to occur, governmental programmes, which focus primarily on physical and reactive measures, must adopt the mechanism and tactics developed by certain non-governmental programmes, as will be seen below.

2. Criminal investigation of aggressions against defenders

All defenders coincide in confirming that the aggressions they suffer would diminish if impunity were ended. This is why it is possible to state the following:

 The criminal investigation, trial and sentencing of the perpetrators of attacks against defenders is one of the principal sources of their protection.

Programmes should be conceived bearing in mind that they cannot be “bubbles” that isolate defenders from the contexts in which they work or from the police or judicial investigations of the threats or attacks they have suffered.

 *Protection programmes are structured to include as members the police and judicial bodies responsible for investigating attacks against defenders.*

At the same time it is fundamentally important to prevent potential leaks of information about the situation of defenders. For example, the proposed Brazilian legislation includes provisions to guarantee “confidentiality of identity, appearance and personal data” of defenders and stipulates that the “Measures and provisions [...] will be carried out and maintained in secret by the human rights defenders and the agents involved in carrying them out.”²

 *Programmes should maintain due confidentiality and prevent possible leaks of information about the circumstances related to the protection of defenders (which, if they are detected, should be investigated). It is more likely for leaks to occur when the perpetrators are members of the security forces who may have connections with officials who are close to the programme (bodyguards for example).*

3. The protection of defenders as state policy

If the protection of defenders is to be state policy it should be regulated by law and not merely by guidelines or ad hoc decrees. At the time this book was being prepared Brazil

1 Article 10 of the Law cited (see text in annexes).

2 Article 10 of the Law cited (see text in annexes).

was the only country in the world that was close to approving a law for the protection of defenders.³ In all other cases mechanism are contained in ad hoc policies (Colombia) or proposals (Guatemala, and more recently, Mexico).

4. The need for inter-sectoral coordination between government and state bodies

An integral protection response requires coordination between the different governmental and state bodies responsible for protection. The Brazilian draft legislation establishes that “the Special Secretariat for Human Rights may create a national-level inter-sectoral commission to coordinate state and federal bodies with faculties related to the policies and programmes for the protection of Human Rights”, but it does not provide a concrete mechanism. The situation in Guatemala is similar. Nevertheless, the new decree regulating the Colombian programme creates a high level Inter-Sectoral Protection Commission⁴ (see table).

Colombia: Inter-sectoral protection commission	
Members	<p>The Minister of the Interior and Justice, who chairs the Commission.</p> <p>The Minister of Defence.</p> <p>The Public Prosecutor (<i>Fiscal General de la Nación</i>).</p> <p>The Solicitor General (<i>Procurador General de la Nación</i>).</p> <p>The Director of the Presidential Programme for Human Rights and IHL.</p> <p>The Human Rights Ombudsman.</p> <p>The <i>Contralor General de la República</i> (responsible for overseeing the rectitude of the public accounts).</p> <p>(participation in this Commission may not be delegated).</p>
Functions	<p>Guide the strategies of state protection policy.</p> <p>Coordinate the implementation and finalisation of protection measures in exceptional cases resulting from situations of extreme risk and requested by the Minister of the Interior and Justice or the National Police.</p> <p>Periodically review the monitoring reports emitted by the different protection programmes, and produce recommendations.</p> <p>Evaluate the process of transition of each of the target populations covered by the programmes.</p> <p>Invite participation from persons considered necessary to the work of the Commission.</p>

³ For more information see Part I.

⁴ Decree 1740 of 2010.

Sessions	<p>The Commission will establish its own regulations governing its functions and will determine the how frequently nit will meet in session.</p> <p>The recommendations and decisions of the Commission will be recorded in a minute which will be signed by the President of the Republic and the Presidential Secretary.</p>
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5. Measures imposed by international bodies

Certain regional bodies such as the Inter American Court and the Inter American Commission of Human Rights have the legal capacity to impose precautionary or provisional measures on a member state when a defender is at grave risk. In certain cases these measures are immediately implemented in the country in question under the theory that the criteria of necessity adhered to by the international body makes them immediately applicable. In other cases the protection programme or a security body will carry out an assessment of risk which will form the basis of the decision on the kinds of measures to be adopted. This has led to situations where precautionary measures have been requested because of the high levels of risk faced by a defender but the risk assessment has categorised the level of risk as “low”, leading as a consequence to a conflict between institutions.

The implementation of protection measures based on precautionary or provisional measures requires a certain level of coordination between the corresponding protection programme and the Foreign Ministry (in fulfilment of its role in maintain relations with international bodies), the security forces and defenders. Usually, the implementation of these protection measures is marked by the same difficulties as those already analysed in the implementation of measures in other programmes.

