



Protection of human rights defenders: *Best practices and lessons learnt*

Part I: Legislation, national policies
and defenders' units

Part II: Operational aspects of
defenders' protection

Research and Training Unit
Protection International

Research and text by María Martín Quintana
and Enrique Eguren Fernández

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Translator of Part I: Elaine Purnell
Translator of Part II: James Lupton
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Copies of *Protection of human rights defenders: best practices and lessons learnt* may be obtained from: **Protection International**, 11 rue de la Linière, 1060 Brussels, Belgium
Tel: + 32 (0) 2 609 44 07 / +32 (0) 2 609 44 05 / Fax: + 32 (0) 2 609 44 06
pi@protectioninternational.org

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PROTECTION OF
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Introduction

In recent years several governments have developed specific national mechanisms to protect defenders, all of them in countries seriously lacking in protection for human rights defenders. These mechanisms (laws, action policies, offices) have been established under pressure from (and with the cooperation of) national and international human rights organisations, with essential legal support from the UN Declaration on Human Rights Defenders.

At Protection International, this development has led us to study these national initiatives: what are they and what do they consist of? How did they come about, how do they work and what is their impact on the protection of defenders? We set up a study group (made up of protection lawyers and experts) and carried out a large number of interviews with men and women defenders as well as government officials in 16 countries on three continents.¹ We also embarked on a process of compiling and analysing legal enforcement instruments at the national level (while examining existing universal and regional ones). During the study we only found national non-governmental initiatives of this type in Brazil, Colombia, Guatemala, Mexico and Peru (Central and South America), in Uganda and the Democratic Republic of Congo (Africa) and Nepal (Asia). While there may be several organizations working on protection-related matters and making important contributions, only Guatemala (UDEFGUA²), Uganda (EHAHRDP³) and Colombia (Somos Defensores Programme⁴) have three defender units specifically set up by civil society. They are pioneers in the field and together with the Protection Desks established by PI⁵ and supporting organizations (such as Peace Brigades International), are among those civil society groups whose sole mission is the protection of defenders on the ground.

Given the vast and complex nature of the results of the survey we decided to compile them in two parts under the general title, “Protection of human rights defenders: best practices and lessons learnt”. Part I is subtitled, “Legislation, national policies and defenders’ units”, and in it we analyse the legislative and structural aspects of these protection initiatives. Part II, “Protection Programmes for Defenders”, analyses the practical aspects of protection programmes: the measures they include, how they are structured, and their results. Part II focuses on the three countries whose protection programmes were examined, namely Brazil, Guatemala and Colombia.⁶

1 Africa (Uganda, Kenya, Democratic Republic of Congo), Central and South America (Brazil, Colombia, Costa Rica, Guatemala, Mexico, Peru), Asia (Indonesia, Nepal, Thailand) and Europe (Belgium, France, United Kingdom, Switzerland). These interviews were done by PI’s Protection Desk network in cooperation with national counterparts, and by a team researching the subject.

2 Unidad de Defensores y Defensoras de Guatemala <http://www.udefegua.org/>

3 East and Horn of Africa Human Rights Defenders Project <http://www.defenddefenders.org>

4 Somos Defensores programme <http://www.somosdefensores.org>

5 The Protection desks already established or in the pipeline are: Colombia (counterpart: Pensamiento y Acción Social), Guatemala (counterpart: UDEFEGUA), Nepal, Thailand, Democratic Republic of Congo, Uganda (counterpart: EHAHRDP), Turkey.

6 In Colombia, the recent Decree 1740 of 2010 defines the parameters of two programmes: the Human Rights Protection Programme of the Ministry of the Interior and Justice, and the National Police Protection Programme. This book concentrates principally on the Ministry’s programme because the Police programme concentrates principally on public figures and high ranking state and government officials.

As you will see in Part I, Defenders' Units (whether governmental or non-governmental) work in different ways to provide protection for defenders, employing different perspectives and objectives and with different budgetary availability; the units operate, also, in very varied organisational frameworks or coordinations. However, they all have in common that their work is carried out under the aegis of article 18 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which indicates that:

1. Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.
2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. [By analogy] Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Although the Defenders' Units are all different, Part II uses a focus that maintains a broad overview that may be applied to any of the varieties of Unit that exist, organising the analysis around their principal objective, that of providing protection. Having examined the work of the different Units we believe that this mixed approach makes it easier to focus on the question of protection. We also highlight, whenever necessary, the differences that may be observed between them. In order to simplify the text we refer always to "protection programmes" or simply "programmes". More detail is available in the annexes where the relevant texts are reproduced.

Clarification

The background to this debate needs to be addressed first. The issue that was repeatedly raised in the interviews we conducted in all these countries, as well as in documentation from international organisations,⁷ was whether it is necessary for the state to create mechanisms (laws, policies, offices) specifically for the protection of defenders or if it is better to ensure the institutions (the legal system and security forces) fulfil their obligation to guarantee protection for this group.

It is an important debate because the *ad hoc* mechanisms at the disposal of human rights defenders generally have few enforcement powers both legally speaking – secondary legislation – and practically, since these bodies lack the necessary resources and can neither launch an investigation nor wield any political power to ensure adequate protection for defenders.

Firstly, it is a fact that existing national instruments were only created in the wake of strong pressure by national (and occasionally international) defenders' organizations – which implies that there is a will to do so by large groups of defenders. However, the detractors opposed to

⁷ For example, 'For more effective protection in favour of human rights defenders in Africa – Strategy Note' - by the International Observatory for the Protection of Defenders (2009).

ad hoc instruments claim they are merely a formal response to this national and international pressure and are mainly used to ease it by displaying responses with no real impact while those attacking human rights defenders continue to act with equal or even increasing impunity. The other problem is that at times these instruments generate new bureaucratic barriers that make it more difficult for NGOs to carry out investigations or prosecute those acting against human rights defenders. It has also been suggested that the funding they get could have been used to improve the response by state institutions (e.g. the police and the judiciary).

On the other hand, those in favour of these bodies acknowledge the serious problems involved but feel they can open the door to enhancing protection - either by facilitating access to places that are traditionally off-limits such as inside the security forces, or by providing immediate support (such as relocation funds, means of communication or escorts) which can address serious protection gaps, at least in the short run. They claim that conscious use can be made of what these bodies have to offer while bearing in mind that it is the entire state apparatus (and not just one office) that is responsible for protection. The onus is above all on the Executive and the Judiciary to take the necessary steps to ensure proper protection for human rights defenders.

In the few countries with existing protection mechanisms of this nature the protection status of human rights defenders is nonetheless precarious within a national context characterized by extreme violations of human rights. We did not find any formal, far-reaching assessment suggesting the existence of instruments and *ad hoc* offices for the protection of human rights defenders has had any impact on the lack of security experienced by defenders. Although it is certainly very difficult to make any such assessment, the defenders interviewed tended to use this kind of *ad hoc* support in full knowledge of its limitations and problems.

Our job as an international NGO is to serve human rights defenders and we adopt a critical approach to state instruments and offices intended to offer protection to human rights defenders, without losing sight of the shared responsibility and duty of all its institutions, starting with the government. This is the reason for this study. In our view there is a need to better understand all the initiatives that have been taken in the world to this end and to show what the defenders think constitutes good practice and what we can learn. In our opinion this is a task for the medium term and we have therefore set up **Focus**, a global observatory for national policies and structures to protect human rights defenders. See <http://focus.protectionline.org/-Focus-> for regular updates on its progress. We are confident that in making these proposals to the international community of defenders we are taking a step in the right direction. New improved practices will give people, who on a daily basis are determined to defend human rights despite tremendous obstacles, the protection they need and deserve.

Additional notes: quotes, gender and defenders.

Save for a few exceptions, we have generally disassociated the content from the persons interviewed. We decided to do so from the start in order to allow for the frank exchange of ideas in the interviews. The latter are in the safekeeping of PI and form the basis of this report.

In this book the authors refer throughout to Defenders; this term should be taken to include women and men. In the Spanish version of the text the authors used the terms *defensora* and *defensor* interchangeably in specific response, as they put it, to the fact that “the adequate use of grammatical gender to reflect the participation of women is a question that remains unresolved in Spanish” and in the hope that “this tactic will make the work of women Human Rights defenders visible”...

Protection of
human rights defenders:
Best practices and lessons learnt

Part I: Legislation, national policies
and defenders' units

Chapter 1: Description and analysis of legislation and institutions for the protection of defenders at international and regional level

There are various laws and regulations regarding the protection of human rights defenders. In some cases these laws were adopted as a result of the work done by civil society and in others due to work by state or international structures.

In this first chapter we address international legislation and instruments of a universal nature as well as regional instruments¹ (national laws and instruments in individual countries will be covered in the next chapter).

1. Universal instruments and institutions

The United Nations has created several instruments that are essential for the work of human rights defenders. Among these is the Universal Declaration of Human Rights, of which articles 19, 20 and 28 refer to freedom of opinion and speech, the right of peaceful assembly and association and the right to an established social and international order in which these rights and freedoms are fully effective. The International Pact on Civil and Political Rights in articles 19, 21 and 22 recognizes and guarantees freedom of opinion and speech as well as the right to peaceful assembly and association.

Subsequently, and after a long discussion process strongly encouraged by non-governmental organizations, the UN also took into account the important work of human rights defenders and the need to guarantee their security. As a result on 9 December 1998 under Resolution 53/144, the General Assembly of the United Nations adopted the **Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms**^{2,3} known as the *Declaration on Human Rights Defenders* (hereafter 'the declaration'). Two years later the United Nations Human Rights Commission asked the Secretary General to appoint a Special Representative on human rights defenders to monitor and support the implementation of the declaration. On 26 April 2000 Resolution **E/CN.4/RES/2000/61**⁴ led to the creation of the post of **Special Representative for Human Rights Defenders**.³ In 2008 **Resolution 7/8**⁴ led to a renewal of the mandate on the special procedure for the

1 There is an interesting summary on the subject (universal and regional instruments) from October 2009 by the International Human Rights Federation.

<http://www.fidh.org/-International-and-regional-protection-of-human>

2 Resolution 53/144 adopted by the General Assembly.

³ [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.Sp?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.Sp?OpenDocument)

⁴ [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2000.61.Sp?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2000.61.Sp?OpenDocument)

³ <http://www2.ohchr.org/english/issues/defenders/>

⁴ <http://www2.ohchr.org/english/issues/defenders/>

situation of human rights defenders but this time appointing a Special Rapporteur³ rather than a Special Representative of the Secretary General.⁴

The mandate of the Special Representative consists in:

“seeking, receiving, examining and responding to information on the situation and rights of those who acting individually or in association with others seek to promote and protect human rights and fundamental freedoms; establishing cooperation and conducting a dialogue with governments and other interested stakeholders on the promotion and effective implementation of the declaration; recommending effective strategies to better protect human rights defenders and following up on these recommendations.”⁵

The Rapporteur’s activities involve *inter alia*:⁶

- Receiving information provided by human rights defenders including complaints regarding violations of their rights, and using this information to determine the issues and questions to be raised with the countries concerned. When presenting a report the representative may submit:
 - Letters of ‘urgent measures’ used to provide information about a violation already occurring or about to, so that the state may take action in time
 - Letters of complaint, used to inform the state about violations already committed or which have had an effect on the defender which can no longer be reversed.
- Maintaining periodic contact with the states in United Nations bodies and establishing more specific bilateral contacts in meetings or in writing. These means shall be used by the Special Representative to raise specific issues with the counties which are a matter of concern, and to ask them to take action

3 Human Rights Council. **Resolution 7/8 on the Mandate of the Special Rapporteur on the situation of human rights defenders** <http://www2.ohchr.org/english/issues/defenders/mandate.htm>

4 The United Nations Human Rights Commission gives several titles to the experts such as Special Rapporteur, independent expert, representative of the Secretary General or Representative of the Commission. These titles do not suggest an order of seniority and are not indicative of any powers conferred on the experts. They are simply the result of political negotiations. The key issue is the mandate of the expert as stipulated in the resolutions of the Human Rights Commission. The mandate can focus on complaints of violations, the analysis of a problem, contributions to technical assistance or a combination of several of these. Office of the United Nations High Commissioner. **Recommendations on extra-conventional mechanisms for Guatemala. Introduction. Special United Nations Rapporteurs** <http://www.oacnudh.org.gt/documentos/publicaciones/KIT%20INSTRUMENTOS%20INTERNACIONALES/9%20MECANISMOS%20ESPECIALES/9.3%20Introduccion.%20%20Los%20relatores%20especiales%20de%20las%20NU.pdf>

5 See <http://www2.ohchr.org/english/issues/defenders/mandate.htm>

6 See Fact sheet N° 29. Human Rights Defenders: Protecting the right to defend human rights.

- Making official visits to the countries (on invitation by the government) during which the functions and situation of their human right defenders are examined, addressing the main concerns and making recommendations on an appropriate course of action
- Meeting other stakeholders relevant to the mandate and its activities such as parliaments, regional intergovernmental organisations and groups of states committed to improving the situation of human rights defenders
- Annual reports to be presented to the Human Rights Commission and the UN General Assembly. The reports describe the general trends and concerns observed during the year and make recommendations on how to address them. Some examine major concerns such as the implications of legislation on security matters for human right defenders and their work.

Given the difficulties and doubts regarding the concept of defender in the declaration, the representative published **Fact Sheet No. 29 -Human Rights Defenders: Protecting the Right to Defend Human Rights**⁶⁵ which provides a better definition of who human rights defenders are and the role played in their protection by the Special Representative and subsequently Special Rapporteur.

Similarly, the General Assembly has adopted several resolutions on defenders as well as more practical documents such as the **Guidelines for submitting complaints to the Special Representative regarding violations under the declaration on human rights defenders**⁶⁶.

It is also important to mention that the United Nations has adopted other documents which, though not directly aimed at the protection of human rights defenders, do have a bearing on this study such as the **Paris Principles**.⁷⁶⁷ These create bases for the regulation and implementation of the recommended rules for the **national human rights institutions**⁶⁸ which usually house the offices responsible for the protection of human rights defenders.

2. Regional instruments and bodies

As with the universal instruments, the regional instruments recognize and protect the right of association and freedom of thought, opinion and speech; at the same time in some regions of the world specific instruments have been adopted to protect human rights defenders as explained below.

⁶⁵ <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>

⁶⁶ <http://www2.ohchr.org/english/issues/defenders/complaints.htm>

⁷ Principles relating to the status of national institutions for the protection and promotion of human rights - adopted by the General Assembly of the United Nations on 20 December 1993.

⁶⁷ <http://www.nhri.net/pdf/ParisPrinciples.english.pdf>

⁶⁸ <http://www.nhri.net/>

2.1. Latin America and the Caribbean

In Latin America and the Caribbean the Organization of American States (OAS) has paid special attention to violence against human rights defenders since 1999 by adopting annual resolutions on this subject.⁸

In 2001, in **Resolution AG/RES. 1818**,⁹ the General Assembly of the OAS asked one of the main bodies in its human rights protection system - the Inter-American Commission on Human Rights (IACHR) - to continue to monitor the situation of human rights defenders in Latin America and the Caribbean. The same resolution led to the creation of the **IAHCR Human Rights Defenders Unit**,¹⁰ which focuses on receiving information on the situation of human rights defenders in the region, maintaining contacts with non-governmental and governmental organizations and coordinating the work of the IACHR Executive Secretariat on human rights defenders in Latin America. In 2006 the Unit published a comprehensive report on the situation of human rights defenders in Latin America and the Caribbean.⁹

Since 1979, the **Inter-American Court on Human Rights**¹¹ - the judicial body of the inter-American system - has tried states for human rights violations including violations perpetrated against human rights defenders. The case of *Eliodoro Portugal vs Panama* or that of *Myrna Mack vs Guatemala* are among the most representative. In both cases the liability of the state was established and they admitted responsibility for the murder of the anthropologist and abduction of the trade unionist. The same thing happened in the case of the murder of the human rights activist Jesús María Valle Jaramillo in Colombia; the court duly recognised the importance of the work done by human rights defenders and that the state has a duty to protect them.

⁸ Resolution by the Organisation of American States (OAS) concerning human rights defenders. AG/RES. 2412 (XXXVIII-O/08) http://www.oas.org/DIL/AGRES_2412.doc

OAS Resolution on human rights defenders. AG/RES. 2280 (XXXVII-O/07) <http://www.civil-society.oas.org/General%20Assembly%20Resolutions/Panama/AG%20RES%202280%20ENG.doc>

OAS Resolution on human rights defenders. AG/RES. 2177 (XXXVI-O/06) <http://www.civil-society.oas.org/General%20Assembly%20Resolutions/Sto%20Domingo/Eng/AG%20RES%202177%20english.doc>

OAS Resolution on human rights defenders. AG/RES. 2067 (XXXVO-O/05) <http://www.civil-society.oas.org/General%20Assembly%20Resolutions/Fort%20Lauderdale/Eng/G-RES.%202067-XXXV-O-05%20ENG.doc>

OAS Resolution on human rights defenders. AG/RES. 2036 (XXXIV-O/04) [http://www.summit-americas.org/OAS%20General%20Assembly/XXXIV_GA-Quito/AGRES_2036_\(XXXIV-O-04\).doc](http://www.summit-americas.org/OAS%20General%20Assembly/XXXIV_GA-Quito/AGRES_2036_(XXXIV-O-04).doc)

OAS Resolution on human rights defenders AG/RES. 1920 (XXXIII-O/03) http://www.oas.org/juridico/english/ga03/agres_1920.htm

OAS Resolution on human rights defenders AG/RES. 1842 (XXXII-O/02) http://www.oas.org/juridico/english/ga02/agres_1842.htm

OAS Resolution on human rights defenders AG/RES. 1818 (XXXI-O/01) <http://www.oas.org/Assembly2001/documentsE/Decl-Resol.apro/ag-RES1818XXXI-O-01.htm>

OAS Resolution on human rights defenders AG/RES. 1711 (XXX-O/00) http://www.oas.org/juridico/english/agres_1711_xxxo00.htm

OAS Resolution on human rights defenders AG/RES. 1671 (XXIX-O/99) <http://www.oas.org/juridico/english/ga-res99/eres1671.htm>

⁹ <http://www.oas.org/Assembly2001/documentsE/Decl-Resol.apro/ag-RES1818XXXI-O-01.htm>

¹⁰ <http://www.cidh.org/defensores/defensores.htm>

⁹ See report: <http://www.cidh.oas.org/countryrep/Defensores/defensoresindice.htm>

¹¹ <http://www.corteidh.or.cr/index.cfm?&CFID=391064&CFTOKEN=18465782>

In several cases,¹⁰ including that of Gilson Nogueira de Carvalho¹¹ (the Brazilian lawyer murdered in 1996) the Court has pointed out that:

“[...] in a democratic society, the duty of states to create the necessary conditions to effectively respect and guarantee the human rights of everyone under their jurisdiction is intrinsically linked to a recognition of the role played by human rights defenders and their protection.[...]”

The Organization of American States has recognized inter alia the need to “support the national and regional action of human rights defenders, recognise their valuable contribution to the promotion, respect and protection of human rights and fundamental freedoms while condemning acts that directly or indirectly impede their work in Latin America and the Caribbean.”

The commitment to protect human rights defenders has been emphasized in other international instruments.

The Court considers that threats and attacks against the integrity and lives of human rights defenders and the impunity of the perpetrators are all the more serious since the impact is not only individual but collective.

This is because society is prevented from knowing the truth about whether people’s rights in a given state are being respected or violated.”

¹⁰ See ‘Servellón García and others’, supra note 11 para. 108; ‘Ximenes Lopes’ supra note 11 para. 85; Pueblo Bello massacre - sentence delivered 31 January 2006. Series C No. 140, para. 113; Mapiripán massacre - sentence delivered 15 September 2005. Series C No. 134, para. 111; and Legal status and rights of undocumented immigrants. Advisory Opinion - 18/03 of 17 September 2003. Series A No.18, para. 140.

¹¹ Inter-American Human Rights Court. Nogueira de Carvalho and others vs Brazil. Ruling of 28 November 2006 - preliminary waivers - para. 74 onwards.

In handing down the sentence, the court¹² repeated earlier rulings adding that:

*It is the duty of the state
to enable human rights defenders
to engage freely in their activities,
protect them when under threat
from attempts to kill or injure them,
refrain from creating obstacles to their work,
thoroughly investigate violations of their rights
and fight against impunity."*

The Inter-American System for the Protection of Human Rights has also set up a series of protection mechanisms for persons at risk which have often been used by human rights defenders.

The rules of procedure of the Inter-American Commission¹³ (article 25¹⁴) enable it to award precautionary measures on its own initiative or at another party's behest to prevent irreparable harm to persons in extremely serious and urgent situations. Article 19c of its statutes¹⁵ also allows it to, "request that the Inter-American Court of Human Rights take any provisional measures it considers appropriate in serious and urgent cases which have not yet been submitted to it for consideration [...]".

12 See case of prisoners at the Dr. Sebastião Martins Silveira penitentiary in Araraquara – interim measures, supra nota 52, twenty-fourth recital; the Monagas remand prisoner case ("La Pica") interim measures. Resolution of the Inter-American Human Rights Court of 9 February 2006, recital fourteen; the Mery Naranjo and others case - interim measures, supra note 52, recital eight; and the Guatemalan Forensic Anthropology Foundation case - interim measures. Resolution of the Inter-American Court on Human rights, 9th February 2006, recital twelve.

13 Rules of procedure of the Inter-American Commission on Human Rights approved by the Commission at its 109th special session held 4-8 December 2000, amended at its 116th regular session period 7-25 October 2002, at its 118th regular session period 6-24 October 2003, at its 126th regular session period 16-27 October 2006 and at its 132nd regular session period 17- 25 July 2008.

14 Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights.

1. In cases of gravity and urgency, in the light of available information and when necessary to avoid irreparable damage to persons, the Commission may, at the request of a party or independently, request that the state in question adopt precautionary measures.
2. If the Commission is not in session the chairman, or failing that one of the vice-chairmen, shall consult the other members through the executive secretariat regarding the application of the above provisions. Should this consultation be impossible within a reasonable period of time in relation to the circumstances of the case, the chairman shall take the decision on behalf of the Commission and shall notify its members.
3. The Commission may request information from the parties concerned regarding any issue relevant to the adoption and enforcement of the precautionary measures.
4. The granting of these measures and their adoption by the state shall not pre-empt any decision on the substance of the matter.

15 Statutes of the Inter-American Commission on Human Rights - approved by resolution 447 of the OAS General Assembly at its 9th regular session, La Paz Bolivia, October 1979.

Similarly, in cases of extreme gravity and urgency, article 25 of the rules of procedure of the Inter-American Human Rights Court¹⁶ enables it to order provisional measures in extremely serious and urgent situations, to avoid irreparable damage to persons.

In the 9 July 2004 Resolution On Interim Measures requested by the Inter-American Commission on Human Rights with respect to Venezuela in the 'Niето and others' case, the Inter-American Court said, "States should provide effective and adequate guarantees to human rights defenders to enable them to act freely. Particular attention should be paid to anything that might limit or prevent their work". Statements of this nature and the necessary response to requests for precautionary and provisional measures have encouraged states to set up protection programmes similar to the ones featured in this survey. This has also led to an increased number of protected persons in these programmes and an example is the inclusion in the Colombian state protection programme of members of the Patriotic Union and the Colombian Communist Party.

At the Inter-American level protecting human rights within the regional system cannot be dissociated from the NGO **Centre for Justice and International Law (CEJIL)**¹² which has proved to be a strong, permanent link between national organizations and the Inter-American system, with resources and capacities that have provided an important complement to the work of national organizations in the system. It has also reported cases of violations of the human rights of defenders to the Commission and the IACHR.

2.2. Africa

The **African Charter on Human and Peoples' rights**¹³ (which does not mention defenders since it pre-dates 1998) authorizes individuals and NGOs to make complaints about human rights violations. Article 56 of the Charter establishes the conditions for doing so, such as avoiding disparaging language against the state involved or against the AU, ensuring complaints are only submitted after national procedures have been exhausted (or illegally delayed) and within a reasonable period of time afterwards, and on condition that these complaints do not involve cases already settled under the principles of the African Charter.

The African Commission on Human Rights¹⁴ (set up by the Organization of African Unity which is now the African Union – AU) confirmed in the **Grand Bay Declaration**¹⁵ (1999) the

16 Art 25 of the rules of procedure of the Inter-American Court of Human Rights:

1. At any stage in the procedures, on condition that the case is one of extreme seriousness and urgency and whenever necessary to avoid irreparable harm to persons, the Court, in an official capacity or on behalf of a party, may order any provisional measures it considers relevant under the terms of article 63.2 of the Convention.
2. If the issues have not yet been brought to its attention, it may act at the request of the Commission.
3. The request may be submitted to the president, to any of the judges or to the secretariat, using any method of communication. In any event whoever receives the request will immediately inform the president.
4. If the court is not in session the chairman in consultation with the standing commission and if possible with the other judges shall demand that the respective government take any urgent steps necessary to ensure the effectiveness of the provisional measures which the Court may subsequently adopt in its next period of sessions.
5. The Court shall include in its annual report to the General Assembly an account of the provisional measures it ordered during the reporting period and if these measures have not been implemented, shall make any recommendations it deems relevant.

¹² <http://cejil.org/en>

¹³ http://www.achpr.org/english/_info/charter_en.html

¹⁴ <http://www.achpr.org/>

¹⁵ http://www.achpr.org/english/declarations/declaration_grand_bay_en.html

importance of the declaration on human rights defenders approved the previous year by the UN, and called upon African states to implement the declaration in Africa. In 2003, the Commission issued the **Kigali Declaration**¹⁶ in which it wholeheartedly supported the role of human rights defenders and the need for their protection. By 2004, the African Commission had adopted its first **Resolution on the Protection of African Human Rights Defenders**¹⁷ which introduced the post of a **Special Rapporteur for Human Rights Defenders in Africa**,¹⁸ answerable to the Commission. In addition to these resolutions, since 2001 the African Commission has adopted several others which refer specifically to human rights defenders.¹⁷ All in all progress regarding human rights defenders in Africa has been brought about through pressure and support from African and international NGOs.

The mandate of the Rapporteur covers several aspects: receiving urgent petitions from human rights defenders that are then referred to the government involved, on-site visits to countries, submitting activity reports, raising questions on the protection of human rights defenders during the sessions of the African Commission¹⁸ and maintaining contact with other stakeholders dealing with the situation of human rights activists in the region.¹⁹

In May 2009, following the Pan-African Conference on Human Rights Defenders in Kampala, the Kampala Plan of Action (KAPA) for the protection of human rights defenders was launched. As well as several African and international NGOs and the diplomatic corps, four African Union commissioners attended (Reine Alapini-Gansou, special rapporteur for human rights defenders, Soyata Maiga, special rapporteur for women's rights, Catherine Atoki, chairperson of the working party on the Robben Island Guidelines, and Mumba Malila, special rapporteur for prisons and conditions of detention). Hassan Shire Sheikh, chairman of the East and Horn of Africa human rights defenders network and head of the secretariat of the Pan-African defenders' network, introduced the main objectives of KAPA, which include greater cooperation between African networks of human rights defenders, improving training in the use of African and international protection mechanisms, security, lobbying, fundraising, gender and sexual orientation issues and encouraging states, intergovernmental organizations and NGOs to respond to the needs of human rights defenders for protection.

¹⁶ http://www.achpr.org/english/declarations/declaration_kigali_en.html

¹⁷ http://www.achpr.org/english/_info/hrd_res_appoin_3.html

¹⁸ http://www.achpr.org/english/_info/index_hrd_en.html

¹⁷ Another resolution on the situation of human Rights defenders in Africa: ACHPR /Res.119 (XXXII)07 http://www.achpr.org/english/resolutions/resolution119_en.htm

Resolution on the situation of human rights defenders in Tunisia: ACHPR/Res.56(XXIX)01

http://www.achpr.org/english/_doc_target/documentation.html?../resolutions/resolution61_en.html

Resolution on the situation of human rights defenders in Gambia: ACHPR /Res.134(XXXVIII)08

http://www.achpr.org/english/resolutions/resolution134_en.htm

Resolution on the situation of human rights defenders in the Democratic Republic of Congo:

ACHPR/Res.139(XXXVIII)08 http://www.achpr.org/english/resolutions/resolution139_en.htm

¹⁸ For a sample of its reports see: http://www.achpr.org/english/_info/hrd_intersess_40.html (2006), <http://www.achpr.org/english/Commissioner%27s%20Activity/44th%20OS/Special%20Rapporteurs/Human%20Rights%20Defenders.pdf> (2008).

¹⁹ For further information on the work of the rapporteur and the challenges faced see the excellent report from the Observatory for the Protection of Defenders: "For more effective protection of human rights defenders in Africa - Strategy Note" (April 2009).

A breakthrough may be made as a result of this plan of action, since it may lead to the creation of national protection mechanisms and the consolidation and strengthening of regional mechanisms.

2.3. Europe

The European continent has also emphasized the protection of human rights defenders as is clear from the various initiatives taken by the European Union and the Organization for Security and Cooperation in Europe (OSCE).

The European Union and the protection of human rights defenders

Europe addresses the protection of human rights defenders within the wider mandate of the **European Commissioner on Human Rights**.¹⁹ The 2008 **Council of Europe Declaration on Human Rights Defenders**,²⁰ in which the Council of Europe strengthened the Commissioner's dedication to human rights defenders, reviewed the main impediments to their work including protection issues and recommended a series of measures to the member states. Some of these measures are particularly relevant to our study, including granting powers to independent commissions, ombudsmen or national human rights institutions to receive complaints or make recommendations on the violation of the rights of defenders (measure 10), ensuring that national legislation complies with international human rights standards (measure 11) and encouraging governments to consult civil society on human rights issues (measure 17). It also recommends building relationships with "other regional mechanisms, such as those within the African Commission and the Inter-American Commission" (measure 26).

In 2004 the EU Council published the European Union Guidelines on Human Rights Defenders²⁰, which can be studied and analysed in several guides and manuals.²¹ Under these guidelines European Union embassies have potentially become important protection bodies, affected by current developments and impact assessments. In 2006 the **first review of the implementation of the EU guidelines on human rights defenders**²¹ was published. The analysis and recommendations are based on information provided by several partners in response to a questionnaire submitted by EU Heads of Mission in 79 countries and with practical examples of good practice. The responses were based on the useful lessons learnt from the freedom of speech campaign in the second half of 2005, including greater awareness, visibility and the best form of action. They cover local experiences of NGOs as well as of the human rights defenders themselves and reflect the recommendations of a seminar on human rights defenders that took place at the EU Seventh Annual NGO Forum on Human Rights (London December 2005) as well as incorporating contributions from international NGOs and local human rights defenders. Finally, the review takes into

¹⁹ http://www.coe.int/t/commissioner/activities/themes/hrd_en.asp

²⁰ <https://wcd.coe.int/ViewDoc.jsp?id=1245887&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFB55&BackColorLogged=FFAC75>

²⁰ The 2008 revised version is at: <http://register.consilium.europa.eu/pdf/en/08/st16/st16332-re02.en08.pdf>

²¹ "Front Line handbook for human rights defenders: What protection can diplomatic missions offer? or European guidelines" <http://www2.ohchr.org/english/issues/defenders/docs/Frontlinehandbook.pdf>; and Amnesty International, Working document: "Towards the full and effective implementation of the European Union Guidelines on Human rights defenders - lessons learnt". http://www.protectionline.org/IMG/doc/051207_AI_Discussion_Paper_for_EU_Forum_FINAL.doc

²¹ <http://www.protectionline.org/First-review-of-the-implementation,570.html>

account the recommendations in the reports of the special representative on human rights defenders. The review led to the **Council conclusions on the EU guidelines on human rights defenders**²² and these in turn were revised in 2006 at the same time as a further review following new contributions in 2008. As in other cases encouragement, support and pressure from NGOs has been and continues to be crucial to the implementation of an instrument that would otherwise be useless.

The OSCE and the protection of human rights defenders

The Organization for Security and Cooperation in Europe (OSCE) has addressed the protection of human rights defenders by setting up an **Office for Democratic Institutions and Human Rights (ODIHR)**.²³ This office has issued several reports on the situation of human rights defenders in the OSCE²² region, and in 2007 established a **focal point**²⁴ for human rights defenders and national institutions. The focal point was set up after consultations with *inter alia* the UN Secretary's special representative on human rights defenders at the time, and its main task is to monitor the situation of human rights defenders in the region, to identify their concerns, promote and protect their interests and provide training. At the time of writing there were no detailed activity reports available. Our interviews and other publicly available information suggest there is much room for improvement in providing this protection infrastructure for human rights defenders.

2.4. Asia

At the regional level there is the **Asian Human Rights Charter**²⁵ the **Asian Human Rights Commission**²⁶ and the Association of South East Asian States (**ASEAN**)²⁷ which recently in October 2009 set up an Intergovernmental Commission on Human Rights. However, Asia is generally lagging behind other regions in terms of regional human rights mechanisms and as a result, in mechanisms for the protection of human rights defenders. The protection of human rights defenders is therefore exclusively dependent on governments and on national human rights institutions and therefore lacks the impetus provided in this field by international bodies in other regions.

²² <http://www.protectionline.org/Council-Conclusions-on-EU,527.html>

²³ <http://www.osce.org/odihhr>

22 2007 report: *Human rights defenders in the OSCE region: our collective conscience* http://www.protectionline.org/IMG/pdf/28760_1004_en.pdf; 2008 report: *The situation of human rights defenders in the OSCE region: challenges and good practices* http://www.osce.org/odihhr/item_11_35711.html.

²⁴ http://www.osce.org/documents/html/pdftohtml/28244_en.pdf.html

²⁵ http://material.ahrchk.net/charter/mainfile.php/eng_charter/

²⁶ <http://www.ahrchk.net/index.php>

²⁷ <http://www.asean.org>

Chapter 2: Description of national legislation and institutions for the protection of human rights defenders

Under article 12 of the UN declaration on human rights defenders, states must guarantee their protection:



Article 12 of the declaration on human rights defenders

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The state shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Despite the fact that the declaration on human rights defenders is not legally binding and does not impose any obligation on states in the strict sense of the word, it is nonetheless the result of a consensus of the United Nations General Assembly and entails a strong commitment by states to enforce it.

It is therefore politically binding and as such includes a series of principles and rights based on existing human rights standards enshrined in other international instruments which *are* legally binding such as the International Covenant on Civil and Political Rights.

In response to this and encouraged by national civil society and the international community, states have developed internally applicable laws. These include legislation aimed at bringing national law into line with their obligations, and others which create national protection mechanisms or implement the measures they propose. Some states have established programmes or offices to protect human rights defenders and others have even considered the possibility of adopting the declaration itself as a binding piece of national legislation.¹

¹ See fact sheet N° 29. *Human rights defenders: Protecting the right to defend human rights*. UN Secretary General's representative for human rights defenders, page 28.

We can now turn to case studies that best reflect the mechanisms used by states to improve the protection of human rights defenders.²

Colombia

Colombia was one of the first countries in the world (along with Mexico) to come up with a specific programme to address the protection of human rights defenders. In 1997 article 81 of **Law 418 which creates instruments intended to promote coexistence and the efficiency of the judiciary as well as other provisions**¹ ordered the Ministry of Home Affairs to introduce a protection programme for persons at risk from political or ideological violence or from internal armed conflict.

The law subsequently underwent several amendments³ and this gave rise to the current **General Protection Programme of the Directorate of Human Rights in the Colombian Ministry of Home Affairs and Justice**.² It is intended to support the government “in safeguarding the lives, integrity, freedom and security of the target population” – i.e. anyone exposed to imminent and exceptional risk as a direct consequence of political, public, social or humanitarian activities. Human rights defenders are within this target group.

Decree 2816 of 2006⁴ forms the basis for the drafting and management of the Programme for the Protection of Human Rights at the Ministry of Home Affairs and Justice. The work was coordinated by the Committees for Regulation and Risk Assessment, governed by **Decree 2788 of 2003**.⁵

One of the institutions responsible for providing security to human rights defenders, the Ministry of Defence, set out its obligations towards them in its **Directive 09 of 2003 entitled, “Policies of the ministry of defence regarding the protection of the human rights of trade unionists and human rights defenders.”**⁶

Subsequently, the Ministry of Home Affairs and Justice through Resolution 2138 adopted a manual of definitions, usage and procedures for the Human Rights Protection Programme, thereby regulating the measures to be adopted by the programme and determining the appropriate mechanisms.

2 Part I constitutes a legal analysis of the protection programmes; Part II of this work will be an operational analysis of protection methods and outcomes.

¹ <http://www.disaster-info.net/desplazados/legislacion/LEY418de1997.pdf>

3 Law 418 Act of 1997 was extended, modified and reinforced by laws 548 of 1999, 782 of 2002 and 1106 of 2006.

² <http://www.mij.gov.co/eContent/CategoryDetail.asp?idcategory=142&IDCompany=2&Name=Derechos+Humanos&idmenucategory=142>

4 See annexes.

³ http://www.presidencia.gov.co/prensa_new/decretoslinea/2006/agosto/22/dec2816220806.pdf

5 See annexes.

⁴ http://www.presidencia.gov.co/prensa_new/decretoslinea/2003/octubre/02/dec2788021003.pdf

⁵ <http://www.hchr.org.co/publico/comunicados/2003/cp0318.pdf>

An assessment of the programme

The Colombian government's protection programme is one of the oldest and most extensive compared to others (it had a budget of 40 million dollars in 2009 and covers hundreds of human rights defenders). This programme has several positive aspects; for example, it has facilitated dialogue at the very highest levels with public institutions and has made it possible for representatives of the target population to participate in decision making within the programme and in the implementation of measures. Similarly, the actions and attitudes of the civil servants at the Ministry of Home Affairs have been positively assessed by those they regularly work with. However, it is to be noted that the continuing conflict between the government and civil society has led some to adopt different conclusions.

Serious shortcomings have also been observed. Some of these are due to delays in risk assessment (which in turn delays implementation) and to the way risk assessments are done. In many cases, civil society and some public institutions take a different view to the security forces regarding risk assessment. This could be due to a lack of training among civil servants with regard to human rights and the situation of the defenders as well as the contexts they work in. Obstacles like this prevent measures from being taken or lead to measures which fail to take account of the vulnerable situation of the defender.

The fact that it is the 'Administrative Security Department' that does risk analysis and orders protection measures has generated a good deal of mistrust, especially since it transpired that this institution was carrying out intelligence activities **and a dirty war against groups of human rights defenders**.⁶ For this reason those requesting protection often refuse to provide the necessary information for this institution to carry out a risk assessment, or they reject any measures involving escorts from this department.

Faced with this situation and without consulting the target group, the Ministry of Home Affairs and Justice proposed the privatization of the protection schemes. This alternative involves private security agencies being entrusted with the protection schemes and ignores the conclusions of the 2002 assessment of the Protection Programme⁶, which proposed the establishment of a Special Directorate for Security and Protection, to operate under the vice-ministry for Home Affairs or under the directorate general of the national police (i.e. part of the Civic Public Police). The alternative proposal was for a Department of Security and Protection at the Directorate of Human Rights at the vice-ministry for Home Affairs.⁷

There are several arguments against privatizing protection schemes. Among them is the fact that some of the elements in these firms come from paramilitary groups or state security agencies with a record of human rights violations or which maintain a confrontational stance against human rights defenders, or even have records of previous attacks and intimidation against the very groups they are supposed to protect.⁸ Another argument against privatization is the fact that it is incumbent upon the state to provide protection and

⁶ <http://www.elespectador.com/node/177212/print>

⁶ Sponsored by the Office of the High Commissioner for Human Rights in Colombia and the International Labour Organisation.

⁷ See Luis Alfonso Novoa Díaz. Opinion on the establishment of a state-run Special Directorate on Protection and Security. Bogota DC, September 2009.

⁸ Ibid.

that it should not delegate its functions and duties to private institutions that do not offer the necessary guarantees and are subject to legal limitations when performing these tasks. This situation also implies less responsibility for those protecting the target groups in the programme (as they are not civil servants) and waters down the responsibility of the state.⁹

Shortcomings have also been observed in the prevention of attacks and this can be addressed through an inter-institutional approach for effective preventive action.

In September 2009, member organizations of the international campaign for the right to defend human rights recalled in writing and for the umpteenth time the existence of chronic problems in protecting human rights defenders in a country where activists are still under serious threat, in spite of the size of this programme. They highlighted the importance of addressing strategic threats to the work of human rights defenders, for example attacks against defenders with complete impunity (proposals include the centralization of investigations of these cases and the separation of civil from military justice in other cases), using the intelligence services and even the escorts themselves against human rights defenders, systematic accusations including from the President's Office stigmatizing their work, malicious prosecutions etc.

Additionally the organizations propose measures intended to revise some aspects of the protection programme itself in consultation with the defenders such as:

- the creation by the Ministry of Home Affairs and Justice of a special unit to coordinate protection schemes in cooperation with human rights defenders
- a mechanism to ensure that escorts or drivers have no links present or past with illegal armed groups and that they do not carry out intelligence work against their charges
- ensuring risk studies and the implementation of the programme take into account the leadership profiles, functions or support work carried out by the persons under threat as well as the reports drawn up by bodies such as the ombudsman's Early Warning System, the Inter-American Commission on Human Rights, social organizations and others
- provision by the Ministry of Home Affairs and Justice of temporary and immediate protection (within 48 hours of receiving the request) to the persons/organizations who request it while their risk situation is assessed
- protection to persons at risk not being provided by private security firms
- ensuring that, once adjusted and reviewed, the Protection Programme of the Ministry of Home Affairs is provided with the requisite funding to ensure the effective implementation of the measures assigned to it for the protection of human rights defenders.

At the end of 2009, following her visit to Colombia, the Special Rapporteur, Margaret Sekaggya, made a number of statements and recommendations for the improvement of the Protection Programme which echoed the sentiments expressed by the human rights defenders themselves. Sekaggya stated that she: *"...welcomed the notable increase in funds earmarked for the National Protection Programme for human rights defenders (from 13 million dollars in 2002 to 40 million dollars in 2009). She added, I support the work of the national and regional ombudsmen, in particular the early warning system, and I believe that their reports should*

⁹ Ibidem.

be made public and taken into account more frequently by the Inter-institutional Committee on Early Warnings". She emphasized the specific needs of certain groups of defenders: "As for the safety of human rights defenders, I have been informed that the government is in the process of reforming the Protection Programme for human rights defenders under the Ministry of Home Affairs and Justice. The reform should accommodate the special needs of women, indigenous peoples and Afro-descendants. I strongly suggest that state officials defending human rights (magistrates, national and regional ombudsmen) be included". She went on to emphasize the need for the "process for requesting protection to be simplified and made more efficient. The issue of spying on human rights defenders by the escorts assigned to protect them should be resolved. Furthermore, the scope of the programme's preventive measures should be widened. Finally, human rights defenders have expressed concern about the privatization of the programme and this matter should be jointly debated and resolved".

Guatemala

Owing to the political violence generated by internal armed conflict, the issue of human rights defenders was included in the Peace Agreements. As such **Commitment 7 of the Comprehensive Agreement on Human Rights (CAHR)**,¹⁰⁻⁶⁷ signed on 29th March 1994 between the government of Guatemala and the National Revolutionary Unit of Guatemala (URNG), acknowledged the importance of the work done by human rights activists and the need to protect them and their work. This document is important not only because it is the first protection instrument for human rights defenders in the country but also because it preceded the declaration on human rights defenders.

As a result of this and in the wake of considerable local and foreign pressure, in 2004 the government of Guatemala approved Internal Agreement II of the Presidential Commission for Human Rights in Guatemala (COPREDEH),¹¹ which led to the setting up of the Coordination Unit for the protection of human rights defenders, law enforcement officers and administrators, journalists and other media personnel. This unit is authorized to coordinate (with government institutions providing protection to the beneficiaries) the protection measures granted by the Inter-American system or by the United Nations.

In order to provide a more complete response, a Protection Programme for Human Rights Defenders and other vulnerable groups was proposed. On 2nd November 2004, the government tabled a Proposal for Public Policy governing Prevention and the Protection of Human Rights Defenders, Accused Persons and Witnesses, Journalists and Media Personnel, plus a National Plan of Action for Protection and a list of protection measures.¹²

10 VII. Guarantees and protection for persons and entities working in the field of the protection of human rights.

1. The Parties agree that all such acts as are likely to affect guarantees to those individuals and entities working in the promotion and protection of human rights are to be condemned.
2. To this end the government of the Republic of Guatemala shall adopt special protection measures for the benefit of those persons or entities working in the field of human rights. Similarly, it shall thoroughly investigate any complaint concerning acts or threats to them.
3. The government of the Republic of Guatemala reiterates its commitment to effectively guarantee and protect the work of those individuals and entities defending human rights.

⁶⁷ <http://www.congreso.gob.gt/Docs/PAZ/ACUERDO GLOBAL SOBRE DERECHOS HUMANOS.pdf>

11 COPREDEH: http://www.minex.gob.gt/index.php?Itemid=39&id=1225&option=com_content&task=view

12 These documents together with others of interest can be found in *Focus* (PI's observatory for national legislation on the protection of human rights defenders) at <http://focus.protectionline.org/-Focus->. Excerpts of the most relevant portions of these documents can be found in the annexes to this work.

These documents were debated and agreed upon by several state organizations and with various human rights organizations and although in 2007 the Presidential Commission on Human Rights (COPREDEH) tried to activate the process through a governmental agreement, this failed and the programme has been postponed without any decision having been made in 2009.¹³

On 10th January 2008, a further step was taken with the **Ministerial Agreement no.103-2008**,¹⁴ by which Guatemala established a unit to analyse attacks against human rights defenders in Guatemala with the intention of studying patterns of violence against activists. Perhaps the outstanding feature of this body is the participation of various investigative bodies (the Directorate General for Civil Intelligence, the Public Prosecutor's office and the National Civil Police) with the participation (by invitation) of representatives of national and international human rights NGOs. This has led to a certain degree of coordination in investigative activities and more practical steps in protecting human rights defenders at risk.

An assessment of the programme

The opinions of human rights defenders suggest that the defenders' unit COPREDEH is endeavouring to reconcile the official response to protection with precautionary and provisional measures and urgent appeals from international bodies; however, although there are some proposals we cannot conclude that there is an actual protection policy or programme in place.

Similarly, the inability to influence decisions taken by the Ministry for Internal Affairs constitutes a serious limitation since most of the protective measures are provided by the National Civil Police and the Ministry decides on all aspects of their application.

On the other hand, it is important to point out that the representatives of the Ministry of Internal Affairs in the Department of Analysis on Attacks Against Human Rights Defenders in Guatemala have no institutional support and this has placed serious restrictions on what the department can do.

Mexico

Human rights defenders and the Offices of the Ombudsmen

In 1997, through its Council, the Mexican Ombudsman's National Human Rights Commission (NHRC)¹⁵ began to coordinate the **Programme of the National Human Rights Commission on offences against journalists and civilian human rights defenders**.¹⁶ The directorate general of the programme on offences against journalists and civilian human rights defenders¹⁶ was set up in 2005 under the programme with the

13 See: *En el nudo de la impunidad (In the knot of impunity): A report on the situation of human rights defenders*, January to December 2008. Protection Unit for Human Rights Defenders (UDEFEQUA).

14 See annex for the text.

¹⁴ <http://www.congreso.gob.gt/archivos/acuerdos/2008/gtamx103-2008.pdf>

15 The Ombudsman system in Mexico is made up of 32 State Commissions on Human Rights and the National Human Rights Commission (NHRC).

¹⁶ <http://www.cndh.org.mx/progate/agoperio/presenta.htm>

16 The National Directorate on the Programme on Offences was set up within what is known as the Fifth General Inspectorate: <http://www.derechoshumanos.gob.mx/Portal/PtMain.php?pagina=def-organismos-nac>

objective of addressing the complaints relating to human rights violations committed against both groups.

Mexico did not only deal with this through its national institutions. In 2007, the Federal District Human Rights Commission (HRCFD)¹⁷ set up the **Rapporteur's Office for Freedom of Speech and the Protection of Human Rights Defenders**.¹⁸ This body was formally established on 30 May 2007 with the publication of the HRCFD Council's agreement, and on 16th June 2007 began work with the objective of collecting information in Mexico City on matters relating to free speech and human rights defenders, as well as organising training and raising awareness about prevention.¹⁸ However the rest of the State Commissions have no specific department to deal with the protection of human rights defenders nor do they make any distinction between them and other categories when they receive complaints.

Government bodies and human rights defenders

For its part, the government established the Programme for the Protection of Human Rights Defenders through an internal regulation from the secretariat of the Ministry of Home Affairs, which was housed under its Unit for the Promotion and Defence of Human Rights (UPDHR).¹⁹ The unit has little information to offer, though its website features a "register of human rights defenders"²⁰ seeking protection, hardly an appropriate way to present this kind of information.