6. Other protection measures

Other protection measures exist on paper, such as the Guatemalan proposal or the Brazilian draft law that, along with the actions carried out by defenders’ organisations, suggest a much broader panorama of possible actions to protect defenders. This section presents a brief summary of some of these measures.

Legal support and approaches to the authorities

- Accompaniment provided to state bodies.
- Monitoring of the evolution of the case and pressure to ensure trial.
- Vigilance to ensure due process in cases of judicialisation or criminalisation of defenders (as a minimum, provide information critical of the legislation or policies that criminalise defenders).
- Awareness-raising of the judicial sector and police concerning the importance of protecting defenders.

 *Example: in 2010 the state programme in Pernambuco (Brazil) took the initiative of inviting the the judicial sector and police to an event to analyse and exchange ideas on the protection of defenders.*

- The right to information: the proposal to establish a programme in Guatemala states that “state institutions should provide information concerning Human Rights to prosecutors and judges whenever requested by HRDs in order to expedite legal investigations and trials.”⁵
- The Brazilian draft law envisages that “[i]f the protected party is a public servant or member of the armed forces” their work activities should be temporarily suspended “without prejudice to their salary or benefits.”⁶

Medical and psycho-social support

Medical and psycho-social support for defenders who have been attacked is a very important part of the protection process. An initial assessment should be carried out to detect cases where specialised support is required, which may be offered by the protection programme (for example, the Brazilian programme and the Guatemalan non-governmental programmes UDEFEGUA⁷ employ psychologists in their teams), or might be contracted from another institution as necessary.

Public statements in favour of defenders by government and state bodies

When defenders are the victims of public attacks in the communications media, whether these come from pressure groups, public servants or other sources, it is important that government and state bodies pronounce in their favour, denouncing the attacks. There have been numerous examples of such situations. Public statements may be public declarations, but can also take the form of Presidential decrees, circular letters to the security forces, administrative guidelines, parliamentary resolutions, etc.

Similarly, state organs charged with overseeing the conduct of state employees, such as the Solicitor General’s office or, in their absence, the prosecuting authorities, can initiate disciplinary procedures against the officials on the grounds whose statements, actions or omissions promote or permit acts of aggression against defenders.

The protective response of national or international networks

An important component of any protection response is the development of national-level or international networks. The proposal for the Guatemalan programme specifically incorporates this point⁸ and suggests seeking the support of networks and creating directories of governmental and non-governmental contacts, etc. In any case, the creation of networks is an effective strategy employed by defenders’ organisations.

Public and sectoral campaigns: human rights education

Public campaigns on the role of defenders are important. There have been very interesting experiences developed by defenders’ organisations, such as the “International Campaign for the the Right to Defend Human Rights” in Colombia, or the campaigns organised by UDEFEGUA in Guatemala, though little is known about their impact. Similarly, information is scarce concerning the impact of education campaigns aimed at the security forces.

5 See the Guatemalan proposal in the annexes (point 4).

6 Article 10 (see text in annexes).

7 The non-governmental organisation Unidad de Defensores y Defensoras de Guatemala (Guatemalan Defenders’ Unit).

8 Chapter 4 of the Guatemalan proposal.

Intelligence archives relating to defenders

Defenders' organisations call for the declassification of military and police intelligence files that contain illegal information on defenders, for access to the information contained in them and their subsequent closure, as well as an end to espionage by intelligence bodies. The proposed Guatemalan programme picks up on this point, saying that "the state is made vulnerable by those who abuse Human Rights and not by those who denounce their abuse", and proposing a series of measures on intelligence archives.⁹

Actions to combat baseless judicialisation and legislation that restricts the right of defenders to promote human rights

The judicialisation of defenders is a growing phenomenon used to reduce the political costs that might result from an aggression directed against them, while being at the same time an effective way to halt their work. At times judicialisation is carried out under the aegis of ad hoc legislation that restricts the the right of defenders to promote Human Rights. Judicialisation and repressive legislation are two very important aspects to bear in mind if due protection is to be offered to defenders.

Managing information concerning aggressions against defenders

Aggressions against defenders follow tendencies and patterns that in turn respond to the needs and strategies of those who attack them. The documentation and analysis of these aggressions provides information that is important to the design of more effective policies and measures aimed at providing protection. Again, in this respect, the non-governmental programmes are well ahead of those run by governments. The regular reports produced by UDEFEGUA cast light on the trends that characterise aggressions against defenders, broken down by geographic location, kind of victim, etc.¹⁰ They are unique in the world, and a good example of what can be achieved if information is dealt with properly.¹¹

9 Chapter 4 of the Guatemalan proposal.

10 See www.udefegua.org

11 In collaboration with its partners (Protection Desks), and inspired by UDEFEGUA, Protection International is beginning to establish data bases in various countries.