On the other hand, in strategy 1.4²¹ of the decree introducing the National Human Rights Plan 2008-2012, there is a list of defenders' protection needs and the organisations responsible for meeting them. The bodies shall:

- "...Define the assumptions and modalities in accordance with which special protection can be granted to human rights defenders. (The Public Security Office, the Prosecutor-General of the Republic – PGR, the Ministry of Home Affairs)
- Develop a specific protocol to enable the investigation of illegal acts committed against human rights defenders (PGR)
- Train civil society organizations in human rights (the Federal Public Administration – FPA)
- Seek support from various sources to enable civil society organizations to undertake projects for the promotion and defence of human rights (FPA)..."

17 This Commission acts as the Office of the Ombudsman for the Federal Capital.

¹⁸ <http://www.cdhd.org.mx/index.php?id=bol10907>

18 Human Rights Commission, Federal District Press Bulletin 109/2007: <http://www.cdhd.org.mx/index.php?id=bol10907>. The HRCFD announced the opening of the Rapporteur's Office for freedom of speech and protection of human rights defenders - 2 June 2007.

19 <http://www.gobernacion.gob.mx/Portal/PtMain.php?pagina=upddh> Established in 2002 "to design and implement state human rights policies".

20 See: <http://www.derechoshumanos.gob.mx/Portal/PtMain.php?nIdHeader=1&nIdPanel=61&nIdLateral=2&nIdFooter=3>

21 See <http://www.sre.gob.mx/derechoshumanos/images/docs/pndh20082012.pdf>

Some figures

The information we have, albeit limited, includes the 2009 end-of-year report on Mexican human rights defenders,²² in which the Office of the High Commissioner for Human Rights highlights the low number of complaints lodged with the Ombudsman's office relating to allegations of violations of the human rights of defenders. Over the last four years and taking all 12 public human rights bodies which responded to the questionnaire from the Office of the High Commissioner for Human Rights, only 11 complaints of this nature were registered. The HRCFD in particular received 6 complaints during 2007-2008 alleging violations of their human rights. The NHRC received a total of 65 complaints from January 2006 to May 2009. Similarly there were few recommendations made addressing specific violations committed against human rights defenders. Out of all 12 state ombudsmen offices which responded to the questionnaire, only 2 recommendations have been issued over the past four years and the National Human Rights Commission issued a total of five from 1998 up to May 2009.

An assessment of the programme

The above mentioned UNOHCHR report notes that among the defenders there is a "generally negative opinion of the work done by the public bodies responsible for human rights and a feeling of mistrust. Sometimes the underlying reasons are the institutional and budgetary limitations of these bodies, although their inefficiency can also arise from a lack of sensitivity and interest on the part of the management or a lack of autonomy. There have even been cases where the leaders of these public bodies have adopted hostile attitudes towards certain human rights defenders critical of their management".

The report acknowledges "the efforts made by the Mexican state to guarantee the right to defend human rights and in particular its commitment to the National Human Rights Programme" but goes on to note "the unbalanced state response to human rights defenders". There is a need for it to "adopt the issue as a priority and for a strong, comprehensive policy in this field" and the report recommends among other measures, "the consolidation and/or establishment of specialized programmes within public human rights bodies", "the creation of a national protection mechanism" and the "adoption of special protocols to investigate attacks". In general this fully reflects the outcome of the interviews conducted for this survey. The same is true of problems regarding protection measures which are due to "the slow response by the authorities, reluctance in acknowledging the gravity of the situation and the fact that in most cases measures basically involve giving people phones and other means of communication or assigning escorts to 'look after the defenders.' Occasionally the institutions they fear are the very same ones entrusted with their protection." There is no mechanism for risk assessment in the unit based at the Ministry of Home Affairs, nor a protocol defining the procedure to be followed or setting clear criteria on whether the measures are to be maintained or lifted; there are no clear rules for coordination between the federal and local levels either, nor is there a budget to shoulder the costs of the protection measures.

22 "Defending human rights: between commitment and risk": <http://www.hchr.org.mx/documentos%5Cinformes%5Cinformepdf.pdf>

Brazil

Following sustained pressure from national human rights NGOs and after several working group meetings (for over a year), the National Programme for the Protection of Human Rights Defenders (PPDDH in Portuguese) was finally officially launched by the government on 26th October 2004 in Brasilia during a public hearing of the Human Rights Commission of the Chamber of Deputies. This programme is run by the **Special Secretariat for Human Rights (SEDH)**¹¹ - part of the **Office of the President of the Republic**¹²). **Decree N° 6.044, of 12 February 2007**²³⁻¹³ led to the approval of the National Policy for the Protection of Human Rights Defenders. Its objective is to establish protection principles and guidelines as well as assistance to natural and legal persons, groups, institutions, organizations and social movements that promote, protect and defend human rights and which in exercising these functions find themselves exposed to risk or in a vulnerable position.

Originally a chapter on the protection of defenders was to be included in a law on victim and witness protection,²⁴ in order to create a legal protection framework for human rights defenders. This project did not materialize and instead a debate took place on elevating the National Protection Programme to the category of a law. The issue is still under discussion at the time of writing and will be dealt with later in this text.²⁵

The PPDDH has initiated a decentralization process with pilot programmes in the states of Pernambuco, Pará y Espirito Santo (and the State coordination office is based in Brasilia). In each state a coordination unit and a programme office have been set up with representatives of various sectors such as the Civil, Federal and Military Police, the Ombudsman's Office (which handles programme coordination in the state of Pará, for example), the Public Prosecutor's Office as well as civil society representatives (NGOs, trade unions, etc).

While the programme was being developed national coordination meetings were held in rotation in the various states included in the programme, with the participation of all of the sectors involved.

The programme budget was initially 500,000 Reales in 2004, rising to 2.5 million Reales (almost one million euros) in 2008, during which time the Special Secretariat had 45 defenders under its protection.²⁶

¹¹ http://www.presidencia.gov.br/estrutura_presidencia/sedh/

¹² http://www.presidencia.gov.br/estrutura_presidencia/sedh/protacao/defensores/

²³ Decree N° 6.044, dated 12 February 2007. Approval of the National Policy for the Protection of Human Rights Defenders - PNPDDH, defines the stages in the elaboration of the National Plan for the Protection of Human rights defenders and presents further steps.

¹³ http://legislacao.planalto.gov.br/legisla/legislacao.nsf/Viw_Identificacao/DEC_6.044-2007?OpenDocument

²⁴ Bill No 3.616/2004 presented before the Chamber of Deputies – the intention was to include a chapter on the protection of human rights defenders under threat in law 9.807/99 (Act pertaining to the programme on victims and witness protection).

²⁵ See full text of the bill in the annex.

²⁶ See accompanying note to this bill in *Focus* (PI's observatory on national protection policies for human rights defenders at: <http://focus.protectionline.org/-Focus->).

An assessment of the programme

At the end of 2009, during a series of debates on the aforementioned Human Rights Defenders Bill, the Brazilian Committee for Human Rights Defenders sent an open letter to the Brazilian government with an assessment of the programme plus a set of recommendations.²⁷ Among other things, the Brazilian defenders pointed out structural problems leading to attacks on defenders (such as the struggle for land and an economic development model based on mega-projects). They also pointed out that chronic problems have dogged the programme since its inception that can be categorized as follows:

- At the institutional and structural level: lack of coordination and demarcation of responsibilities between the central and state levels and excessive bureaucracy
- Extension of networks: a need for legal advice, psychological support and effective protection of defenders, prioritising local protection for defenders and strengthening of the ombudsman's offices (*inter alia*)
- The legal framework: the need to make the programme state policy
- The need for a national analysis
- Programme management: civil society/state participation and good staff retention since 2007 are recognized as strengths. The letter mentions the need for clearer work plans, coordinated visits at local level and a better definition of methodology. It highlights structural weaknesses and lack of resources.

It is worth mentioning that the bill proposed by the Brazilian government is the only one of its kind in the world given that all the other protection programmes are based on decrees or policy measures without attaining this level of institutionalization.

The current bill on protecting human rights defenders

According to the SEDH, the current bill is intended to institutionalize the protection of human rights defenders and overcome contradictions and gaps affecting the programme (constitutional matters, and conflict of powers between various state and federal bodies). Likewise its intended legal status, its cross-cutting nature (covering different state bodies dealing with human rights issues) and decentralized structure must be underlined. State protection offices are to have a wider scope (currently only in states of Pernambuco, Pará, and Espírito Santo with 45 defenders on the programme) and an analysis of the national situation of human right defenders will be completed. The bill seeks greater international cooperation regarding the protection of defenders and the sharing of experience at that level (see below for an assessment of the contents of the bill).

²⁷ This document and other relevant will be available in *Focus*: <http://focus.protectionline.org/-Focus->

Peru

On 22 February 2007, the Ministry of Justice by official notice requested that the chairman of the Commission on Justice and Human Rights of the Congress of the Republic adopt bill 175/2006 on the “Benefits of effective co-operation and a system for the protection of informers, wronged persons, witnesses and experts.”²⁸ The objective of this initiative was to modify **Law 27378 relating to the benefits of effective collaboration in the field of organized crime**,⁶¹⁴ adding informers, victims, witnesses and experts who may be involved in investigations or legal action against human rights violations, close family, parents/grandparents, descendants, siblings or other related persons such as lawyers or human rights defenders to the list of people protected by the law.

However at the time of writing the project had not yet been adopted.

The Democratic Republic of Congo (DRC)

Despite there being no law in force, the Democratic Republic of Congo is a pioneer in this field on the African continent. In 2007, civil society drew up a draft bill on the Protection of Human Rights Defenders. It was debated but never passed.

Due to the fact that the text²⁹ incorporates essential elements of the Declaration on Human Rights Defenders, its adoption and entry into force presupposes the transposition and full application of the declaration at national level, thus invoking the direct obligation of the state to protect defenders. However, in contrast to legislation in other countries, this bill does not have a special protection mechanism and there are gaps in the defenders’ rights.

This process has also been addressed at provincial level in the Democratic Republic of Congo: in 2007 human rights organisations in South Kivu submitted draft regional legislation to the provincial legislative assembly. Unfortunately on the 14th February 2009 it was rejected by the assembly without debate.³⁰ As the South Kivu organizations prepare to resubmit it a similar initiative is being prepared in North Kivu for the provincial legislative assembly.

28 This document and other relevant ones are available in *Focus* (observatory on national policies for the protection of human rights defenders) at: <http://focus.protectionline.org/-Focus->

614 http://74.125.45.104/search?q=cache:rSFtAHwBu4QJ:www.oas.org/juridico/spanish/mesicic2_per_ley_27378_sp.pdf+Ley+N%BC+27378,+que+establece+beneficios+por+colaboraci%97n+eficaz+en+el+%87mbito+de+la+crim+inalidad+organizada&hl=es&ct=clnk&cd=2

29 See this document in annex.

30 Initiative Congolaise pour la Justice et la Paix (ICJP) - Congolese initiative for justice and peace - Press statement 17 February 2009.

Other African countries

Although the majority of African countries have no laws or institutions dealing specifically with the protection of human rights defenders, in some like Kenya there is legislation covering the protection of certain individuals including certain types of human rights defenders. The purpose of the law is primarily witness protection but it can also cover the protection of whistleblowers on corruption, human rights violations and other crimes.³¹ The mandate of the ombudsman in both Kenya and Uganda includes the protection of human rights defenders, although this has only actually been practiced in a few cases.³²

Nepal

In Nepal, an organization known as the **Informal Sector Service Center (INSEC)**^{Ⓔ15} presented a draft decree³³ on human rights defenders for discussion by the Nepali authorities in the second half of 2009.

- The draft includes an express reference to the UN Declaration on human rights defenders and includes a definition of the defender and his/her rights and responsibilities which complies with the declaration
- It advocates the establishment by the government of a Commission on Human Rights Defenders (sic) as an “autonomous” institution that would be made up of a government representative (Ministry of Home Affairs), another from the Judiciary (but appointed by the government), a legal expert from the Bar,³⁴ a journalist appointed by the Federation of Nepali Journalists and four defenders (with at least one woman) appointed by the government (on recommendation by the National Human Rights Commission). Apart from the government’s substantial participation in decisions regarding the composition of the Commission, the representatives must also meet certain requirements such as holding university degree and being between 25 and 70 years old. Nevertheless, this Commission does not include any representative from the security forces, which deprives it from the opportunity of communicating with them directly, building trust and proposing action regarding human rights defenders at risk. There is also no representative from the National Human Rights Commission
- As regards resources, several possible sources of funding are acknowledged, ranging from government funds to NGOs including questionable sources such as “fees” from the defenders themselves or funds from “any other source”. The staff is to be provided by the government who will also pay their salaries

31 Information from interviews.

32 Information from interviews.

Ⓔ15 <http://www.insec.org.np>

33 Human Rights Defenders Bill 2066, First Draft (see annex).

34 Nepal Bar Association.

- The responsibilities of this Commission entail taking action or making others take action to provide defenders with the protection they need, drawing up a “code of conduct” for the defenders, developing protection policies and assisting the National Human Rights Commission and the government to enforce the Defenders’ Declaration, etc. However, it does not specify mechanisms for coordination or action, or the source of authority for all this. There are no details on the scope or use of the code of conduct in defining the work of defenders (for example the non use of violence) or in excluding certain groups of defenders
- The draft includes a chapter on safety measures for defenders which highlights the responsibilities incumbent upon all government, administrative and security bodies in supporting the work of defenders, such as the fact they cannot be detained or prosecuted while carrying out their duties (unless they commit a crime). They cannot be made to testify or make a statement based on information they have as a result of their role as defenders. Both measures are important in order to safeguard defenders from being criminalised.

The analysis of this draft is interesting in that it is the most recent attempt to establish a legal instrument for the protection of a country’s human right defenders. Though drafted in the spirit of the UN Declaration, it reproduces many of the mistakes and gaps highlighted by human rights organizations and the reports of the Special Rapporteur on the situation of human rights defenders covered here. However, the inclusion of the rights of defenders in the course of their work is an innovation.

Initiatives by European Union countries

The legislation and initiatives of the European Union usually provide guarantees regarding the rights of those defending human rights. Several states have taken initiatives regarding the situation of defenders beyond their respective borders. The German Bundestag (Parliament) drafted a **motion on the protection of human rights defenders under threat**;¹⁶ the Spanish Congress of Deputies issued a **non-legislative motion on the protection of human rights defenders**¹⁷ and in Belgium the Senate issued a **resolution on the protection of human rights defenders**¹⁸ while the **House of Representatives adopted a resolution on defenders**.¹⁹

As always civil society initiatives have been fundamental in achieving this progress.

¹⁶ <http://www.protectionline.org/Motion-on-the-protection-of-human,220.html>

¹⁷ <http://www.protectionline.org/Non-legislative-motion-about-the,3920.html>

¹⁸ <http://www.protectionline.org/Resolution-on-the-protection-of,217.html>

¹⁹ <http://www.protectionline.org/Resolution-on-Human-Rights,188.html>

Chapter 3: Analysis of national laws and authorities protecting human rights defenders

There are two types of legislation governing the protection of human rights defenders:

1. Laws leading to transposition of the declaration into national law, and which define human rights defenders and the state's obligations towards them.
2. Laws which lead to national protection mechanisms and stipulate their tasks and roles.

Ideally states should have both types and use the transposition of the declaration to develop mechanisms to meet its obligations. Unfortunately this usually does not happen, although the laws have in general at least accommodated the declaration with an express recognition of its binding nature.

We shall now examine the legislation.

Human rights defenders as protected subjects

One of the most important aspects of this study of legislation is without a doubt the people it is designed to protect. We will use the instruments adopted by the United Nations as a reference and more specifically the declaration on human rights defenders.

Definition of human rights defenders

From 1998 onwards, terms such as human rights 'activist, professional, observer or agent' fell out of usage because with the express recognition of the "right and duty to promote the respect and knowledge of human rights and fundamental freedoms at national and international levels" the term human rights defenders became increasingly common.¹

Fifty years after the Universal Declaration on Human Rights and twenty years after negotiations began on the draft "Declaration on Human Rights Defenders", the United Nations finally recognized the reality of the thousands of persons promoting and protecting human rights in the world. February 1998 saw the birth of the "Declaration on the Right and Responsibility of Individuals, Groups and Institutions to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms".

As already mentioned, article 12.1 of this Declaration recognizes the right of all persons to participate, individually and collectively, in peaceful activities against violations of human rights and fundamental freedoms.² This statement led to a sufficiently broad definition of the term defender for the needs of the situation and recognized the range of persons involved in human rights promotion and protection.

Before taking an in-depth look at the definition of the term 'human rights defender', for the purposes of illustration we will give a brief definition of human rights.

1 See Fact sheet N° 29. Human Rights defenders: Protecting the right to defend human rights. The United Nations Secretary General's Special Representative for human rights defenders. Footnote on page 2.

2 Art 12.1. "Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms".

International human rights law recognizes the individual's rights and freedoms before states. States are obliged to refrain from violating these rights and to guarantee the law is upheld.³

Thus human rights “can be defined as the privileges which all individuals have, in accordance with international law, before the authorities to preserve their dignity as human beings. Their function is to exclude state interference in specific areas of the individual's life or to guarantee the provision of certain services by the state to meet basic needs and which reflect the fundamental demands a human being can make on the society they live in.”⁴

So the work of human rights defenders is to take action when the state violates human rights or fails to guarantee them. They also intervene when the state fails in its obligations to transpose international law into national legislation.⁵



Essential requirements for human rights defenders

- Defend, promote, protect human rights
- Act in a non-violent manner
- Accept the universal nature of human rights

The United Nations document entitled “**Human rights defenders: protecting the right to defend human rights**”⁶⁶¹ defines the term ‘human rights defenders’ as applicable to persons who individually or with others promote and protect human rights through non-violent acts. So a human rights defender can be anyone irrespective of gender, age or origin. There are no requirements for professional qualifications nor must defending rights be part of their job. A defender can work alone or within an NGO, international institutions, the state machinery,

the government or the private sector. However, the human rights defender must meet three essential requirements: defend, promote or protect human rights, do so in a non-violent manner and accept the universal nature of human rights (that is, no human right may be rejected).

Before ending this section, it must be pointed out that in spite of the above and the many efforts to spread this concept within society and even among defenders, traditional positions which consider human rights defenders as people working in the civil and political rights sector or as individuals paid to defend them are still commonplace. Some people only consider defenders to be those working for social organizations, and some further restrict the definition by applying it solely to lawyers involved in human rights cases. Nevertheless, as we have already explained, both the United Nations and regional legislation adopt a broad definition of term ‘defender’ as has been described above.

³ Cf. Art.30 Universal Declaration on Human Rights; Art 1 (Obligation to respect human rights) of the European Convention for the Protection of Human Rights and Fundamental Freedoms – part 1: duties and obligations, Chapter I Article 1 (Human and Peoples’ Rights) of the African Charter on Human and Peoples’ Rights (BANJUL CHARTER) art 1, para.1 of the American Convention on Human Rights.

⁴ Inter-American Institute for Human Rights. The inter-American system for the protection of human rights: institutional and procedural aspects, Héctor Ledesma Faúndez. 4th ed., 2004 pp. 5 and 6.

⁵ Some instruments have made the need to transpose these obligations into national law one of the obligations to guarantee human rights, repealing or amending such legislation as may be in violation of them or legislating to ensure they are complied with. Cf. art. 1 African Charter for human and peoples’ rights and art. 2 of the American Convention on Human Rights.

⁶ **Fact sheet N° 29. Human rights defenders: Protecting the right to defend human rights. The United Nations Secretary General's Special Representative for human rights defenders.**

⁶¹ <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>

The actions of the human rights defenders

An important factor in the definition of the term human rights defender is the type of action they are involved in. The difficulty in arriving at a clear and precise definition led the above mentioned United Nations document⁷ to note that human rights defenders are above all identified by what they do and it is through a description of their actions and of some of the contexts in which they operate that the term can be best understood. To specify further who qualifies to be a human rights defender, the same document describes the nature of defence and lists some typical actions (see box).

Features of defence work

- Must promote or defend any human right (civil, political, economic, social and cultural rights) or fundamental freedoms
- May be carried out individually or collectively
- May use any platform (including state institutions, government or private firms)
- Should be non-violent or peaceful
- May focus on the rights of specific sections of the population
- May be paid or unpaid (through employment or voluntary work)
- May be carried out on a permanent or occasional basis
- May be carried out in any part of the world
- May be carried out at local, national, regional and international levels

Action may include:

- Investigation of human rights violations or gathering and disseminating the information
- Victim support
- Ensuring accountability and ending impunity
- Supporting more effective public management and governance
- Contributing to the implementation of human rights treaties
- Education and training in human rights

⁷ Fact sheet N° 29. Human rights defenders: Protecting the right to defend human rights. The United Nations Secretary General's Special Representative for human rights defenders.



Art. 3 of the Declaration on human rights defenders

“Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted”.

To many, requiring action to be legal is a debatable issue. Although international instruments stipulate non-violence on the part of the human rights defenders, they do not actually say their action must be legal. Some of the experts we interviewed for this survey felt action by defenders should not constitute a criminal offence; however, restricting the actions of human rights defenders to legal acts alone, especially in a context of conflict, repression or states of emergency⁸ can lead to unjust exclusion. A response to this question is found in article 3 of the declaration on human rights defenders,

which affirms that domestic law is the framework within which the defence of human rights should be exercised and enjoyed, but only as long as this does not contravene the aforementioned instruments. As such, if a human rights defender were to carry out action deemed *illegal* under domestic law, the same action can be construed to be legitimate if the infringing legislation proved to be contrary to international human rights instruments.

However, one can go further and point out that states which often “criminalise” the actions of human rights defenders do so in two ways. First, the states in question define as criminal all resistance or defence of human rights, for example restrictions on the right of assembly and demonstration, excessive application of the offences of conspiracy and terrorism etc.⁹ Secondly ambiguous laws may be applied in an arbitrary way to accuse a defender, i.e. when laws are

8 States of emergency, alert and siege are situations in which the states have the authority to restrict or limit guarantees. Authoritarian governments have traditionally made use of these methods to curb the activities of their opponents.

- This is an important point to emphasize as both the European and American Conventions include provisions that empower states to abolish some of the guarantees established by these instruments in exceptional cases. The European Convention stipulates that, “in times of war or other public emergencies threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required the situation, provided that such measures are not inconsistent with its other obligations under international law”. However, this provision does permit any derogation from the right to life nor from that prohibiting torture and slavery.
- In a wider sense but with more precision article 27 of the American Convention authorizes states in exceptional cases like war, public danger or any other emergency threatening state security or its independence to adopt measures that would limit certain guarantees, but solely for “the period of time strictly required by the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, gender, language, religion, or social origin”. Like the European Convention, the American Convention excludes from possible suspension the guarantees that protect the right to life, personal integrity as well as those that prohibit slavery but adds other rights not mentioned in the European Convention (10) where the obligation stipulated under article 15 must be deduced from the words “such measures are not inconsistent with its other obligations under international law”.
- So clearly in exceptional situations the legality of the actions of the defenders may not be curtailed by the states in the case of the defence of rights or guarantees which cannot be suspended under international law and conventions. Furthermore regarding actions to defend rights in states of emergency, both the European and American Conventions require that states inform the respective secretaries general on the reasons underlying the suspension of rights and guarantees and the date of expiry of these measures.

9 Manual to address, monitor and verify cases of violations against human rights defenders. Claudia Samayoa. Protection unit for human rights defenders in Guatemala. (UDEFEUGUA).

applied without the proper guarantees (recognized by international instruments). Under these ambiguous laws the assumptions are so broad as to be imprecise, lending themselves to various interpretations and the prosecution of a broad range of actions. So a precise classification of offences is needed, especially those which human right defenders could be accused of in the course of their work. The draft Nepali decree contains a good example of preventive measures under which human rights defenders cannot be detained or prosecuted in the course of their duties (unless they commit a crime), neither can they be forced to testify or to make statements based on information they have acquired as a result of their work as defenders. Both measures are important to avoid the criminalisation of defenders.¹⁰

Furthermore in some countries the right to resistance is recognized by law¹¹ and this would imply that many of the actions referred to here are not even deemed illegal.

Is the definition of human rights defenders in national legislation the same as in international instruments?

National legislation on the protection of human rights defenders should clearly determine the target group. Almost all laws include the term *human rights defenders* but some actually lack a definition of defender (perhaps largely due to the fact the laws adopt the definition in the Declaration).

In Guatemala the proposed Public Protection Policy for Human Rights Defenders and Other Vulnerable Groups includes some of the elements of Fact Sheet N° 29, However it does so in a section entitled “Background” and when referring to the target group states that protection policy “should be directed at certain categories or sectors in society such as:

- a) Leaders and activists in political groups, especially opposition groups
- b) Leaders and activists in social, civic, community, trade union, farmers and ethnic groups
- c) Leaders and activists from human rights organisations
- d) Victims of crime, abuse of power and/or witnesses in cases of human rights violations and offences against international humanitarian law, whether or not criminal, disciplinary and administrative proceedings have been initiated
- e) Journalists and media personnel dealing with the dissemination, defence, safeguard and restoration of human rights and the application of International Humanitarian Law or who exercise freedom of speech
- f) Mayors, councillors and trade unionists whose duties place them at risk”.

Although this Public Policy includes important elements for the definition of human rights defenders, it simply lists various groups without mentioning them specifically. Although the list is not exhaustive, it could be misleading and exclude certain people, which is not advisable given the matter’s importance.

10 Human Rights Defenders Bill 2066, First Draft (this document along with other relevant one can be found in Focus (<http://focus.protectionline.org/-Focus->).

11 For example, article 45 of the Political Constitution of the Republic of Guatemala stipulates that “action to prosecute human rights offenders is public and can be exercised through a simple complaint without bail or any formality. The people shall legitimately exercise resistance in order to protect and defend the human rights and guarantees enshrined in the Constitution”.

For its part, the **General Protection Programme of the Directorate of Human Rights in the Colombian Ministry of Home Affairs and Justice**¹² covers several target groups, although the members of the groups are not always defined as defenders under law.¹² The programme¹³ is intended for:

1. Leaders or activists of political or opposition groups, social, civic and community organisations, trade unions, farmers and ethnic groups, human rights NGOs and members of Mision Medica
2. Witnesses in cases of violation of human rights and international humanitarian law
3. Leaders and members of the Unión Patriótica (Patriotic Union-UP)¹⁴ and the Colombian Communist party
4. Journalists and media personnel
5. Mayors, councillors, members of parliament and proxies¹⁵
6. Leaders of organisations representing displaced populations
7. Civil servants and former civil servants responsible for designing, coordinating and implementing the government's human rights and peace policy.

The draft bill under discussion in Brazil and the draft decree in Nepal accept and include the definition in the declaration. But there are other important contributions to the definition of the term human rights defender such as the bill in the Democratic Republic of Congo, which in article 6 includes a list of action typically taken by defenders:

"[...] human rights defenders shall:

- *provide proof of acts of violence*
- *provide legal, medical, psychological or any other form of assistance, such that victims may assert their rights before the law*
- *combat the culture of impunity that has been used to hide systematic and repeated violations of human rights and fundamental freedoms"*

The civil servants attached to protection programmes are familiar with this concept and usually endorse the definition in the international instruments.¹⁶ However, the laws governing these programmes are sometimes confused and although the objective is to

¹² <http://www.derechoshumanos.gov.co/>

¹² According to Jorge Cubides, Interinstitutional Coordinator of the Government Programme for Human Rights and International Humanitarian Law in Colombia, this was in order to avoid excluding anyone.

¹³ Decree 2816/06 of 22 August 2006: "Drafting and managing the Human Rights Protection Programme of the Ministry of Home Affairs and Justice and adopting other provisions".

¹⁴ Colombian political party.

¹⁵ These proxies are agents of the Solicitor-General of the Nation. In addition, article 277 of the Political Constitution of Colombia authorizes them to – *inter alia* - protect human rights and ensure they remain effective, to defend the interests of society as well as the collective interest, ensure administrative tasks are done efficiently and supervise the official conduct of those exercising public functions.

¹⁶ Interview with Hugo Enrique Martínez Juárez, director of the coordination committee for the protection of human rights defenders, administrators and officers of the law, journalists and media personnel of the COPREDHE, Guatemala.

protect human rights defenders, there is no clear reference to them and the term is even avoided. For example the Mexican ombudsman's programme is intended for 'civilian defenders' of human rights, which is an unclear, misleading term for such an important issue as the definition of a protected group.

In conclusion, it cannot be said that the different national laws are at variance with international instruments. In fact most of the protection programmes apply a broad definition of the term defender in their daily practice similar to that of international instruments. However, the lack of a written definition may lead to the exclusion of some defenders when certain institutions do not wish to include them or where civil servants do not have the right training.

National protection legislation should include a definition of defender based on international instruments.

Does national legislation only apply to the protection of human rights defenders or does it also provide protection to other sectors?

Protection legislation does not usually apply solely to human rights defenders, as the measures can also cover journalists, witnesses and other groups often at risk (and who in some cases can also be considered as human rights defenders).

In Mexico the rules of the ministry of state are intended to prevent human rights violations including those against human rights defenders, although they are not expressly mentioned. However the Programme of the Mexican National Human Rights Commission only deals with journalists and civilian defenders of human rights.

In Guatemala and Colombia the Proposal for Public Policy and the Protection Programme apply to a wide-ranging group of persons as we have seen. The fact that these provisions cover the protection of different, diverse groups may make it difficult to cater for each group individually. Ignoring this may affect how efficient these measures turn out to be.

In Brazil protection extends to family members who live with the defender as well as their assets should they also be threatened.

Laws governing protection measures should therefore take into account the different needs stipulated by each group (or else different laws should govern different groups).

The specific protection needs of defenders should be taken into account when legislation applies to several groups

Are witnesses included?

Although there is no indication that Colombia and Guatemala's protection programmes apply directly to witnesses, generally speaking both programmes include protecting witnesses as well as other groups from violations of human rights and international humanitarian law.¹⁷

In the case of Peru, where there is no government or state protection for defenders, an attempt was made to include defenders in a witness protection programme set up to protect those involved in court cases following the Truth Commission. To some, this was a good proposal as it endeavoured to guarantee the protection of human right defenders by making use of existing structures. However, for others this was not an appropriate alternative, as a witness programme does not necessarily reflect the specific nature of protection required for defenders and this could have a bearing on the effectiveness of the measures taken.

Where both programmes coexist, one for the protection of defenders under the ministry of state or home affairs for example and another for witness protection under the attorney-general's office or the ministry of justice, there are often problems of overlap when the witness is also a human rights defender. This conflict of interest is usually to the detriment of the defenders' protection because it can considerably delay the granting of measures.

*Where two programmes coexist
criteria on who is covered by each one
must be drawn up to avoid delays
owing to conflicts of responsibility*

In Colombia Decree 28/16 includes witnesses to human rights violations. The Protection Programme nonetheless coordinates with the Office of the Public Prosecutor.¹⁸ Cases are referred to this office if they meet the criteria for the witness protection programme since some of the measures in its remit, such as change of identity and isolation, are considered more effective for their circumstances. The same may apply to elected holders of public office in Colombia, such as mayors, who while not human rights defenders are still covered by the programmes (protection measures are only granted in these cases when the state security forces or the public bodies to which they belong do not have the resources to protect them).

It would therefore be advisable in such cases for legislation to lay down clear criteria allowing to rapidly determine which programme should cover the defender or the witness and by applying measures to each case in line with its specific protection needs.

¹⁷ In Colombia, the target group of decree 2816/06 is "victims of crime, abuse of power, and/or witnesses in cases of human rights violations and infringement of international humanitarian law, irrespective of whether criminal, disciplinary or administrative proceedings have been initiated". In Guatemala, the Proposal for Public Policy includes both witnesses and accused persons in the protection scheme.

¹⁸ Interview with Jorge Cubides, Interinstitutional Coordinator of the Colombian Presidential Programme for Human Rights and International Humanitarian Law.

Are any defenders excluded?

Even the most exhaustive list of persons such as the one in the Colombian programme (see above) may leave certain defenders out of the programme, despite the fact the definitions in international instruments include them. For example, human rights defenders involved in teaching human rights in educational centres (or anywhere else other than social organizations) could fall outside the programme even though this is a sector that has traditionally been a victim of political violence. A further example is the Colombian programme which limits one of its target groups to affiliates of two political parties¹⁹ which could put other current or future political parties involved in human rights work in a vulnerable position and leave them without protection.

In the Peruvian bill even though reference is made to human rights defenders, this only applies to persons participating in trials and as such, human rights defenders whose activities do not involve court cases are not covered by the legislation.

The term “civil defender” used by the Mexican National Human Rights Commission apparently excludes all those who do not belong to human rights NGOs. This implies that non-organised human rights defenders or those working in national or international institutions will not be protected; furthermore the identity of the aggressor can also exclude people because the Commission does not protect human rights defenders who have not been attacked by state agents. This creates an additional problem since in many cases it is not possible to identify who is behind an attack.²⁰

Another example of possible restrictions is to be found in the Nepali draft bill which alludes to a code of conduct: depending on how this is defined, several groups of defenders might be excluded.

As previously explained, defenders involved in violent action are disqualified and therefore excluded from protective measures. However, some civil servants appear to confuse “non-violence” with the requirement that the action of a human rights defender should be legal. Mistakes like this can also exclude them from protection.

Obligations for states arising from legislation on human rights defenders

When national protection guidelines apply to wider groups and not solely to defenders, states base their legislation on the obligation to guarantee the security of persons on their territory, arising from their recognition of different rights and freedoms in the Universal Declaration of Human Rights²¹ and other universal and regional instruments. When legislation applies specifically to human rights defenders as a group, in addition to the general obligation to protect, it normally draws on the obligations under the declaration on

19 Members of the Unión Patriótica and the Communist Party of Colombia are included for historical reasons (systematic repression of members of both parties) and possibly because regional bodies such as the Inter-American Commission on Human Rights are aware of this.

20 The main objective of the National Human Rights Commission is to closely examine cases in which a media worker or member of any non-governmental organization dealing with the defence of human rights is wronged by any authority in the exercise of their respective duties.

21 Article 2 of the Universal Declaration of Human Rights: “Everyone is entitled to all the rights and freedoms set forth in this Declaration”.

human rights defenders. Protecting this group does not only mean protecting the right to life and to one's physical integrity but also the right to defend human rights.

When addressing violence against human rights defenders from this perspective a broader approach can be adopted so that the legislation and mechanisms created to meet these obligations can also fully meet the needs in question.

Therefore, when the declaration on human rights defenders acknowledges *"the important role of international cooperation and the valuable work of individuals, groups and institutions in contributing to the effective elimination of all violations of human rights and fundamental freedoms"* and recognizes in the same text the right to defend human rights, it places an obligation on states under article 12 to protect these rights in accordance with the terms above.

The content of national legislation on human rights defenders

In conclusion, we can say that substantive legislation on the protection of human rights defenders should at least cover the following points:

- Protected persons:
 - They should be precisely defined as human rights defenders and the text should include a broad and clear definition of human rights defenders in accordance with international instruments
 - Any list of persons should not be considered closed since the broad interpretation of the term 'human rights defender' makes it almost impossible to draw up detailed lists that do not lead to exclusions
 - Protection of human rights defenders should be addressed separately from other protected groups so that legislation can include their specific needs
 - Should other groups be included, it is important that the human rights defenders be dealt with in a separate paragraph which should cater for the specific nature of protection required by defenders. In this way their needs will not be glossed over in an attempt to legislate for the protection of several groups at once.
- State obligations:
 - Obligations arise from a recognition of the work done by human rights defenders. Recognition implies an obligation to protect
 - Obligations incumbent on the state should include a general obligation to guarantee human rights, but this should not be dealt with separately from the duty to protect the right to defend human rights.

Chapter 4: State structures and mechanisms for the protection of human rights defenders

An important statement to start with: much as the existence of protection within the state machinery might reflect real political will, and in some cases has led to substantial progress in this field, it in no way guarantees any improvement in the situation of human rights defenders. Several countries in this survey have sophisticated protection legislation, yet human rights defenders continue to suffer attacks that go unpunished. In the final analysis it is clear that protection depends on political will and action as well as effective cooperation between the authorities involved, especially the government, the security forces and the judiciary.

On a more technical level problems such as the allocation of insufficient resources or the deployment of poorly trained civil servants may lead to an ineffectual state protection office. The Peruvian ombudsman has stated that *“any attempt to improve the system of protection requires sufficient economic and specialised human resources to enable it to efficiently implement and adopt the right protection measures.”*¹ Human rights organisations have made similar criticisms of the federal programme in Brazil. Obstacles such as these (problems with training and resources) have led to many considering these initiatives as window dressing by the state for the benefit of the international community. The detractors of these institutions feel that in the absence of the will to deal with the problem, the role of these offices is simply to improve the country’s image and that they contribute little if anything to protection. In many cases it has even been claimed they have made things worse by rendering international pressure less effective.

The mistrust some defenders feel towards the state also hinders many from joining these programmes. One of the main reasons is that the information the police obtain from human rights defenders may end up being used to attack them instead. The increasing flow of information on the dirty war waged by the Administrative Department of Security (DAS) in Colombia against large sectors of defenders (among other social groups) is striking, especially when it was the DAS that was supposed to be protecting them.

In spite of this, responsibility for protection must lie first and foremost with the state and as we shall see in some cases, a state programme may provide adequate protection simply owing to the economic, human and logistical resources available to it.

We shall therefore analyse the processes involved in establishing state protection offices and the best practices for an effective response.

Background to state protection offices

Some of the bodies providing protection to human rights defenders were set up with this objective in mind, as is the case with Colombia, Brazil or the proposal in Nepal, while others have been created within structures already in existence. Creating something from scratch means it can be designed to match the protection needs of the human right defenders and can do its job without the inertia and red tape of an existing body. However, it then has to find its place on the global scene and get enough funding, etc. On the other hand, the use of already established state structures can be a good opportunity for state institutions doing

1 Office of the Ombudsman of Peru. Ombudsman’s report N° 112. December 2006.

similar work to do something for human rights defenders. The specific nature of protection for human rights defenders must of course be catered for. In certain political circumstances there may be less resistance to the setting up of an office for the protection of human rights defenders under an existing structure. As we have seen, in the case of Peru, human rights defenders at risk were handled through witness protection legislation during the court cases from the Truth Commission. In the case of the Mexican National Human Rights Commission their protection emerged from a programme for journalists.

In all the cases studied the state protection offices were set up due to political pressure from human rights organisations, generally over several years. In fact some of these offices such as those in Guatemala and Colombia were set up to mirror the setting up of protection bodies by the human rights defenders themselves (the Defenders Unit in Guatemala and the Non-Governmental Protection Programme for Human Rights Defenders - see Part II of this study).

Another important point as far as the background to the setting up of these offices is concerned is the political moment at which this takes place. For example in Mexico a change of government, national and international demands for an explanation of the murder of the human rights defender Digna Ochoa and subsequent threats against known defenders turned the safety of human rights defenders into an important item on the political agenda. Human rights organisations seized upon this and, using the tools provided by the First Latin American Conference of Human Rights Defenders, demanded the establishment of a protection office. The presidency's human rights unit was subsequently set up.

*It is important for civil society
and other relevant experts to participate
in the setting up of the office*

As well as the importance of national participation, international experts should be involved in the creation of these offices. In Brazil national civil society organisations and international experts contributed to drafting the legislation for the programme. This type of participation can set useful standards for programme development, especially when sharing experiences and best practices to be applied in countries which have not tackled this problem yet.

Objectives of the protection offices

In general, the main objective of all the protection offices studied was protecting a relatively large group of human rights defenders. The biggest differences lay in the mechanisms they use or in the scope of their work. The other common factor is that in all the countries studied many critics of defenders felt the offices were set up in a bid to ease international pressure brought to bear on the states in response to violence against human rights defenders.

The objective of the Human Rights Protection Programme of the Ministry for Home Affairs and Justice in Colombia is to:

"[...] support the National Government in safeguarding the lives, integrity, freedom and security of the programme target population which faces certain, imminent and exceptional risks as a direct consequence of their political, public, social or humanitarian work."²

2 Decree No. 2816 2006. 22 August 2006 "through which the Human Rights Protection Programme of the Ministry of Home Affairs and Justice is drafted and regulated, and other provisions adopted".

The Public Policy Proposal in Guatemala makes a similar suggestion in its second objective³; however this proposal is much more ambitious in that it has a wider overall objective:

“To ensure a favourable environment in which human rights defenders, trade unionists, officers of the law, persons appearing in court, victims of crime, journalists, media personnel and other vulnerable groups may perform their tasks.”⁴

The specific objectives suggested by this proposal are therefore the fight against impunity and the promotion of a human rights culture, as well as the design and implementation of a national plan of action for protection, the establishment of an early warning system, without forgetting the improvement and strengthening of human rights protection mechanisms and programmes.

The bill of the Democratic Republic of Congo contains a magnificent example of how to transpose the declaration on human rights defenders into national law:

“The State has the responsibility and the duty to protect, promote and render effective all human rights and fundamental freedoms, in particular by adopting measures to create the right conditions and legal guarantees, so that everyone under its jurisdiction, including human rights defenders, may individually and collectively put these rights and freedoms into practice.”⁵

This is an ideal framework for a protection programme; the obligations in it are likely to lead to a programme that meets the protection objectives of the declaration. The protection office then introduces measures to ensure that the appropriate authorities protect the defenders,⁶ investigate specific cases,⁷ fight impunity⁸ and prevent the expulsion of human rights defenders fleeing persecution in other countries.

Where are the protection offices housed?

Traditionally, state protection activities emanated from several sources: human rights commissions, the Ombudsman, the Attorney General’s office and human rights bodies linked to the Executive usually under the Ministry of the Presidency or Home Affairs (or its equivalent). In almost all the cases studied the protection office was set up by the government and housed within government structures. There are also cases such as Mexico and Brazil however where ad hoc bodies for human rights defenders are housed at the ombudsman’s office.

3 Objective 2 of the Public Policy Proposal for the Prevention and Protection of Human Rights Defenders and other vulnerable groups in Guatemala. *“To develop prevention mechanisms for the improvement and strengthening of the existing mechanisms and programmes for human rights defenders, those appearing in court, media personnel and other vulnerable groups under threat or in situations of imminent risk to their lives, physical integrity, safety and other universal freedoms, intended to protect them from violence, that is to say ordinary violence, organised crime, illegal, clandestine and parallel security groups”.*

4 Overall objective of the Public Policy Proposal for the Prevention and Protection of Human Rights Defenders and other vulnerable groups in Guatemala.

5 See annex.

6 Art. 26: the state shall take all necessary measures to ensure the competent authorities protect human rights defenders, individually or in association with others, from violence, threats, retaliation, de facto or de jure discrimination or any other arbitrary action as a consequence of his or her legitimate exercise of the rights and freedoms guaranteed by national and international human rights instruments.

7 Art. 25: The state shall conduct a prompt and impartial investigation when a complaint about violence has been made or when it has grounds to believe that a violation of the rights of a defender has occurred.

8 Art. 29: Emphasize the need to combat the problem of impunity by carrying out in-depth independent investigations and bringing to an end the violence perpetrated against human rights defenders.

When analyzing the pros and cons of where to place protection offices we can distinguish between a government structure (a ministry for example) or an independent body (such as the ombudsman's office).

There are several reasons in favour of an ombudsman's office having a department for the protection of human rights defenders. The independence it enjoys makes it, at least in theory, an ideal place for this work. Independence is a key element in protection work and for gaining the trust of human rights defenders, who in many cases refuse contact with government offices. Although the office's resolutions might not entail sanctions, they may force state institutions to respond. There is also the advantage of stability over time. These are the positive points of basing protection offices in an institution of this type.

On the other hand, a government office does not only spell disadvantage compared to the ombudsman, since it can also make important contributions to protection work e.g. access to government structures and chains of command (such as the Ministry of Home Affairs and the security forces for example), contacts with the Executive with the prospect of political agreements and even the possibility of doing comprehensive work involving different ministries, secretariats and local authorities. The government also has economic and human resources as well as the possibility of amending legislation.

Finally, it is possible to create a mixed programme that includes contributions from the government and the ombudsman. For example, in the State of Pará (Brazil) the department responsible for the government's programme for the protection of human rights defenders is housed and coordinated by the ombudsman's office and civil society participates fully. Initiatives like this one that lead to a collective response imply combined effort and diverse contributions that can substantially enrich the approach to protecting human rights defenders.

Who participates in the management of the protection programme?

The legislative obligations arising from international instruments are aimed at countries as a whole and not solely at governments, so in seeking to meet their commitments they should involve the different state authorities and institutions. With that in mind and from an operational point of view, the work of an office for the protection of human rights defenders requires solid cooperation with other institutions – government and state as well as non-state institutions. Working relations are often established with ministries, offices attached to the presidency or the Home Office as well as other high ranking positions in the security forces and the public prosecutor's office, etc. It is thus important that the laws governing protection offices take the need for this network of institutional relationships into account.

Although in some instances this type of coordination has not been formally established, there have been cases where these institutions and others participate directly in the programme's decision-making processes. Thus in Colombia, the CRER (Comité de Evaluación de Riesgos – risk assessment committee) is chaired by the Deputy Minister for Home Affairs or his representative⁹ and composed of the director of human rights at the Ministry of Home Affairs and Justice, the director of the Presidential Programme for the Promotion of Human Rights and the Application of International Humanitarian Law, the director general of the DAS or his representative from the Protection Directorate, the director of the National Police,

⁹ All the CRER posts may be deputised by alternates and this may dilute its executive powers at certain times.

the director of the Social Solidarity Network, a representative from the Attorney-General's office, a representative of the ombudsman and a treasury representative. The Guatemalan Public Policy Proposal for Prevention and the Protection of Human Rights Defenders and Other Vulnerable Groups also provides a Committee for Risk Assessment and Protection Measures and proposes a similar structure, adapted to the state's institutions, with the addition of a delegate from the public prosecutor's office.

The participation of organisations supporting human rights defenders in these structures is crucial. Among the various laws analysed, of special interest are those in Colombia, Brazil and Guatemala's Public Policy Proposal, because they cater for civil society participation. Four representatives of the target population sit on Colombia's Committee for Regulation and Risk Assessment.¹⁰ They recommend the adoption of appropriate measures for each case.

In Guatemala, the public policy proposal allowed delegates from civil society organisations and others from the journalism and media sector to join the Committee for Risk Assessment and Protection – who then participated in the assessment of risk levels, formulating recommendations and adopting protective measures.

In Brazil, the draft bill presented to the presidency on 30 October 2008 provides for civil society participation within the highest authority in the programme - the National Deliberation Council. Participation is therefore possible in the deliberations on setting up a National Protection Policy and on which cases the programme should cover. Civil society organisations decide on appeals against decisions by local councils or other decision-making bodies in the programme. They support the implementation of the programme in the various states and participate in other matters according to the new powers given to the Council by its regulations.

However, in the Nepali proposal the four defenders on the National Commission are there in an individual capacity, appointed by the government following a proposal from another body (the National Human Rights Commission). They must be between 25 and 70 years old and have a university degree, which excludes many defenders.

The intervention of defenders' organisations not only enables them to participate in discussions and decisions on cases brought before the programme, but also in planning and procedures. In the Colombian programme, protection polices were initially agreed with the target population, but in the years since the programme began one of the main recommendations following criticism on how it could be improved has been the need for better coordination on protection measures. As well as offering criticism, civil society organisations that join the programme may bring it closer to its members, and this can win the defenders' trust.

Although strictly speaking only the above-mentioned programmes permit the participation of civil society, others allow a form of cooperation which is not so clearly defined but which

¹⁰ **Trade union leaders:** A representative each for CUT, CGT and CTC. **Human rights leaders:** A representative from MINGA. **Mayors, councillors, proxies and MPs:** A representative each from the Colombian Local Government Federation, the Colombian Local Councillors Federation, the National Association of Legal Proxies and from the National MPs Association. **Journalists:** A representative each from the Foundation for the Freedom of the Press-FLIP, ANDIARIOS, ASOMEDIOS and Media for Peace. **UP-PCC:** A representative of REINICIAR, two from the PCC and one from the UP. **Displaced Persons:** A representative each from ASODESAMUBA, the Foundation for Women and Labour and the National Coordination Committee for Displaced Persons. **Indigenous and Afro-Colombian leaders:** A representative of the indigenous and Afro-Colombian communities respectively.

functions as a channel for information exchange and a focal point for reaching out to human rights defenders. It would obviously be preferable for civil society participation to be explicitly provided for, since otherwise they have no decision-making powers, and changes in the programme's staff coupled with the political atmosphere can close down these channels of communication.

The participation of international institutions can also be very useful. In the Colombian programme, the office of the United Nations High Commissioner for Human Rights (UNHCHR) sits on the Risk Assessment Committee and although it has no voting powers it has made several technical contributions and brought cases to the programme's attention. The office monitors the country, records cases and receives complaints. In Guatemala, even though the UNHCHR is not yet established as an assessment body for the government programme, it has participated in some successful initiatives. For example the UNHCHR organised a defenders' workshop on views of protection mechanisms where proposals from the government's presidential commission for human rights were submitted so that new legislation could take experience into account. Along the same lines, a representative of an international body sits on the recently created Agency for the Analysis of Attacks against Human Rights Defenders.

It is to be noted that the attendance of the UNHCHR (or other institutions) can provide an external perspective that can act as a kind of informal monitoring and when necessary, a meeting point for state institutions and non-governmental organisations.

The draft legislation in Brazil, Nepal and the Democratic Republic of Congo does not include international participation in the monitoring or management of protection programmes.

The participation of international human rights organisations and civil society in the programmes can be beneficial

The following bodies should participate in the programme

- The security forces and Ministry of Home Affairs
- Specialist protection forces
- Civil society
- Delegates from the protected sectors
- International institutions
- Representatives of protected groups
- Representatives of the Executive's human rights office
- Ministry of Justice
- The prosecution service and other investigation and intelligence bodies (and bodies specialising in investigating these cases)
- Ministry of Social Security, Welfare or the equivalent
- Judicial bodies
- Ministry of Health
- For monitoring purposes
 - Ombudsman's Office
 - Public Prosecutor's Office
 - Treasury

Protection programmes and relations with other institutions participating in the protection of defenders

All these institutions are not working alone in this field, because as has been previously explained, protection work requires coordination between different state institutions and this should feature in their guidelines for action. As such several institutions have worked together. Here are some examples of coordination with the security forces or the judiciary.¹¹

Coordination with the security forces

In all the programmes we studied organisations of human rights defenders constantly underlined the need for coordination with the security forces and getting them to prevent and respond to attacks against human right defenders.

Police escorts for human rights defenders at risk have become the main form of security provided by the state. Not all human rights defenders agree with this measure, irrespective of whether they use it or not. For some defenders the use of weapons even by the state is at variance with their ethics. In other cases this type of protection has been described as ineffective or counterproductive. Indeed, there are many cases in which a human rights defender has declined this type of security on the grounds that contact with other defenders or grass roots organisations becomes difficult with a police escort, or because the escort itself becomes a source of information on his or her activities which could be used for a direct attack (there are many documented cases) or for campaigns and other activities against them.¹² Note that defenders emphasize that declining a police escort should not be construed as freeing the state from its responsibility to protect the defender concerned.

One of the negative experiences observed with the use of police escorts is the lack of proper preparation for the police officers, much to the discontent of the users of the service. On other occasions the service is provided by specialist bodies which provide more effective protection, with the result that the defender feels much less vulnerable. This is the case of the Brazilian programme where organisations are calling for a police force trained by the National Public Security Agency to provide specialised protection to human rights defenders.

In Guatemala the DIPROSE - Division for Protection and Security - handles these cases as well as the DPP - the Directorate for VIP Protection - bodies which were formed to protect persons at risk. However a new proposal (opposed by the Interior Ministry) involves the creation of an Elite Body for Security and Protection known as CESP to provide escorts both for personal security as well as at home and at work. Members are to be selected from personnel already serving in state security forces, not involved in intelligence and counterintelligence activities, and they must have the right training, including in human rights and international state responsibility. Furthermore, they must devote themselves exclusively to this task and representatives of the target population are to participate in their selection.¹³

11 Part II of this study includes an in-depth analysis of the operational protection programmes.

12 For example, the Special Rapporteur Margaret Sekaggya raised this issue in the preliminary report on her visit to Colombia in September 2009: "The issue of spying on human rights defenders by escorts detailed for their protection must be resolved..." http://www.protectionline.org/IMG/pdf/A-HRC-13-22-Add3_advance_edited_version_.pdf

13 See: Schedule of preventive and protective measures for human rights defenders and other vulnerable groups - Hugo Enrique Martínez Juárez. Coordination Committee for the Protection of Human Rights Defenders, Administrators, Legal Officers, Journalists and Social Communicators, COPREDHE, Guatemala.

The Guatemalan proposal also allows for the possibility that escorts may not meet the protection needs of certain clients and for this reason – as long as there is a justification for it – people trusted by the human rights defender can be hired and trained by the state (this experiment was applied in Colombia where rehabilitated ex-guerrillas were trained by the Administrative Security Department prior to deployment as escorts. This is no longer the case).

Similarly, in Peru a proposal was made to set up a specialised police protection unit, separate from the National Police. However the Peruvian People’s Ombudsman stated that the application of protection measures for victims, witnesses and family members of victims of human rights violations should be handled by a mixed entity, with the participation of both the state and civil society organisations.¹⁴ In addition, the ombudsman’s office also pointed out that the effectiveness of any protection measures will depend among other things on the fear in both victims and their families of members of the police and army.¹⁵

However, police intervention should not only be limited to these measures. In Guatemala, the emergency hotline 110 for use by all citizens led to a specialised service for human rights defenders being set up. It offered for example to respond to cases of observation and persecution (which it normally would not have responded to) as well as immediately informing specialised police units in the event of offences against human rights defenders, such as murder and robbery.¹⁶

Likewise, the Guatemalan police, through its human rights unit at the Criminal Investigations Division (CID), set up a unit to respond to offences perpetrated against human rights defenders in order to assist investigations. The unit responds to requests from the Prosecutor’s Office or from the human rights defender at risk, then offers assistance to the prosecutor in charge of the investigation. This means that the unit, like all other institutions of this type, not only requires training and resources but also prior coordination with the prosecutor’s office, with clearly defined powers and technical investigation requirements.¹⁷

Another innovation is the Committee for the Analysis of Attacks against Human Rights Defenders in Guatemala which includes the interior ministry, the Directorate General for Civil Intelligence, the Criminal Investigations Division (DINC) - PNC, national and international human rights organisations, the Office of the Prosecutor and lately the Office of the United Nations High Commissioner for Human rights. The function of the committee is to “analyse patterns of attack, where they occur, using a scientific methodology defined, approved and agreed on by the committee members,”¹⁸ in order to develop prevention policies and possibly support investigation efforts undertaken by the relevant institutions¹⁹ (N.B. this Committee for Analysis does the same analytical work on attacks against human rights defenders which the non-governmental Guatemalan Defenders Unit has been doing for years).

14 Office of the Ombudsman for the People of Peru. Ombudsman’s report N° 112. December 2006.

15 Office of the Ombudsman for the People of Peru. Ombudsman’s report N° 112. December 2006.

16 Unidad de Protección de Defensoras y Defensores de Derechos Humanos de Guatemala (Unit for the Protection of Human Rights Defenders of Guatemala - UDEFEGUA). *Venciendo barreras* (Overcoming barriers) - Report on the situation of human rights defenders. January to December 2007.

17 Unidad de Protección de Defensoras y Defensores de Derechos Humanos de Guatemala (Unit for the Protection of Human Rights Defenders of Guatemala - UDEFEGUA). *Venciendo barreras* (Overcoming barriers) - Report on the situation of human rights defenders. January to December 2007.

18 Ministerial order No.103-2008. Guatemala, 10th January 2008.

19 Unidad de Protección de Defensoras y Defensores de Derechos Humanos de Guatemala (Unit for the Protection of Human Rights Defenders of Guatemala- UDEFEGUA). *Venciendo barreras* (Overcoming barriers) - Report on the situation of human rights defenders. January to December 2007.

A source of alarm for Colombian organisations of human rights defenders is the possibility that the state might contract private security firms to protect defenders instead of the national security forces.²⁰

Coordination with the Office of the Prosecutor

The Office of the Prosecutor as the body responsible for investigations is also an important element in this field - not only in terms of ending impunity but also as an essential element in avoiding the criminalisation of social protest, since it has the power to initiate criminal law reform. The importance of the Office of the Prosecutor can be seen in Guatemala, where they have a unit dealing solely with attacks against human rights defenders – the Unit for the Prosecution of Attacks against Human Rights Activists - that answers to the department for human rights. Although the work of these units has not been considered successful in view of the results, the very existence of the department staffed with qualified personnel and resources can be essential in fighting impunity. Analysing patterns of attack and placing all cases under one unit at the prosecutors' office can improve its ability to investigate these cases.

Coordination with the judiciary

Cooperation between protection offices and the judiciary can be of great relevance in protection work and not only as a means of bringing the perpetrators of attacks against human rights defenders to justice. A good example of this is the ruling by the Colombian Constitutional Court of 20th October 1998,²¹ which establishes the duty of the state to protect human rights defenders. The Court held that the activities of human rights defenders in Colombia are fraught with numerous dangers, making them a vulnerable social group, and that the State was therefore obliged to prioritise their protection.²² It further stated that, *“the lack of protection for human rights defenders by the State led to an unconstitutional state of affairs.”*²³ Case law stipulated that an unconstitutional state of affairs occurs when *“(1) the fundamental rights of many persons are repeatedly violated - persons who might subsequently resort to legal action to fight for their rights, thus congesting the law offices and (2) when these violations are not caused solely by the authority in question but also by structural factors.”*²⁴

In the above-mentioned appeal for legal protection the Court decided to appeal to all the country's authorities to end this situation and called upon the Prosecutor General of the Nation and the Ombudsman to act. They then prioritised the protection of the lives of defenders, since under the Constitution it is their duty to safeguard, protect and promote human rights. The Court likewise called on all persons resident in Colombia to comply with article 95 of the Constitution, which obliges them to defend and disseminate human rights as the foundation of peaceful coexistence.²⁵

20 These and other operational matters are to feature in an in-depth analysis in Part II of this study.

21 Ruling on case T-590 by the Constitutional Court of Colombia, 20th October 1998.

22 Ruling on case T-590 of the Constitutional Court of Colombia. Summary of the ruling of the Inter-American Court on human rights in the case of Valle Jaramillo and others vs Colombia, 27th November 2008.

23 Ruling on case T-590 of the Constitutional Court of Colombia. Summary of the ruling of the Inter-American Court on human rights in the case of Valle Jaramillo and other vs Colombia, 27th November 2008.

24 See ruling SU-250 of the Constitutional Court of Colombia, 26th May 1998. Summary of the ruling of the Inter-American Court on human rights in the case of Valle Jaramillo and other vs Colombia, 27th November 2008. Note 41.

25 Ruling T-590 of the Constitutional Court of Colombia, supra nota 39 (f. 1409). Summary of the ruling of the Inter-American Court on human rights in the case of Valle Jaramillo and other vs Colombia, 27th November 2008. Para 84.

Coordination with other bodies

As regards cooperation in the area of, for example, medical care for human rights defenders, methods such as those of the Mexican Human Rights Commission should be taken into account. They refer human rights defenders to public health institutions for treatment for physical and psychological wounds following attacks.

Finally, it is important to note that even though up until now we have only referred to institutions that are specifically involved in the protection of human rights defenders, there are other bodies which protect human rights defenders in some way or other as part of their work. Indeed some ombudsman offices and government human rights programmes may not have special defender departments but have nonetheless been known to intervene in cases of violations of defenders' rights.

The efficiency of the work done by the protection offices

The **Paris Principles**²⁶ cover a broad international consensus on the features which national human rights institutions should possess. These principles set out the steps necessary for increased efficiency, quoted in a document entitled *Assessing the effectiveness of national human rights institutions*.²⁶ When applying the document to national protection offices two things must be born in mind:



Factors contributing to the efficiency of protection offices

- Public legitimacy
- Accessibility
- Open form of organisation
- Consultations with civil society
- Ensuring the integrity, quality and diversity of staff
- Broad mandate
- Effective international links
- Speedy and effective handling of complaints
- Powers covering all sectors
- Power to monitor compliance with their recommendations
- Systematic handling of human rights
- Adequate budgetary resources, accountability.

First of all that the Paris Principles apply to national human rights institutions and this survey only analyses one type - the protection offices - and secondly, the Principles only apply to independent institutions and therefore do not include government bodies. (Note that Part II of this study includes a more operational analysis of the performance of protection programmes and offices).

So both the Paris Principles and the above-mentioned assessment document make useful contributions to analysing the work of protection offices, be they part of an independent institution, the government or even non-governmental agencies. According to these documents, in order for protection offices to be effective they must display the following features:

²⁶1 <http://www.nhri.net/pdf/ParisPrinciples.english.pdf>

²⁶ International Council on Human Rights Policy and the Office of the United Nations High Commissioner for Human Rights: *Assessing the effectiveness of human rights institutions*. 2005.

Public legitimacy

The first criterion is whether the protection office enjoys public or popular legitimacy. To a large extent this will depend on the institution within which it is based, whether it has legal or official status, is perceived as a body that protects the rights of the defenceless against more powerful interests and whether it acts in a just manner when addressing issues within its remit.²⁷

Accessibility



The accessibility of the offices depends on:

- *Publicity regarding its work*
- *Easy contact*
- *Proximity to the most vulnerable*
- *Decentralising work through its own offices or through coordination with other institutions.*

Protection offices need to disclose what they do and be open to the public as well as to official bodies and non-governmental organisations. As such, their offices should be easily accessible and the most disadvantaged groups should be encouraged to visit them.²⁸

Decentralisation

Broadly speaking, access to the office will depend on its capacity to decentralise its operations. Locating offices and staff in various regions of the country will provide access to people who do not work in the capital city or who live in rural areas.

Local government authorities are consequently of key importance for human rights work, as pointed out in the document entitled, *“Local government and human rights: doing good service.”*²⁹ They provide citizens with access to their own rights. Public human rights bodies at local level with special provision for the protection of defenders are therefore to be highly recommended.

Decentralisation of protection work is not only important in facilitating access to the programmes. When the work is decentralised any measures taken tend to be more efficient, since proximity to the users makes for better knowledge of their circumstances, which in turn allows their needs to be met more effectively. The Peruvian Ombudsman states that, *“the effectiveness of the protection measures in each case will depend on the specific social and cultural background of the subject; [...] there are special circumstances that should be considered when assessing possible protection measures, such as the remoteness of where they live.”*³⁰

However experience shows that, on the contrary, the work of protection offices tends to be centralised, with offices only in the capital or in large cities and staff only occasionally travelling to other areas.

²⁷ Ibid.

²⁸ Ibid.

²⁹ International Council on Human Rights Policy. *“Local Government and Human Rights: Doing Good Service 2006. “In this sense human rights and local governance are both essentially concerned with the provision of certain entitlements, including participation in local political processes and access to essential services.”*

³⁰ Ombudsman of the People of Peru. Ombudsman’s report N° 112 December 2006.

This type of work is done more easily in federal states, since their structure generates the decentralisation of public offices. In Brazil for instance the national programme for the protection of human rights defenders has three offices with staff in three priority states (Pará, Espírito Santo and Pernambuco). However, when assessing the programme human rights defenders point out gaps in responsibility and conflicts of powers, caused by inadequately planned decentralisation.



Decentralisation can be:

- *Direct:*
 - *Through the different protection offices*
- *Indirect:*
 - *Through the headquarters of institutions in which they are located*
 - *Through civil society:*
 - Protection organisations working with provincial human rights defenders*
 - Rural based organisations.*

Similarly, the work of the Mexican ombudsman is not only done through the National Human Rights Commission, but also through the ombudsman offices of the federal states. However, despite the fact that the state commissions may provide the means of replicating this system, only the Federal District Commission has a Rapporteur on Freedom of Speech and Human Rights Defenders.

In both Colombia and Guatemala, although the protection offices are located in the capital cities, other

mechanisms have been developed to extend protection work to the countryside. Even in the absence of qualified personnel, Colombia has 16 people entrusted with the 16 departments handling the prevention of human rights violations, while Guatemala depends on offices of the government-run Presidential Commission on Human Rights (Comisión Presidencial de Derechos Humanos - COPREDEH) to verify cases relating to defenders or to monitor measures adopted in the region.

Decentralisation is also possible through participation in the programme for civil society organisations. In the case of Guatemala, the governmental protection office has highlighted the fact that the work of civil society has given them greater access to defenders in rural areas.³¹

Clearly, of all the proposed alternatives the best is a protection office with branches in various areas of the country, capable of dealing directly with the defenders in its care.

Open form of organisation

For institutions of this nature to be effective and able to respond adequately to the needs of the target population and identify shortcomings in their own practices, there is a need for constant communication with existing and potential clients. It is therefore important for clients and their respective organisations to feel welcome in the protection offices and confident of being taken seriously.

A major factor in improving the effectiveness of the office is its accessibility to civil society and the target population

³¹ Interview with Hugo Enrique Martínez Juárez. Director of the Coordination Committee for the Protection of Human Rights Defenders, Administrators, Law Enforcement Officers, Journalists and Media personnel, COPREDHE, Guatemala.

However the mistrust of many human rights defenders towards government or state institutions, the existence of tightly closed institutions and of bodies unwilling to cooperate or to exercise self-criticism has meant there have been very few cases of constant communication, analytical thinking and constructive criticism.³²

Consultations with civil society

In our area of interest, consultations with civil society and the target population of male and female human rights defenders is of special relevance in ensuring effective links between national institutions and the defenders, especially the most vulnerable. These consultations can also influence programme design and implementation in such a way that the measures are more efficient and meet the protection needs of the defenders.

Ensuring the integrity, quality and diversity of staff

The quality and efficiency of the work of these offices depends largely on the staff. As such, steps should be taken to adopt procedures to guarantee staff are selected on merit and that independent professionals are appointed.

In the interests of openness and accessibility, the office staff should reflect the social, ethnic and linguistic composition of the society it serves as well as guaranteeing gender balance.³³

Broad mandate

Article 2 of the Paris Principles³⁴ stipulates that national institutions for the protection and promotion of human rights should have as broad a mandate as possible. As we have seen, this also applies to the offices for the protection of human rights defenders. It is therefore especially important for their mandate to include not only protection but also preventive action (see paragraph below on preventive vs. reactive action). The definition of a human rights defender is also of great importance, as this will substantially influence the office's scope of action (see discussion on the definition of human rights defender above).

The effective application of the office's mandate may be restricted by budgetary or human resource issues. However, the lack of resources could be a purely cyclical matter that should not have a bearing on the definition of its mandate, as this can open up future areas of activity for a later stage.

Powers covering all sectors

It is important for the institution to have powers to include all sectors in its work, since the credibility of human rights institutions can be jeopardised if certain authorities with a potentially major impact on human rights (such as the security forces) are excluded from its remit.³⁵ For example, the Mexican National Human Rights Commission does not exclude any

32 See the International Council for the study of human rights policy and the Office of the United Nations High Commissioner for Human Rights: *Assessing the effectiveness of human rights institutions*. 2005.

33 International Council for the study of human rights policy and the Office of the United Nations High Commissioner for Human rights: *Assessing the effectiveness of Human rights institutions*. 2005.

34 United Nations Commission on Human Rights. *The Paris Principles: principles relating to the status and functions of national institutions for the protection and promotion of human rights*. March 1992. Art 2 "A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence."

35 See: International Council on Human Rights Policy and the Office of the United Nations High Commissioner for Human rights: *Assessing the effectiveness of human rights institutions*. 2005.

type of civil servant, but as already mentioned it only deals with those defenders whose rights have been violated by agents of the state, a fact that is not always easy to establish. Furthermore, attacks on defenders are perpetrated by a vast array of groups, which as with organised crime do not necessarily have formal links with the state. However, should the perpetrator be a private individual, the National Human Rights Commission cannot intervene immediately following the attack. It only does so subsequently if the state fails in fulfilling its obligations to investigate the circumstances or to protect the victim.

The approach adopted by this institution has however proved limited in the face of systematic violence against human rights defenders. As the Colombian Constitutional Court states in the above-mentioned ruling,³⁶ the violence is not committed by any particular authority as such but is rooted in structural factors³⁷ for which the state is indeed responsible.

Develop international links

The protection office can become an interface between the national system and the international and regional mechanisms protecting defenders and can even function as a coordinating and supervisory body for measures adopted at international level. However conflicts of powers may occur as this is usually a task for the Ministry of Foreign Affairs. On the other hand, the coordination or supervisory role of the protection office should not serve as a pretext to absolve other parts of the state, such as the security forces, from responsibility and from being held accountable.

Preventive vs. reactive action

One of the main complaints from civil society is that the mandate of the protection offices does not cover preventive action and even if it does, this action is not taken. In some cases such as Colombia the idea was contained in the initial programme but was promptly discarded and emphasis placed on reactive action, meaning the state could only intervene after attack had been perpetrated.

Although some legislation allows preventive action, this usually focuses on self-defence training intended merely to avoid future attacks on those who have already been victims. Budgetary constraints also mean priority is given to providing direct support and physical protection for human rights defenders who have already been attacked (and this includes threats and intimidation as well as physical violence).

Some elements of prevention which civil society considers important have been overlooked. For example, protective action following serious threats *prior* to any attack, campaigns to legitimise the defence of human rights and to forestall and penalise campaigns by civil servants to discredit defenders as well as training in protection and self defence for those at risk but who have not actually been attacked.

Human rights defenders feel that the best way to prevent violence against them is to punish the perpetrators of previous attacks, i.e. combat the impunity they enjoy. This however barely features in these programmes and where it does it has proved largely ineffectual.

³⁶ Ruling on case T-590 by the Constitutional Court of Colombia, 20th October 1998.

³⁷ See ruling SU-250 of the Constitutional Court of Colombia, 26th May 1998. Summary of the ruling of the Inter-American Court on Human Rights in the case of *Valle Jaramillo and others vs Colombia*, 27th November 2008. Note 41.

In response to this, with prevention in mind, a mechanism has been set up in Guatemala - the Committee for the Analysis of Attacks against Human Rights Defenders (see above). Its task is to develop preventive policies and provide support to ongoing investigations.³⁸ The Early Warning System (EWS) is also sign of progress and is up and running in Colombia, with attempts to set it up in Guatemala in connection with the above-mentioned committee. The objective of the EWS is to identify risks and threats to protected subjects in given regions, in the light of the social, political and cultural context.³⁹

Preventive action leads to more effective protection and indicates greater commitment by the state towards human rights defenders

However it cannot be said that the outcome of these attempts has led to major progress in preventive action.

Summing up, responding to attacks through protection is a first step but should not be the only one. It is therefore necessary to prevent the attacks while addressing their causes and the reasons they continue.

Speedy and effective handling of complaints

For a protection office to be effective, the work it does should be simple, accessible, economic (preferably free of charge) and speedy. The office itself should be efficiently run.

When human rights defenders approach national institutions, they expect the latter to be vested with the authority to address the organisations responsible for their protection – otherwise the effectiveness of the office is limited. Similarly, it is vital for the office to ensure its recommendations are implemented. For example, it should have the power to refer the outcome of its investigations to the specialist courts judging its cases, in the event that its good offices produce no results. An example of ineffectiveness raised by UDEGEGUA⁴⁰ is the case of the human rights prosecution service. Although it has supported defenders in specific cases, they only rarely get any feedback on how their complaints have been handled and say that the prosecution service is just another formality which provides neither answers nor results. Defenders' organisations in Colombia also feel that it is crucial to reduce the response time in a protection case and even ensure protection is immediately available while the defender's file is being drawn up. Similar criticism has been expressed by human rights defenders in Brazil and Mexico.

³⁸ Unidad de Protección de Defensoras y Defensores de Derechos Humanos de Guatemala (Unit for the Protection of Guatemalan Human Rights Defenders - UDEFEGUA). *Venciendo barreras* (Overcoming barriers) - Report on the situation of human rights defenders. January to December 2007.

³⁹ See list of preventive and protective measures for human rights defenders and other vulnerable groups, Hugo Enrique Martínez Juárez. Coordination Committee for the Protection of Human Rights Defenders, Administrators, Law Enforcement Officers, Journalists and Media Personnel, COPREDHE, Guatemala.

⁴⁰ See *In the Knot of Impunity* – report on the situation of human rights defenders, Jan-Dec 2008. Protection Unit for Human Rights Defenders (UDEFEGUA).

Power to monitor compliance with their recommendations

Closely linked to the above is the need for protection offices to monitor the degree to which the relevant authorities follow their advice and recommendations. Without monitoring compliance in this way there is little point having an office. Monitoring should also be a permanent exercise.

Systematic handling of human rights

As already stated, office efficiency depends largely on its host institution and the work that institution does. Protection departments should therefore be placed in institutions working with human rights which identify and address issues of general concern. They should also use appropriate methodology, such as investigations and reports on public policies.

Adequate budgetary resources

Protection offices can be ineffective due to lack of resources. State institutions should therefore ensure that they receive an adequate budget. At the same time control over the budget should be independent of the government in power to ensure the office retains its independence.

International donors often fund these offices and this can become controversial. Exactly this happened in Colombia. According to Jorge Cubides (inter-institutional coordinator of the government protection programme) the figures for 2007 show that over 75% of the budget for the human rights protection programme at the Ministry of Home Affairs and Justice came from the state budget and only a small percentage from donors.⁴¹ However human rights organisations claim that the bulk of the above programme's budget (which reached 40 million dollars in 2009) comes from international cooperation, especially from the United States Agency for International Development (USAID). Both versions are possible since international funds end up in various sections of the state budget.

For the office to earn its legitimacy, steps must be taken to ensure that the resources at its disposal – be they generous or inadequate – are used sensibly and that there is accountability.

This should include the source of the funds, which may depend to a large extent on the institution's degree of independence. For this reason as well as the above controversy it would be unwise to allow the possibility that Nepal's draft decree proposes of accepting dubious sources of finance such as 'fees' from the defenders themselves or funds from 'any other source' (*sic*).

The specific functions of a protection office

The functions to be carried out by the office will largely depend on its mandate (see above).

However the functions of a protection office should not only be analysed in the light of the Paris Principles, which spell out the powers and the working methods of national institutions for the promotion and protection of human rights. The declaration on human rights defenders should also be taken into consideration, given that its articles 2, 9, 12, 14 and 15 place obligations on states which logically speaking should in part be the responsibility of protection offices.

⁴¹ Information from our personal interviews.

Since the declaration includes the obligation to protect, promote and render effective all human rights and to guarantee their application through legislative, administrative or any other measures that may be necessary,⁴² some of these steps should be taken by the protection offices based within national human rights institutions. Under the Paris Principles, this may entail:

- Preparing reports on the national situation of defenders
- Submitting opinions, recommendations, proposals and reports on matters concerning the protection of defenders to the government, parliament and any other competent body for advisory purposes, which may be made public
- Promoting and ensuring national legislation, regulations and practices are implemented and that they comply with the international instruments relating to defenders to which the state is a party. The ratification of these international instruments or compliance with the texts and their subsequent application should also be encouraged.

The declaration also indicates that states should provide adequate resources to persons who have reported human rights violations against them and investigate the complaints in a prompt and impartial manner.⁴³ Likewise section C of the Paris Principles states that the institution should:

- Freely consider any issues falling within its competence, whether they are submitted by the government or whether it acts on its own authority following a proposal from its members or any petitioner
- Collect evidence and obtain any information and documents necessary to assess situations falling within its remit.

The Paris Principles state that should there be no response from the state, the institution shall resort to international protection mechanisms which, in the case of defenders, implies that the institution should also:

- Contribute to the reports which states are required to submit to United Nations bodies and committees or to regional defender institutions and, where necessary, submit an opinion on the subject
- Cooperate with the United Nations and other international organisations, regional institutions and institutions in other countries responsible for the right to defend human rights.

The declaration on human rights defenders calls for steps to guarantee the protection of anyone facing violence, threats, reprisals, adverse discrimination, pressure or any other arbitrary action arising from the legitimate exercise of their rights.⁴⁴ Under the Paris Principles state institutions protecting defenders shall therefore:

⁴² Article 2 of the UN Declaration on human rights defenders.

⁴³ Article 9.5 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

⁴⁴ Article 12.2 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

- Ensure the safety of defenders, drawing the government's attention to situations in any part of the country where the right to defend human rights is being violated. They shall propose measures to resolve them and publish opinions on the government's position and reaction.

The declaration includes an obligation to promote public understanding of civil, political, economic, social and cultural rights, and promote and facilitate the teaching of human rights at all levels of education and official professional training.⁴⁵ Under the Paris Principles the protection office should therefore:

- Publicise the work of human rights defenders by raising public awareness of the importance and legitimacy of their work.

Experience shows that these principles have not been applied in this way because in most cases the role of these offices is severely limited and basically revolves around practical action to try to guarantee the defenders' physical safety including:

- Receiving and handling requests and information on violations of the right to protect human rights
- Analysing and verifying relevant documentation and requesting further information to investigate the particular situation of the petitioner. This may involve an interview with them to collect additional information on their personal circumstances
- Coordinating enforcement of prevention and protection measures with the relevant authorities once approved
- Transmitting requests or information for which the programme is not responsible to the relevant authorities
- Providing information required by government inspection bodies and other relevant authorities
- In other cases the offices may also:
 - Ensure appropriate use and storage of devices provided for personal protection
 - Monitor the implementation of current and pending protection measures
 - When programmes involve risk assessments of defenders, as is the case in Colombia, carry out the following tasks:
 - Ask the National Police or an equivalent institution for studies on risk levels and degrees of threat for those seeking protection under the programme
 - Submit requests for protection with supporting documents to the Committee on Regulation and Risk Assessment so that relevant recommendations can be made
 - Act as technical secretariat to the committee
 - Notify beneficiaries of the committee's recommendations
 - Implement the protection measures recommended by the committee.

⁴⁵ Article 15 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

Some protection offices have gone beyond risk assessment and coordinating protection measures and have for example contributed to introducing and drafting public policies on human rights defenders.

Functions of protection offices

- Freely consider any issues falling within its competence, whether they are submitted by the government or whether it acts on its own authority following a proposal from its members or any petitioner
- Collect evidence and obtain any information and documents necessary to assess situations falling within its powers
- Prepare reports on the national situation of defenders
- Submit opinions, recommendations, proposals and reports on matters concerning the protection of defenders to the government, parliament and any other competent body for advisory purposes, which may be made public
- Promote and ensure national legislation, regulations and practices are implemented and that they comply with the international instruments relating to defenders to which the state is a party. The ratification of these international instruments or compliance with the texts and their subsequent application should also be encouraged
- Contribute to the reports which states are required to submit to United Nations bodies and committees or to regional defender institutions and, where necessary, submit an opinion on the subject
- Cooperate with the United Nations and other international organisations, regional institutions and institutions in other countries responsible for the right to defend human rights
- Ensure the safety of defenders, drawing the government's attention to situations in any part of the country where the right to defend human rights is being violated. Propose measures to resolve them and publish opinions on the government's position and reaction
- Publicise the work of human rights defenders by raising public awareness of the importance and legitimacy of their work.

Commitments by the beneficiaries

In most cases, clients not only benefit from the advantages of the protection programmes but also need to make several commitments. Although many programmes have no actual rules, the Colombian programme has worked out in minute detail the duties expected of its beneficiaries:

1. Inform the state security or inspection forces of the circumstances causing them to fear for their lives, integrity, freedom and safety
2. Comply with the recommendations of the state security forces and the human rights protection programmes of the Ministry of Home Affairs and Justice

3. Not request or accept registration in any other state protection programme
4. Keep all items provided in good condition
5. Use all items provided exclusively for personal protection
6. Adhere to established procedure regarding the items provided
7. Cooperate with the state investigation, inspection and security forces when clarifying the facts behind the threats
8. Refrain from any conduct that could jeopardise their safety
9. Attend self-defence and personal safety courses
10. Give prior notification of any travel that might require inter-institutional coordination
11. Report immediately any loss, theft or damage to any item provided by the programme
12. Pay the insurance value of any item provided by the programme in the event of the need to replace it due to loss, theft or damage
13. Return all items provided for protection in good condition
14. Cooperate with the state security forces when carrying out studies on risk assessment and degree of threat
15. Safeguard personal details
16. Sign the document of commitment
17. Abide by any other commitment arising from his/her status as programme beneficiary and any recommendations from the Committee for Regulation and Risk Assessment.

In the Guatemalan programme the only written justification for withdrawing the measures is using them for means other than those originally intended.

The Nepali project requires defenders to “take due care when compiling and disseminating information linked to national security, sovereignty, indivisibility, social and religious harmony and unity” – which seems to entail commitments on the part of the human rights defender which go beyond protecting human rights.

Normally the obligations are restricted to the signing of a commitment by both parties when the measures are enforced or escorts made available. However the document does not always detail what obligations the beneficiary has taken on and as such they should be included in legislation governing protection programmes.⁴⁶

⁴⁶ Part II of this study contains a more detailed analysis of all the operational issues on protection programmes for human rights defenders.

Prototype legislation for protection offices

In conclusion and as a summary to this section, legislation that governs the establishment and work of protection offices should include the following elements:

- **Source of legislation**
 - The programmes may emanate from amendments to laws governing action taken by the state to protect other groups, or new laws may be drafted. In the first case it is important for the amendment to include specific mention of the protection of defenders
 - It is important for the laws governing the functioning and structure of the protection offices to include the participation of civil society and experts in the field (national and international)
 - Certain circumstances and periods may be useful for promoting state approval of these laws and programmes. The role of civil society is crucial for generating the necessary political will during the process.
- **Objectives of the protection offices**
 - The protection laws and mechanisms the offices set in motion need to address wider objectives beyond the physical protection of defenders. These objectives should include the quest for an environment conducive to human rights defence work which will involve:
 - The elaboration of a national plan of action for protection to address the issue from all angles and which includes different state institutions
 - The setting up of a preventive system (early warning, training, etc.)
 - The fight against impunity
 - The promotion of a human rights culture and the legitimisation of the work of human rights defenders.
- **Location of the protection offices**
 - Protection work may require bodies set up exclusively for the protection of human rights defenders
 - The offices are usually housed in institutions specialising in human rights. Offices of the ombudsman or human rights directorates attached to the Executive are the most common but there is always the possibility of mixed offices, which pool the efforts of various bodies including those from civil society.
- **Programme participants**
 - Protection work requires that a large number of institutions each with different capacities join forces. To this end, legislation should create areas where different state institutions converge. These may include:
 - The security forces and the Ministry of State
 - Security agencies specialising in protection

- Civil society
- The protected groups
- International human rights institutions
- The human rights office of the Executive
- The Ministry of Home Affairs or Justice
- The Director of Public Prosecutions (or bodies specialising in the investigation of cases of this nature, where they exist)
- The Ministry for Social Security, Social Solidarity or the equivalent
- The judiciary
- The Ministry of Health
- Inspection/audit bodies
 - ◆ Office of the Ombudsman
 - ◆ Office of the Prosecutor General
 - ◆ Treasury.
- **Other institutions involved in protection**
 - Legislation should include coordination with other institutions also involved in protection without necessarily being part of the structure such as:
 - Other security forces linked to protection work
 - Services providing rapid response to high-risk situations
 - Other investigative bodies such as the intelligence services
 - Medical care services
 - The judiciary.
- **Ensuring effective work**
 - To function effectively, legislation should ensure the offices display the following features:
 - Public legitimacy
 - Accessibility
 - Open form of organisation
 - Consultations with civil society
 - Ensuring the integrity, quality and diversity of staff
 - Broad mandate
 - Effective international links

- Speedy and effective handling of complaints
 - Powers covering all sectors
 - Power to monitor compliance with their recommendations
 - Systematic handling of human rights
 - Adequate budgetary resources, accountability.
- Functions
 - Legislation should stipulate the following functions:
 - Freely consider any issues falling within its competence, whether they are submitted by the government or whether it acts on its own authority following a proposal from its members or any petitioner
 - Collect evidence and obtain any information and documents necessary to assess situations falling within its powers
 - Prepare reports on the national situation of defenders
 - Submit opinions, recommendations, proposals and reports on matters concerning the protection of defenders to the government, parliament and any other competent body for advisory purposes, which may be made public
 - Promote and ensure national legislation, regulations and practices are implemented and that they comply with the international instruments relating to defenders to which the state is a party. The ratification of these international instruments or compliance with the texts and their subsequent application should also be encouraged
 - Contribute to the reports which states are required to submit to United Nations bodies and committees or to regional defender institutions and, where necessary, submit an opinion on the subject
 - Cooperate with the United Nations and other international organisations, regional institutions and institutions in other countries responsible for the right to defend human rights
 - Ensure the safety of defenders, drawing the government's attention to situations in any part of the country where the right to defend human rights is being violated. Propose measures to resolve them and publish opinions on the government's position and reaction
 - Publicise the work of human rights defenders by raising public awareness of the importance and legitimacy of their work.
 - The commitments of the beneficiaries
 - Legislation should include a clear statement of the commitments that beneficiaries enter into on accepting the protection measures
 - Commitments that go beyond those directly relevant to the protection of the rights of human rights defenders should be avoided.

Some final reflections on Part I

Finally at the end of Part I we offer some thoughts we hope will encourage an open dialogue in Focus,⁴⁷ the observatory on national policies, or in direct correspondence with interested human rights defenders:

- ✓ Although the UN declaration on human rights defenders was adopted in 1998, there is little experience of the introduction of national laws and authorities for the protection of human rights defenders. The overwhelming majority of defenders are to be found in Latin America. If we were to venture an explanation, we would probably say that this is due to the pressure exerted by a powerful civil society with high expectations of human rights as well as the existence of a structured regional human rights system. Perhaps this combination has enabled national governments to generate the necessary political will for this to be the case.
- ✓ In all the cases studied there is much room for improvement in the protection programmes. Some have already accumulated valuable experience and we hope that this study contributes towards that.
- ✓ It is probably fair to say that none of the cases studied have moved from a tactical level of protection (provision of protective measures alone) to a more strategic level of protection (prevention of attacks instead of reactive measures, investigation and trial of the perpetrators of attacks against defenders, institutionalisation of a democratic human rights culture, etc) despite the fact defenders' organisations are constantly calling for this and are willing to cooperate in achieving it.
- ✓ As we said in the introduction to this part, the challenge is still what it has always been: how do we recognise and make more effective the responsibility of the state for providing human rights defenders with protection and for the fight against impunity? With this in mind, beyond assessing the immediate results of the national protection programmes, we should assess civil society's ability to trigger an appropriate response from the state. Of course the creation of a protection programme is part of the answer, but probably not all of it.
- ✓ The increasing flow of information on the involvement of Colombia's Administrative Security Department in a "dirty war" against human rights defenders is a direct attack on the Colombian protection programme. At the time of writing we do not know what the final consequences of this will be, given that this is the largest programme with the most resources of all our case studies.
- ✓ The devil may lie in the detail, but nonetheless the next part of this study will include an in-depth analysis of the operational aspects of the protection services provided to human rights defenders, i.e. the day-to-day work of the programmes.

⁴⁷ See: <http://www.protectionline.org/>

Protection of
human rights defenders:
Best practices and lessons learnt

Part II: Operational aspects
of defenders' protection

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:¹ “...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:

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 prejudge 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*;² 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.

² 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 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:**

- Women³
- 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,⁴ 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.*

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.¹

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.

¹ 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:²

- 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).

² 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.³

³ 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"> Colombia: the defenders should belong to legally recognised organisations, ranging from NGOs to community organisations.⁴ 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.
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"> The applicant must provide a copy of the complaint lodged before the authorities (police or a judge). The local or regional authorities should be aware of the situation of risk faced by the applicant.
Place	<p>Colombia: the zone of risk has to form a part of the national territory.</p>

⁴ Criteria for acceptance in the Colombian programme (2010):

- Leaders or activists of social, civic, community, trade union and peasant organisations or of interest or ethnic groups.
- Leaders or activists of human rights organisations or members of the medical mission.
- 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.
- Journalists and communications professionals.
- Leaders and representatives of organisations of the displaced population or displaced people in situations of extraordinary or extreme risk.
- Officials responsible for the design, coordination, or implementation of the National Government's Human Rights or Peace Policies.
- Employees who have in the past been responsible the design, coordination, or implementation of the National Government's Human Rights or Peace Policies.
- 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.

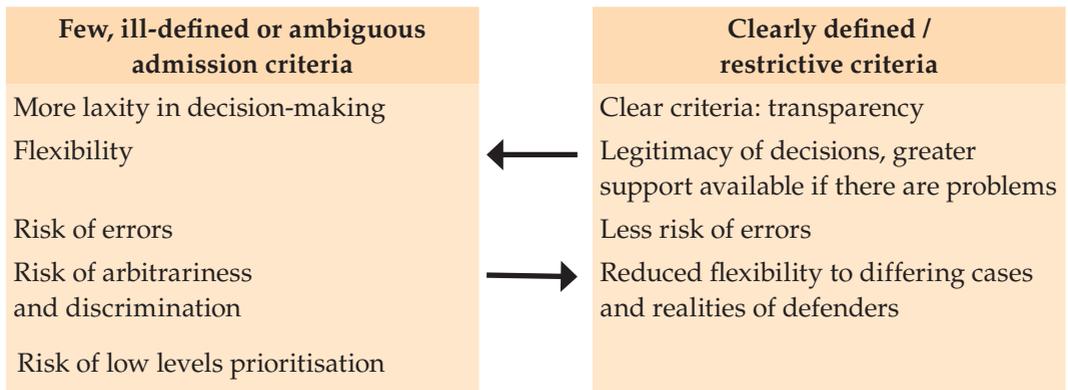
The objective of the request for protection	Guatemala: the protection request should have no other motivation than preserving and protecting the life, integrity, security or freedom of the individual.
Competence	Guatemala: the protection requested should not be responsibility of another state body; if it is, the application should be made to this body.
Programme capacity	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:



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 ⁵	Guatemala ⁶	Brazil ⁷
Name of Body	<ul style="list-style-type: none"> Committee for the Regulation and Evaluation of Risks, CRER (advisory body) 	<ul style="list-style-type: none"> Committee for the Assessment of Risks and Protection Measures (CERPM) 	<ul style="list-style-type: none"> State and National Deliberative Councils
Government	<ul style="list-style-type: none"> Minister of the Interior and Justice (may delegate the Deputy Minister); chairs the CRER Director of the Presidential Agency for Social Action and International Cooperation 	<ul style="list-style-type: none"> Presidential Coordinating Commission of Executive Branch Policies on Human Rights –COPREDEH- (who functions as chair) Delegate of the Office for the Analysis of Attacks against defenders, attached to the Vice-Ministry for Security in the Ministry of the Interior 	<ul style="list-style-type: none"> Representatives of the Government (not specified, other than the National Executive Coordinator of the Programme)
Participating Bodies	<ul style="list-style-type: none"> Director of the Presidential Human Rights Programme⁸ Director of the Human Rights Programme of the Ministry of the Interior and Justice 	<ul style="list-style-type: none"> Director or delegate of the Directorate of Civilian Intelligence. Representative of the International Relations Unit of the Ministry of Labour and Social Security Representative of the prosecuting authorities (special invitation) 	

⁵ According to Decree 1740 of 2010.

⁶ 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).

⁷ 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).

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

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

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).⁹*

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.

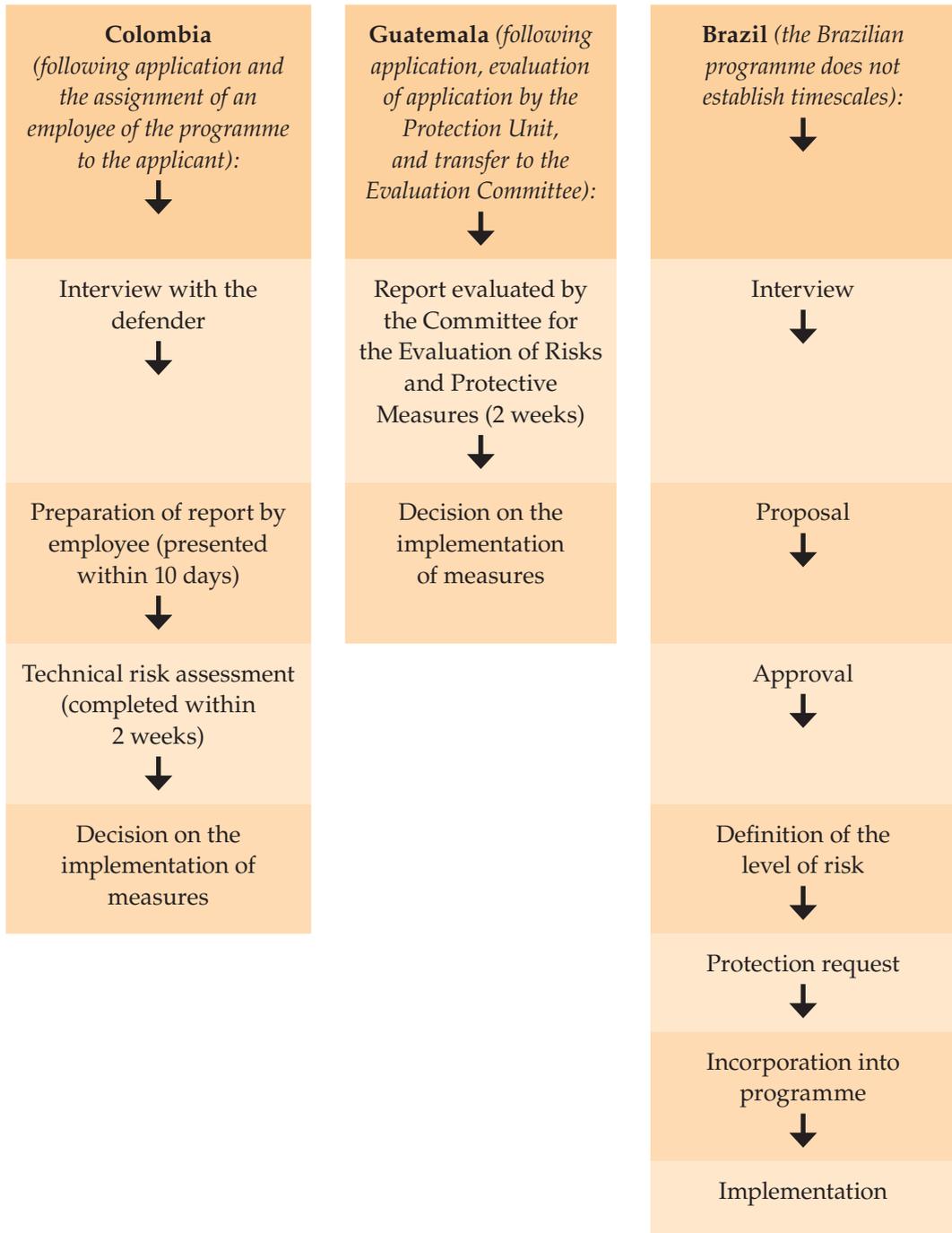
When it comes to defining timescales it is important to take into account the frequency with which the decision-making bodies meet:

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

⁹ 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.¹⁰

¹⁰ 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.¹¹*

 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.

¹¹ Article 50, Decree 1740 of 2010, Colombia.

Chapter 3: Risk analysis in programmes for the protection of human rights defenders

As a general rule, the risk analyses available to the authors in preparing this research were neither clear nor concrete;¹ in a sense, rather than efficient systems useful when analysing the risks faced by human rights defenders they present little more than a “list of needs”, and classifications of the types of risk faced. As they may be consulted in the annexes to this book they are not presented in detail here. Instead, this chapter deals with a range of key questions related to the analysis of risks.

Risk analyses should respond to reality and to the needs of human rights defenders. If the systems used by the police do not fulfil this function, then protection programmes should contain their own system of risk analysis either in an attempt to reach agreement concerning adjustments to the schemes the police use, or to apply them directly, working in conjunction with the human rights defenders. Differences between the analyses might lead to conflicts of interpretation, but in any case it will be easier to adapt the programmes to varied circumstances.

It is also important to try and define risk, though this is not an easy task because the truth is that there is no single agreed definition of what risk means. The Colombian programme defines risk as the “objective probability that some danger faced by an individual or a group of individuals will be materialised in acts of damage or aggression”.² Similarly, in the New Protection Manual for Human Rights Defenders³ we say that “risk” refers to “possible events, however uncertain, that cause damage”. The level of risk depends on the threats received but also on the degree of vulnerability of the defender to these threats and the capacity they have to confront them. For example, faced with a generalised threat against “everybody who works in Human Rights” in a city, organisations with greater capacity (a security plan, protection measures in the office, support networks etc.) will not face the same risks as much more vulnerable organisations (with no awareness of the importance of security, no protection for their office or for computer equipment, etc.). Thus, the management of risk focuses on acting in response to threats, vulnerabilities and capacities. For an in-depth treatment of this topic, see annexes).⁴

Risks are *circumstantial* (because they depend on context and circumstances), *changeable* (because they change when significant events occur) and *subjective* (because each individual in an organisation may perceive them differently). In other words, risk cannot be “measured” and it is therefore necessary to reach agreement about the level it has reached.

1 That is, the analyses that appear in the Guatemalan and Brazilian programmes; we have not had access to the Colombian programme, nor to the protocols used by the different police forces to evaluate risk.

2 Decree 1740 of 2010, article 3.

3 See the manual in question, which may be consulted at: <http://protectionline.org/-Protection-International,318-.html>

4 Adapted from Chapter 1.2 of the New Manual for the Protection of Human Rights Defenders (see bibliography).

Some protection programmes use a numerical system to determine the level of risk.⁵ Others just draw approximate conclusions based on the views of the person who carries out the analysis. This chapter presents a process that may be used to determine the level of existing risk by consensus.⁶ It involves two steps: first the determination of the level of risk; second, how to manage the risk according to the level that has been determined.

 **Before continuing, it is important to differentiate between and separate the analysis of threats from the analysis of risk**

An analysis of threats is carried out to study a threat and to try to determine the possibility that it may be made effective in an attack against a defender. For example, if a defender has received a death threat by telephone it is useful to analyse if it is likely to be carried out in the form of direct physical aggression. But this is not an analysis of risk; risk analysis is a more complex process that takes more factors into account.

We therefore recommend carrying out the analysis of threats *first* and the risk analysis *subsequently*.

I. Determining the level of risk

Determining the level of risk is not a question of seeking to “measure” it objectively, but to interpret it; that is, agree on how it should be understood according to a perspective of providing protection to the defender. The Colombian programme defines the “study of the level of risk” as the “result of the technical security analysis concerning the gravity and imminence of the situation of risk and threat faced by the individual, family or group of persons, as well as the specific conditions of vulnerability that affect them”.⁷

Although there are different ways to determine the level of risk, in general the process involves determining if the level is “high, medium, or low”, in reflection of the probability that something will occur and of the impact it would have if it did.

The probability of an aggression occurring: *what is the probability that an aggression will be committed (against individuals or an organisation).*

The following table may be used to characterise this probability:⁸

5 This is the case with the (non-governmental) case of UDEFEGUA (Guatemalan Defenders Unit).

6 The process is based on the results of the current research and previous experience in the field.

7 Decree 1740 of 2020, article 3.

8 Adapted from the New Manual for the Protection of Human Rights Defenders (see bibliography).

Probability		Previous Reflections / in summary form	Table characterising the possibilities that a given aggression will occur in the following ... (days or months)								
			Influencing Factors								
Aggression very probable	It is very likely that it will occur, almost certain in fact; we have to treat it as a fact.	The conjunction of threats and action is clear, and there is an intention to attack.	Threats and direct actions carried out up to now by the Aggressive Party (AP).	Ability to operate in the zone analysed.	Skills and resources of the AP.	Political, military or hegemonic motivation in the zone.	Economic motives.	Previous aggressions (against the same or different defenders).	Attitudes or intentions.	Ability of the security forces to prevent aggressions	Our levels of political influence in order to neutralise the AP.
Aggression probable	It is expected to occur; it is more likely to happen than not.		Clear and explicit threats, direct actions such as other threats or surveillance operations.	AP controls the zone, or operates at ease in it.	It has them.	The Defender clearly damages their ability to achieve objectives, benefits their opponents, etc.	The AP desperately needs equipment or resources in cash form.	Clear cases of previous aggressions.	Aggressiveness – clear current threats.	Inexistent, there is no capacity or will (the armed forces collaborate with , ore, the AP)	Limited (depending on circumstances) or inexistent.
Aggression possible	It might happen; it would not be strange if it did.	There are threats and minor actions, but apparently no desire to carry out direct acts of aggression.	Clear and explicit threats. Minor actions (low level or sporadic surveillance).	AP acts in nearby zones and could start operations in this one.	It has some, or could acquire them.	Partial – the Defender is an obstacle to their political or hegemonic objectives.	The AP is interested in equipment, cash resources or other income (eg from kidnapping).	There have been a few cases.	Not overly interested. Occasional threats; frequent warnings.	Low.	Medium to Low.
Aggression improbable	It might happen, though it would be somewhat surprising if it did; but the likelihood cannot be rejected.	The threats do not refer to direct aggression.	Veiled, non-explicit or anonymous threats. There is no history of actions.	Low capacity to act in the zone.	It has few or no resources to carry out an aggression such as that analysed.	None – the Defender does not constitute an obstacle to their objectives.	AP does not need our equipment or money.	No cases or exceptionally.	They claim to be close or to identify with us, or are indifferent.	Existing.	Good.
Aggression very improbable	It would be very strange if it happened; it has never happened before – there are no antecedents.										

An example of the probability of direct acts of aggression: the potential aggressor controls the zones where the defender operates but has no economic motivation for carrying out an attack. The work of the defender only limits the potential aggressor’s political and military objectives partially and there are no precedents for similar aggressions in the zone. The attitude of the potential aggressor is indifferent and it is clear that it is not in their interests to attract the national or international-level attention or pressure that would result from an attack on the defender. However, the potential aggressor does, through third parties, issue veiled threats against the work of the defender.

Conclusion: *The probability of direct aggressions against the defender is in this case considered to be low or medium.*

It will be apparent that we use terms such as “given aggression” or refer to the execution of a specific threat that has been received. It is important to refer to *concrete* aggressions or threats.

It is also important to establish a deadline or timescale (two weeks, two months, six months etc.) to govern the probability analysis. For example, what is the probability of an aggression such as this occurring during the next six months? Or: is it likely to be repeated during the next two weeks?.

The Impact of an Aggression: *how great would the impact of this aggression be on the defender or the organisation (taking different factors into account).*

The following table may be used to characterise the potential impact of a given aggression:

How to determine the impact of an aggression				
Impact	On individuals (in cases analysed or on other associated individuals)	On property, resources, information (in cases analysed or in relation to associated third parties)	On reputation and image (in cases analysed or in relation to associated third parties)	On the continuity of work (in cases analysed or in relation to associated third parties)
Very High	Lives clearly at risk, there might already have been other deaths	Losses or irremediable damage	Overwhelming effects	Impossible to continue

High	Lives at risk, or physical integrity at risk (serious attacks), prolonged imprisonment, etc.	Losses or serious damage	Serious effects	Serious difficulties, it is not clear whether it will be possible to continue
Medium	Non-serious attacks, brief imprisonment	Moderate losses	Partially affected	Work will continue, with difficulties still to overcome
Low	Insults or similar	Light losses	Very little affected	Scarcely affected
Very Low	No	No	Not affected	Not affected

To determine the level of risk, it is necessary to combine the probability that something will occur with its impact. In this way it will be possible to classify the risk as Very High (VH), High (H), Medium (M), Low (L), or Very Low (VL), using the following table:

Determination of the level of risk					
Impact \ Probability	Very Low or None	Low	Medium	High	Very High
Very Probable	L	M	H	VH	VH
Probable	L	M	H	H	VH
Possible	VL	L	M	H	H
Unlikely	VL	L	L	M	M
Very Unlikely	VL	VL	VL	L	L

It is apparent that “Very High” levels of risk correspond to a “Very Probable” attack that “endangers the life of the defender (for example, a murder attempt). “Very Low” risks correspond to a “Very Unlikely” action that produces “pressures” or “verbal harassment”.

 In order to determine the level of risk using this table it is necessary to enter into debate and draw conclusions; it is not always easy to reach agreement. If it is not possible to agree between two levels of risk it is best to choose the higher, to ensure that the benefit of the doubt always favours security.

The constitutional presumption of risk, extraordinary risk, and the Colombian programme

The Colombian Constitutional Court has referred to the concept of the “constitutional presumption of risk” which it links to the “duty to pay particular attention to the population displaced by the authorities” when the “conditions that activate the presumption of risk” are fulfilled. These conditions are:

- a. the presentation of a request for protection to the authorities by the displaced individual,
- b. that the request was duly registered by the competent authority,
- c. the request contains information that demonstrates, prima facie, that the individual has been displaced as a result of violence, sufficient evidence being the registration papers presented to the Unique Register of the Displaced Population, and
- d. the information presented refers specifically to an identifiable threat to the life and integrity of the petitioner or their family or to an act of violence committed against them, related to concrete events that indicate they were the object of threats or attacks.

This presumption of risk should be applied by the authorities until its substance is determined by a “specific, technically conducted, security analysis”. The current decree covering the Colombian programme has, for the first time, incorporated the presumption of risk in the case of displaced persons.⁹

The new regulation covering the Colombian programme¹⁰ describes “ordinary” risk as “that to which all persons are subject, equally, as a consequence of their membership of a given society and which generates an obligation on the part of the state to adopt general security measures by providing an effective police service”. Following on from this, “extraordinary” risk is defined as “that which persons are not legally obliged to assume and which brings with it the right to receive from the state special protection provided by its authorities”. This legal distinction is very important, because it specifies a right to protection that was not present in previous versions of the programme. It is based on several sources, including the Colombian Constitutional Court’s Sentence T-719 of 2003 and Decision 200 of 2007. The Colombian programme utilizes the Constitutional Court’s characterisation of extraordinary risk:¹¹

- a. That it should be specific and individualizable.
- b. That it should be concrete, based on particular and manifest actions or facts and not on abstract suppositions.
- c. That it should be current and not remote or presumed.
- d. That it should be important, that is, that it threatens to damage goods or legal interests, or the physical, psychological or sexual integrity that is valuable to the victim or witness.

⁹ Decree 1740 of 2010 (Section III).

¹⁰ See Decree 1740 of 2010 (article 3), in annex.

¹¹ Decree 1740 of 2010 (article 3).

- e. That it should be serious, and likely to be carried out given the circumstances of the case.
- f. That it should be clear and discernible.
- g. That it should be exceptional to the degree that it should not be borne by individuals in general.
- h. That it should be disproportionate when compared to the benefits derived by the person from the situation that generates the risk.

It also adopts the definition of “**extreme risk**” as “that which threatens the rights to life and integrity, liberty and personal security and occurs when all the characteristics indicated for cases of extraordinary risk are present. Additionally, this type of risk should be grave and imminent and directed against life or integrity, liberty and personal security, with the evident intention of violating these rights “.

In its definition of risk the Brazilian programme incorporates the same characteristics assigned by the Colombian programme to extraordinary risk.

Once the level of risk faced by the defender or the organisation has been determined it is possible to pass onto the next stage, risk management.

II. Managing risk: decisions and processes to put into practice

Before taking decisions on managing risk, it is useful to examine first what can be done with it, as set out in the following table:

What can be done with risk? Strategic decisions (first of all)		
Level of Risk	What can be done	How to do it
Very Low or Low Risk	Accept the risk	Continue with habitual activities, without forgetting to monitor the context and the risk, in case there are changes.
Low, Medium or High Risk	Reduce the risk	This involves acting on the risk in order to reduce it. This can involve applying the risk equation (reduce risks, reduce vulnerabilities and increase capabilities: see annexes). Another alternative is to share the risk : by acting jointly with allies the risk of aggression is shared and may be reduced.

<p>High or Very High Risk</p>	<p>Avoid the risk</p>	<p>When the risk is high or very high it is difficult to reduce it in the short term and it is necessary to initiate measures immediately to avoid it. These measures generally interrupt work or habitual activities and generate drastic changes during an indeterminate period of time. Simultaneously, measures should be put in place to reduce the risk in the medium term.</p>
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It is important to remember that when the risk is high or very high it is difficult to continue with day to day activities in the same way as before, because drastic measures are generally required to reduce the risk, including: changes in routines, the implementation of security measures, the dedication of time and resources to avoiding and reducing risk (acting to reduce the threats and vulnerabilities). These options are indicted in the following table:

<p>How to influence the level of risk affecting a defender and/or organisation</p>				
<p>Situation</p>	<p>Description of the general situation</p>	<p>Continuation of normal activities</p>	<p>Security plan and security measures</p>	<p>Time to be dedicated to security</p>
<p>Risk</p>				
<p>Very High</p>	<p>Very dangerous and unpredictable</p>	<p>No</p>	<p>Absolute priority</p>	<p>All that is necessary</p>
<p>High</p>	<p>Dangerous and unpredictable</p>	<p>No, save exceptions</p>	<p>Priority</p>	<p>All that is necessary</p>
<p>Medium</p>	<p>Dangerous but predictable or manageable</p>	<p>Yes, with changes to the activities most associated with the risk</p>	<p>Important: integrated into activities</p>	<p>Part of the time (reducing the amount of time usually dedicated to normal activities)</p>
<p>Low</p>	<p>Little danger, and manageable</p>	<p>Yes, in general</p>	<p>Normal</p>	<p>Normal</p>
<p>Very Low</p>	<p>Manageable</p>	<p>Yes</p>	<p>Normal</p>	<p>Normal</p>

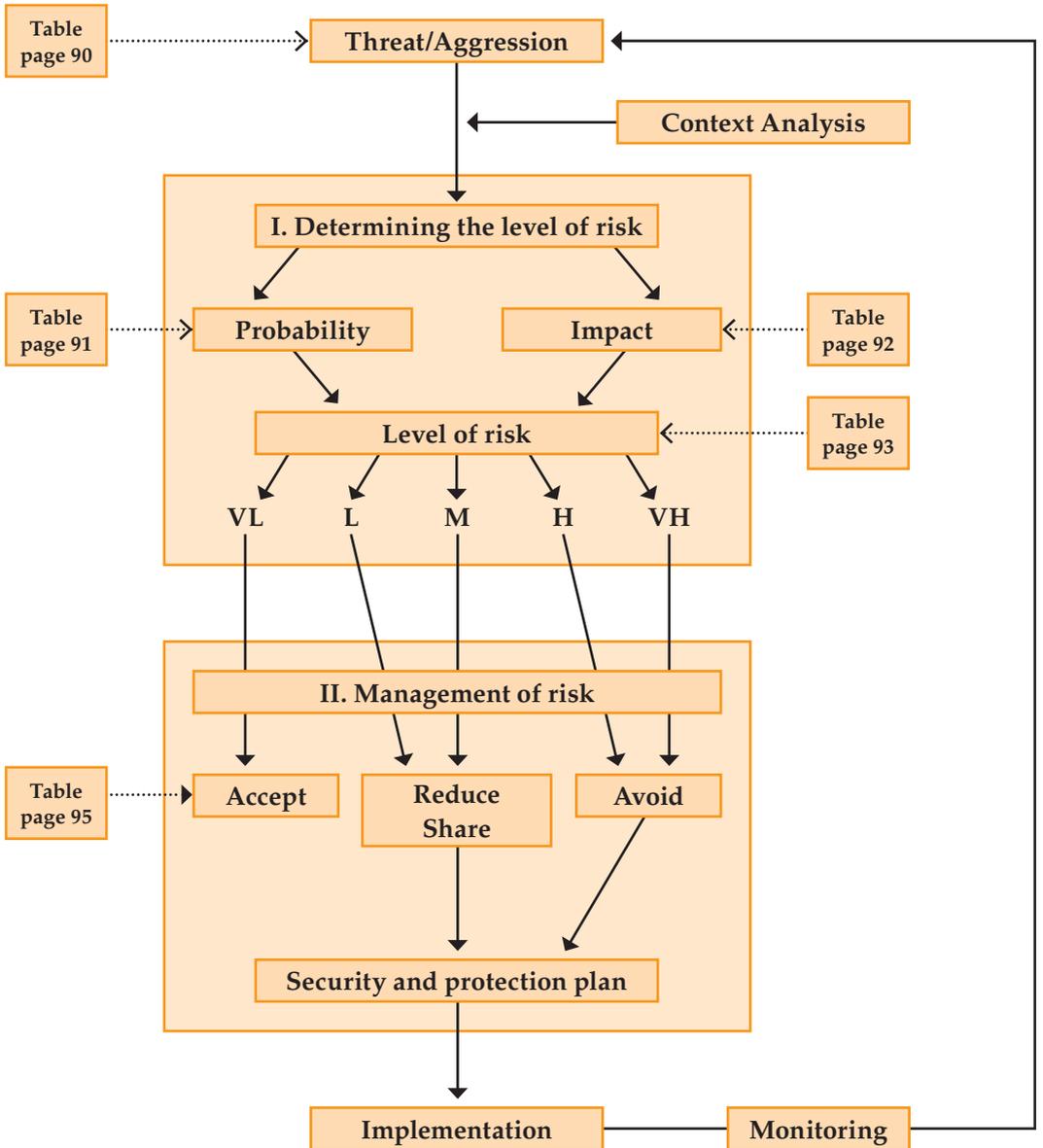
Risk analysis focused on risk management: taking decisions on security

The next step involves analysing the risk from the point of view of its components, so as to be able to establish a protection and security plan. At the beginning of the chapter risk was defined as “possible events, however uncertain, that cause damage”. Risk was said to

depend on threats that have been issued but also on how vulnerable the target is to these threats and what capacity they have to face them; consequently, the management of risk means acting on threats, vulnerabilities and capacities. This topic is dealt with in greater detail in annexes.¹²

Summary: the process of analysing and managing risk

The following table summarises the process of analysing and managing risk; it draws on the tables and tools presented previously in the chapter.



12 Adapted from the New Manual for the Protection of Human Rights Defenders (see bibliography).

Finally, it should be remembered that:

- When defining the level of risk the idea is not to “measure” it objectively but to interpret it. That is, agree, from the point of view of the defender, how it should be understood.
- It is important to separate the analysis of risk (determining the level of risk) from decisions about how to manage it (the protection and security plan).
- Frequently, when it comes to analysing a situation there is a tendency to confuse the analysis of risk with the analysis of how it should be managed. Nevertheless, it is important to separate the two and to carry out first the analysis of risk (to determine its level) and subsequently decide how it should be managed (the protection and security plan).

For example, a “medium” risk might be managed by implementing a simple protection plan.

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.

Chapter 5: Catalogue of available protection measures and analysis

The programmes analysed in this book bring together, in greater or lesser detail, the different protection measures that are examined, but, first it is useful to make some general comments about them.

There are major budgetary differences between the programmes and while it is true that the Colombian programme is the most generously funded, the programme of the Ministry of the Interior and Justice also covers groups other than defenders, such as journalists, witnesses, demobilised guerrilla fighters, etc.). These budgetary differences mean that the programmes are able to offer different kinds of measures (transport costs, bullet proof vehicles, etc.). The catalogue of measures offered by the Colombian programme is more extensive than is contained in the Guatemalan and Brazilian proposals which, above all, offer police protection. Evidently, there is a theoretical advantage if a greater range of measures is available as they are more likely to meet a range of needs; but it should be borne in mind that, in practice, many of the measures are only offered on paper.¹

 *Frequently, due to structural and budgetary limitations, more measures are listed than are actually available in practice. This is not good practice as it may provide an inflated image of the programme that is not reflected in reality.*

The programmes classify the measures they provide in different ways. Some refer to “preventive” and “protective” (or “protection”) measures. Others classify the measures offered as “soft” or “hard” (according to whether they use armed bodyguards or not). Some provide detailed descriptions of operational arrangements or protection “schemes”, while others open the door to less technical and more political approaches, such as Human Rights training for the security forces, etc. In order to be able to carry out a thorough analysis of the measures, they have been grouped according to a logic derived from risk assessment (see annexes): risk is proportional to the vulnerabilities of the defenders, and inversely proportional to their security capacities. It is therefore fundamentally important that measures should confront threats, reduce vulnerabilities and increase the capacities of defenders. First, it is important to understand that the vast majority of protection measures are intended to reduce vulnerability (means of communication, bullet proof vests, payment of transport costs to leave the zone of risk, etc.), and that practically the only measure intended to confront threats directly is the provision of armed bodyguards. Taken together these factors imply that the overall set of measures available does not deal with threat in a balanced way, but tends towards the technical and to approaches based on armed protection.

There have been cases where the funding for protection programmes has been diversified, with the result that defenders have been passed from one programme to another for a variety of reasons (for example, because they are internally displaced, or indigenous, or because of the kind of protection offered – for example if they have to leave their region or the country, etc.).

¹ The UN Special Rapporteur on the situation of Human Rights Defenders, M. Sekaggya, has also expressed her concern at this:
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=111&LangID=E>

👉 It is important to avoid the practice of “one defender for each funding source”, because it creates problems in coordination, delays in providing protection, and poor resource management.

📖 Although different funds exist for defenders, it is possible to integrate them effectively by adopting common criteria concerning admission to programmes and the implementation of protection measures

1. Measures to reduce vulnerability

Measures to reduce the exposure of defenders

- **Evacuation**, removing a defender and their family from a zone. This usually involves (as an emergency measure, or with more planning) the payment of transport (terrestrial or air depending on the characteristics of the zone).
- **Temporary Relocation** in a different, risk free, zone (this may be outside the country, but is usually to another location within national territory).
 - Financial support (usually limited: for example the Colombian programme specifies that it will provide a “maximum of the equivalent of the minimum wage for three months, renewable”; the Brazilian programme stipulates that the support will be for a “fixed period”).
 - Financial support to help with moving costs.

A frequent problem has been the timely availability of funds to carry out an evacuation or a temporary relocation. In general it is necessary to increase the responsiveness of the programmes in these cases. More than once a non-governmental defenders’ programme or organisation has had to advance money and wait for it to be returned by the governmental programme.

- **Internships** (national or international): sometimes the relocation may involve an internship or a period of paid or unpaid collaboration with another Human Rights institution; these arrangements allow better use to be made of the period of relocation, reduce psycho-social effects and facilitate the exchange of experiences.
- Protection of **daily movements**:
 - Provision of a vehicle to facilitate mobility (with or without a driver or bodyguard according to the level of risk; risk is also taken into account when determining whether the vehicle should be bullet proof or not).
 - The use of secure transport means (private cars, or payment for taxis in order to avoid the use of public transport which might increase levels of vulnerability if the defender is obliged to wait at bus stops, use pre-established routes or walk to between bus stops and their place of residence or work, etc.).

Measures to improve communications capacity

Communications equipment for use in emergencies:

- Cellular telephones (or payment of pre-paid services for use in emergencies)

- Radios or radio telephones
- Satellite phones

Measures to protect defenders' offices, headquarters and homes

- Security doors and windows
- Video entry phones, closed circuit television
- Metal detectors
- Bullet proof vests

Measures to increase the capacity of defenders to protect themselves

The governmental programmes all mention a measure known as “Training in protection and self-protection”, although training processes are most frequently organised by non-governmental organisations.²

2. Measures to confront direct threats

These measures are designed to deal with direct threats; that is, to reduce the possibility that a potential perpetrator will attack a defender directly. Most of these measures are based on the continuous or periodic presence of armed personnel, though the unarmed international accompaniment provided by NGOs such as Peace Brigades International should also be mentioned.³ A protective presence may also be offered by national NGOs, United Nations staff, the International Committee of the Red Cross and other bodies including some state institutions such as Human Rights Ombudsman's offices.

Bodyguards or armed protection

Bodyguards or armed protection details who provide a continuous or periodic presence of armed personnel; they may be offered to an organisation (for example to protect a place of work) or to threatened defenders (individual bodyguards). For defenders, armed protection is important in a number of ways, analysed below.

Who provides the service?

There are different ways in which Bodyguards may operate:

- Bodyguards provided by members of one of the security forces such as the police.

This is the most frequent mechanism because it has a broad reach (in theory it can be provided anywhere in the country). It has advantages but also disadvantages which have caused a great deal of concern among defenders (see the table below). As is detailed in the next point, several proposals have been put forward, as a result of these concerns, to create a specialised security body specialising in armed protection for defenders. In any case, as minimum defenders insist that mechanisms should be created to ensure that the bodyguards or drivers have “clean records”, with no connections with armed

² Among the few organisations that specialise in this field are Protection International and the Protection Desks that it has created in conjunction with national defenders' organisations in several countries around the world. For more information see www.protectioninternational.org

³ For more information see www.peacebrigades.org, or “Unarmed bodyguards: International Accompaniment for the Protection of Human Rights”, by Liam Mahony and Luis Enrique Eguren, Kumarian Press, West Hartford, Connecticut, 2007.

groups or other security bodies that have participated in repressive actions. Defenders insist, too, that bodyguards should have received training in, and be sensitive to, Human Rights, and have finished their training recently. These demands are all made to avoid cases where bodyguards form a part of criminal networks that oppose the work carried out by defenders or where they might be co-opted and used to attack or gather information on those they are supposed to protect.

- Bodyguards provided by specialised bodies.

The Guatemalan proposal includes a suggestion for the creation of an Elite Security and Protection Corps – CESP (for its Spanish initials), within a state security body, but specialised in the protection of persons. The Colombian defenders' organisations have made similar proposals, specifically for the creation of a special unit to coordinate existing security schemes, whose design "should be agreed with the beneficiaries". There have been similar discussions in Brazil. These proposals are not only based on the hope that the bodyguards will be adequately trained to perform their role, but that the members of the units will also receive special recognition, developing an esprit de corps, and reducing the risk they will "sell their services".

- Bodyguards provided by "trusted" personnel.

That is, individuals in whom the defender has confidence, trained in weapons use (in Colombia and Guatemala these people are frequently demobilised guerrilla fighters). At times these bodyguards work on private contracts and frequently (for the purposes solely of providing this specific service) join some state security body; in Colombia for example several joined the state security agency, or DAS, after receiving additional training as bodyguards. This model is provided for in the Guatemalan proposal in cases in which "the beneficiaries [decide] for valid reasons not to accept protection from [official bodyguards]": the state would, in these cases, contract and train the bodyguard and provide their weaponry; they might be placed under the authority of the official body in charge of protection or, if contracted privately, under the CESP;⁴ in this latter case they would, in the words of the proposal, "respond to the beneficiaries".

- Bodyguards provided by private security companies.

Currently, the Colombian programme offers bodyguards and armed protection contracted from a private security company. This has been widely criticised by defenders' organisations and by the UN Special Rapporteur on the situation of Human Rights Defenders, Margaret Sekaggya⁵¹ (see following table), who propose that the model should be abolished.

⁴ Elite Prevention and Protection Unit (a police body to be created to provide protection), see the proposed Guatemalan programme, Section 3.4.

⁵¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=111&LangID=E>

Comparative table of the different models of armed protection		
	Potential advantages	Objections
Bodyguards provided by permanent members of a security body	<p>Present everywhere in the country.</p> <p>Probably cheaper.</p> <p>Possible access to police intelligence information on possible aggressions against defenders (if such information exists and is transmitted to the protection programme).</p> <p>There might be more people available in a given operation and greater fire power (weapony).</p>	<p>Lack of experience and commitment (availability depends on other police priorities) or resources (at times the defender is obliged to pay for the bodyguard's food).</p> <p>Lack of awareness: it is common for the bodyguards to be prejudiced against human rights defenders (who are viewed as "Defenders of Guerrillas" or of "Criminals", or as people who present obstacles to the work of the security forces).</p> <p>Possible direct or indirect links repressive structures within the security forces.</p> <p>Risk that they will carry out surveillance or leak information on or against the defenders or their contacts and their work (cases have been documented).</p> <p>Need to coordinate with the protection programme (they are separate institutions).</p>
Bodyguards provided by a specialised bodies	<p>Better training and more dedicated.</p> <p>Less risk of structural relationships with repressive sectors, less risk of surveillance or leaking of information.</p> <p>Potentially, improved coordination with the protection programme.</p> <p>Possible access to police intelligence information concerning possible aggressions against defenders (if such information exists and is transmitted to the protection programme).</p> <p>There might be more people available in a given operation and greater fire power.</p>	<p>Probably more costly to create.</p> <p>Bureaucratic delays might create delays in its establishment.</p>

<p>Bodyguards provided by “trusted” personnel</p>	<p>Greater social and political commitment with the work of defenders.</p> <p>Absence of the risk of structural connections with repressive sectors, of surveillance or of leaking information.</p>	<p>Less access to police intelligence information on possible aggressions against defenders (if such information exists).</p> <p>Might lead to conflicts with the security forces (if these are hostile to defenders), such as arrests if they act in confused circumstances, etc.</p> <p>Generally limited firepower (because of the number of bodyguards and weapons).</p> <p>The relationship of confidence between the bodyguards and the defenders may create conflicts of interest or the bodyguard may not act with due professionalism.</p> <p>Dilution of state responsibility.</p>
<p>Bodyguards provided by private security companies</p>		<p>The state is responsible for providing protection, and a private company is not a state body; it is therefore very difficult for the state to delegate its authority and responsibility (given that state agents owe high degrees of accountability, whereas this is much more diffuse for a private bodyguard).</p> <p>Companies tend to be created by former members of security bodies and may be infiltrated by sectors that repress defenders (cases have been documented in Colombia).</p> <p>In contrast to the situation with state officials there is no due control of the employees of private companies.</p> <p>The bodyguards do not have the basic training provided to state agents and many fewer have received Human Rights training.</p>

This table setting out potential advantages and objections should be read bearing in mind risk and the needs of defenders. For example, if there is a high risk of surveillance and espionage being carried out against a defender’s contacts, armed police bodyguards may not be a viable option for the defender. But sometimes it is not possible to choose, and the defender is left feeling that they have to decide between a bodyguard and nothing. At other times defenders might opt for a form of protection other than a Bodyguard, such as international accompaniment (see the comments on this in chapter 1), or – in situations of risk – accompaniment by a member of the defenders’ or another organisation.

In this connection the proposed programme in Guatemala envisions support in developing “accompaniment by national and international organisations (...) to respond to situations of imminent risk” (including, for example, by facilitating visas for international companions).⁵

A possible alternative is to use unarmed guards, a mechanism which is frequently used, for example, to guard business premises. Sight should not be lost of the fact that these different models of accompaniment and the employment of bodyguards should always be analysed in the light of existing risks, because frequently, in particular circumstances, one or other alternative may not provide viable protection.

How are bodyguards deployed?

Bodyguards or armed protection details are usually provided on a continuing basis or for long periods of time, day and/or night. They consist of an operation (or “scheme”) employing one or more bodyguards, with or without a vehicle, who accompany a protected person according to set security protocols. On leaving a building they exit before the protected individual, check out the enclosed or semi-enclosed places the protected person will enter, plan transport routes and in general apply technical criteria that have been designed taking into account the daily routines of the person they are protecting. These actions are necessary because the bodyguards cannot be “in two places at one time”. The effectiveness of bodyguards is based on their ability to dissuade potential aggressors from attacking (they share this with national and international companions), if an attack is planned, they should detect or, if eventually necessary, repel it without injury to the protected person or to themselves.

 *A bodyguard who is not committed, or is passive, will not be able to repel an attack, nor react appropriately if it occurs.*

Discontinuous armed presence

This mechanism involves organising patrols around an office or place of residence. Its principal objective is not usually to act in response to aggressions at the moment they occur but to prevent them happening in the first place. If patrols are to be effective they should be irregular but sufficiently frequent that a potential aggressor cannot predict when the next one will be. They should be carried out several times a day especially at moments of high risk (such as when a defender enters or leaves the office, at dusk, etc.; frequency can also vary according to changes in the overall level of risk). Patrols should consist of more than “just passing by” requiring an active attitude including counter surveillance activities (to detect if others have the premises being protected under surveillance) and when possible carrying out enquiries locally (that is, to carry out intelligence on the protected area), in order to be able take note of danger signals and to act on them. It is also important, as the Guatemalan proposal notes, to take into account levels of illumination in the zone, parking areas, traffic flow and the layout of entrances, stairways, doors, lifts and the like.

 *Bad practices that have been detected in police patrols include the low frequency with which they are carried out, and their routine nature (the car “just drives by” and “always at the same time”).*

⁵ See Guatemalan proposal, Section 4.

 In order to ensure that visits are carried out at greater frequency, or at least gather evidence of which agents are not fulfilling their duties, some organisations who have counted with these measures have agreed with the police that they would maintain a register of the dates and times of visits made to their offices along with the badge numbers, names and signatures of the officers involved

The practice of discontinuous armed presence can also include provision of direct telephone lines to guarantee a rapid police response if a security incident occurs. For a period in Colombia a networked communications system was established, using radio telephones to link defenders and a specially assigned unit in the National Police, which defenders could use to communicate immediately with the police and arrange for a patrol to be sent to the scene of events. In Guatemala there was a similar experience using the standard emergency telephone number (110) available to the whole population but which was adapted to include a special service for defenders. It is not entirely clear, on balance, how effective these measures were since positive reports on their functioning were matched by negative ones.

The process of assigning bodyguards

First, the protection programme and the defenders themselves (both organisations that support the programmes and beneficiary organisations and individuals) should monitor accurately the ways in which the measures work. The following section highlights some of the most frequent problems encountered and suggests ways of overcoming them.

- Substantial or formal disagreement concerning the level of risk faced by the defender or of the kind of security detail they should be offered.

If the body carrying out the risk assessment is not the same as the one providing the armed protection there might be disagreements about the level of protection required by the defender. In a similar vein, the limited resources available to pay for bodyguards and the even lower social status of defenders mean that the police are likely to see defenders as a low priority for protection.

On other occasions the disagreements may have political or ideological roots as occurs for example when high ranking police officers oppose Human Rights activities, when the attacks on defenders come from the security forces themselves or when a police chief identifies with a local government that does not share the government line and is prepared to act against it.

There are several ways to deal with these situations. At the technical level it can be useful for the entity that provides the bodyguards to participate in some way in the risk assessment, so that they can contribute their perspectives and it may be possible to win their commitment. Similarly, it may be useful if the personnel who work as bodyguards are not linked operationally to the core bodies of the police. But if the underlying problem is a lack of political will, the solution has to be to create that will: to increase perceptions of the social significance and value of defenders, and to ensure that orders handed down from above are respected. During the research we have learnt of a range of responses to these difficulties and there are no clear conclusions as to which is most effective, because each depends on the particular context. But the general conclusion is that it has not proved possible to generate the political will needed to overcome the

obstacles to implementing protection measures (let alone the broader measures that are discussed in the next chapter).

- Coordination between the Programme and the Body that Provides the Bodyguards.

A recurrent problem is the lack of coordination between programmes and the armed body that provides the bodyguards, whether initially or during deployment. This obstacle also occurs when different security bodies are involved. The lack of coordination has budgetary implications too, a question that at first appears minor but that is in fact sensitive: who pays the costs of the bodyguards (food, petrol, journeys outside the city, etc.)? It is all too frequent that the defender ends up paying for food and other related costs.

The programmes propose different ways of dealing with these coordination difficulties. The Colombian programme defines a “protection route”, a strategy intended to articulate and coordinate the actions of authorities at national, departmental and municipal level. This “route” defines the responsibilities of each level in some detail.⁶ The programme also establishes a unique data base to record the details of beneficiaries. Guatemala saw the creation of the Human Rights Unit of the Criminal Investigation Division of the National Civilian Police (subsequently renamed the Special Criminal Investigations Division, or DIEC for its Spanish initials), whose function is to respond to crimes committed against defenders and contribute to their investigation in coordination with the prosecutors who are responsible for them. For a period, despite having only a small team that required help with training and resource problems, this Unit demonstrated considerable capacity to operate and to attend cases throughout the country to the extent that initial results promised that it might be possible to end impunity. Regrettably poor coordination with the prosecuting authorities and obstructive attitudes meant that many of these cases were never brought to a final conclusion.

In relation to bodyguards’ expenses, the Colombian programme stipulates only that a circular will be sent the regional and local authorities requesting them to include the costs associated with the protection programmes in their budgets. The Brazilian programme establishes that “the necessary collaboration and support”, including economic assistance, will be offered to police forces.⁷

 The supervision of bodyguards should not be the sole responsibility of the programmes, but should also involve defenders’ organisations. To enable this, organisations themselves need to develop their own policies covering their interactions with armed protection; they should do this in cooperation with other organisations and without obliging individual defenders to manage the difficulties associated with accepting protection from bodyguards

- Distrust for the police felt by defenders or the populations they work with.

In the three programmes analysed, defenders maintain high levels of distrust towards the police forces that provide their bodyguards. There have been numerous cases of espionage carried out against defenders, as well as direct actions against them

⁶ Decree 1740 of 2010, Section IV.

⁷ Procedural Manual, p.31.

committed by the security forces. Among the most resonant of these cases has been that of the illegal interceptions of communications involving defenders and other social and political groups in Colombia by the army and the state intelligence agency, the DAS.⁸ Bodyguards are also able to facilitate the processes that criminalise defenders: cases are on record where they have provided evidence against them. The same risk exists with the officials who undertake risk assessments, as these agents are able to obtain abundant information on defenders and their work.

Some of the ways in which attempts have been made to address these activities include – in addition to the necessary investigations and legal proceedings – the proposals that have already been discussed to create special independent police units, and the importance of establishing an accessible contact point within the police with whom it is possible to develop a relationship of trust and who can take measures and even carry out internal investigations when the circumstances so dictate.

It is common for the population groups with which defenders work to resist collaboration with a person who has armed accompaniment, whether these are members of the state security forces or not. In these cases there is usually an understanding of the risk involved, a factor that explains why defenders tend to describe openly the risks they face. It is common practice, too, for the bodyguard to be a person who does not have contact with the local population or know the localities where they live (for example in cases where witnesses or the leaders of movements have chosen to operate with a low public profile). This also generates multiple conflicts in the programmes because at times defenders may go to a place without informing their bodyguards, ask them to remain at a distance while they carry out their work, or “dismiss” them at a certain time and then carry on with their activities. However, this latter alternative is not always possible because such cases have been defined by the Colombian programme as “improper use” of the protection measures and may lead to their suspension.

 If the levels of risk allow it, protection measures should be compatible with the work carried out by defenders. Both the Colombian Constitutional Court and the Inter American Court of Human Rights have stipulated that protection measures should be appropriate to the needs of defenders and consulted with them. The Brazilian draft law for the protection of defenders puts it in the following way: “Measures that lead to the interruption of the human rights defender’s work in his/her area of activity will only be implemented if strictly necessary for his/her security or that of his/her collaborators”⁹

- Bodyguards who generate risks

In certain circumstances police bodyguards may generate risks for defenders. For example, defenders who work in the Brazilian favelas state that their levels of risk increases when they enter localities accompanied by uniformed police (and the police say the same). We are not aware of simple solutions to cases such as these in which

⁸ Protests at these acts of espionage and other actions against defenders have been widely expressed, including by the UN Special Rapporteur on the situation of Human Rights Defenders, M. Sekaggya: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=111&LangID=E>

⁹ Article 10 (see annexes).

different kinds of risk are combined, namely those that defenders face and those faced by their bodyguards. On many occasions this situation has led to interruptions in the provision of armed protection in zones of risk, a factor which seriously limits their capacity to protect.

3. Other protection measures

It is clear that the majority of the measures proposed by the programmes are reduced to the physical protection of threatened defenders. However, all defenders agree that the best form of protection would be to end impunity: if cases are investigated, if perpetrators are arrested and then tried and sentenced the result would be a major advance in protection. Another significant advance would be the creation of a social environment in which the work of defenders is positively valued. In this, as so often, defenders' organisations themselves have been pioneers developing wide-ranging, prolonged, campaigns. For its part, the proposed Guatemalan programme includes a series of measures that go beyond physical protection and, similarly, the Colombian programme has also included certain – though much more limited – aspects of this kind. The next chapter focuses on other protection measures, of broader scope, that go beyond the physical measures analysed here.

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.undefegua.org

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

Protection of
human rights defenders:
Best practices and lessons learnt

Appendices

Appendix 1: Table of supranational protection systems

Instruments	Institutional structures	Protection mechanisms
<ul style="list-style-type: none"> Declaration on the Right and Responsibility of Individuals, Groups and Institutions to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms⁻⁰¹ Human Rights Defenders: Protecting the Right to Defend Human Rights Fact Sheet no. 29⁻⁰² Principles relating to the statute on national institutions. Paris Principles⁻⁰³ Guidelines for presenting complaints about violations of the Declaration on Human Rights Defenders to the Special Representative⁻⁰⁴ 	<ul style="list-style-type: none"> United Nations High Commissioner for Human Rights⁻⁰⁵ Special Rapporteur for UN defenders⁻⁰⁶ 	<ul style="list-style-type: none"> Individual complaints Presentation of complaints on the question of human rights defenders to the Rapporteur On-site visits to countries Periodic reports to the UN

Universal scope

- ⁻⁰¹ <http://www2.ohchr.org/english/issues/defenders/declaration.htm>
- ⁻⁰² <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>
- ⁻⁰³ <http://www.nhri.net/pdf/ParisPrinciples.english.pdf>
- ⁻⁰⁴ <http://www2.ohchr.org/english/issues/defenders/complaints.htm>
- ⁻⁰⁵ <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>
- ⁻⁰⁶ <http://www2.ohchr.org/english/issues/defenders/index.htm>

Appendix 1: Table of supranational protection systems (continued)

Instruments	Institutional structures	Protection mechanisms
<ul style="list-style-type: none"> • OAS resolution on defenders. AG/RES. 2412 (XXXVIII-O/08)⁰⁷ • OAS resolution on defenders. AG/RES. 2280 (XXXVII-O/07)⁰⁸ • OAS resolution on defenders. AG/RES. 2177 (XXXVI-O/06)⁰⁹ • OAS resolution on defenders. AG/RES. 2067 (XXXV-O/05)¹⁰ • OAS resolution on defenders. AG/RES. 2036 (XXXIV-O/04)¹¹ • OAS resolution on defenders. AG/RES. 1920 (XXXIII-O/03)¹² • OAS resolution on defenders. AG/RES. 1842 (XXXII-O/02)¹³ • OAS resolution on defenders. AG/RES. 1818 (XXXI-O/01)¹⁴ • OAS resolution on defenders. AG/RES. 1711 (XXX-O/00)¹⁵ • OAS resolution on defenders. AG/RES. 1671 (XXIX-O/99)¹⁶ 	<ul style="list-style-type: none"> • Organization of American States⁰¹⁷ • IACHR Human Rights Defenders Unit⁰¹⁸ 	<ul style="list-style-type: none"> • Complaints before the IACHR⁰¹⁹ • Protective Measures of the Protective Measures IACHR⁰²⁰ • Cases before the IACHR⁰²¹ • Provisional Measures of the Provisional Measures IACHR⁰²²

America

⁰⁷ http://www.oas.org/DIL/AGRES_2412.doc

⁰⁸ <http://www.civil-society.oas.org/General%20Assembly%20Resolutions/Panama/AG%20RES%202280%20ENG.doc>

⁰⁹ <http://www.civil-society.oas.org/General%20Assembly%20Resolutions/Sto%20Domingo/Eng/AG%20RES%202177%20english.doc>

¹⁰ <http://www.civil-society.oas.org/General%20Assembly%20Resolutions/For%20Lauderdale/Eng/G-RES.%202067-XXXV-O-05%20ENG.doc>

¹¹ [http://www.sunmit-america.org/OAS%20General%20Assembly/XXXIV_GA-Quito/AGRES_2036_\(XXXIV-O-04\).doc](http://www.sunmit-america.org/OAS%20General%20Assembly/XXXIV_GA-Quito/AGRES_2036_(XXXIV-O-04).doc)

¹² http://www.oas.org/juridico/english/ga03/agres_1920.htm

¹³ http://www.oas.org/juridico/english/ga02/agres_1842.htm

¹⁴ <http://www.oas.org/Asamblea2001/documentsE/Decl-Resol.apro/ag-RES18XXXI-O-01.htm>

¹⁵ http://www.oas.org/juridico/english/agres_1711_xxxo00.htm

¹⁶ <http://www.oas.org/juridico/english/ga-res99/eres1671.htm>

¹⁷ <http://www.oas.org/en/default.asp>

¹⁸ <http://www.cidh.org/defensores/defensores.htm>

¹⁹ <http://www.cidh.org/DefaultE.htm>

²⁰ <http://www.cidh.org/medidas.eng.htm>

²¹ http://www.corteidh.or.cr/denuncias_consultas.cfm

²² <http://www.corteidh.or.cr/medidas.cfm>

Appendix 1: Table of supranational protection systems (continued)

Instruments	Institutional structures	Protection mechanisms
<ul style="list-style-type: none"> • First review of the application of EU guidelines on human rights defenders.⁶²³ • Council Conclusions on EU Guidelines on human rights defenders⁶²⁴ • Declaration of the Council of Europe on defenders⁶²⁵ 	<ul style="list-style-type: none"> • Council of Europe and its Commissioner for Human Rights⁶²⁶ • European Commissioner on Human Rights: Defenders⁶²⁷ • Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR)⁶²⁸ • OSCE: Focal Point for defenders and national human rights institutions⁶²⁹ 	<ul style="list-style-type: none"> • On-site visits to countries • Reports to bodies

Europe

⁶²³ http://www.protectionline.org/IMG/pdf/AnnexII_EU_Guidelines_evaluation_en06.pdf

⁶²⁴ http://www.protectionline.org/IMG/pdf/EU_conclusions_guidelines_HRD_120606.pdf

⁶²⁵ [http://wcd.coe.int/ViewDoc.jsp?Ref=CM\(2008\)5&Language=lanEnglish&Ver=ad&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](http://wcd.coe.int/ViewDoc.jsp?Ref=CM(2008)5&Language=lanEnglish&Ver=ad&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

⁶²⁶ http://www.coe.int/t/commissioner/default_en.asp

⁶²⁷ http://www.coe.int/t/commissioner/activities/themes/hrd_en.asp

⁶²⁸ <http://www.osce.org/odihr/>

⁶²⁹ http://www.osce.org/documents/html/pdf/html/28244_en.pdf.html

Appendix 1: Table of supranational protection systems (continued)

Instruments	Institutional structures	Protection mechanisms
<p>Declarations on Defenders:</p> <ul style="list-style-type: none"> Grand Bay Declaration (1999)⁶³⁰ Kigali Declaration (2003)⁶³¹ Resolution on the protection of African defenders (2004)⁶³² 	<ul style="list-style-type: none"> Special Rapporteur on Human Rights Defenders in Africa⁶³³ 	<ul style="list-style-type: none"> Presentation of complaints to the Special Rapporteur on Human Rights Defenders of the African Commission on Human Rights Missions to countries Reports to the African Union

Africa/African Union

⁶³⁰ http://www.achpr.org/english/declarations/declaration_grand_bay_en.html

⁶³¹ http://www.achpr.org/english/declarations/declaration_kigali_en.html

⁶³² http://www.achpr.org/english/_info/hrd_res_appoin_3.html

⁶³³ http://www.achpr.org/english/_info/index_hrd_en.html

Appendix 2: National protection systems in the Americas

Country	Declarations, legislation and policies on defenders	Legislation and policies on witnesses and victims	State and institutional frameworks	Non-governmental frameworks for defenders
Peru	<ul style="list-style-type: none"> • There is no legislation for protecting defenders • On 22 February 2007 the Minister of Justice made an official request to the President of the Commission on Justice and Human Rights of the Congress of the Republic to include within Bill No. 175/2006, on “Procedures Relating to the Granting of Privileges for Effective Collaboration and on the System of Protection for Collaborators, Injured Parties, Witnesses and Experts”, specific measures to offer protection to human rights defenders. However nothing has been implemented to date⁻⁰¹ • Report of the Ombudsman (Ombudsman’s Report No. 112), which recommended including defenders in Bill No. 175/2006⁻⁰² 	<ul style="list-style-type: none"> • Law No. 27378, which establishes privileges for effective collaboration in the sphere of organised crime⁻⁰³ • Bill No. 175/2006⁻⁰⁴ 	<ul style="list-style-type: none"> • Witness protection programme 	<ul style="list-style-type: none"> • Risk Assessment Committee of the National Human Rights Commission

⁻⁰¹ http://www.justiciaviva.org.pe/nuevos/2005/septiembre/29/defensorial97_recomendaciones.pdf

⁻⁰² <http://www.defensoria.gob.pe/descarga.php?pb=917>

⁻⁰³ <http://190.41.250.173/frj/> - see “el caso peruano” within “anticorrupción” section.

⁻⁰⁴ http://www.justiciaviva.org.pe/nuevos/2005/septiembre/29/defensorial97_recomendaciones.pdf

Appendix 2: National protection systems in the Americas (continued)

Country	Declarations, legislation and policies on defenders	Legislation and policies on witnesses and victims	State and institutional frameworks	Non-governmental frameworks for defenders
Colombia	<ul style="list-style-type: none"> Law No. 418 of 1997, under which instruments for seeking coexistence and effectiveness of justice are set out and other provisions issued, and which orders the Ministry of the Interior to put into operation a programme of protection for people who find themselves in a situation of risk against their lives, physical well-being, safety or freedom, for reasons related to political or ideological violence or to internal armed conflict⁻⁰⁵ Mindefensa Directive 09 of 2003. Policies of the National Ministry of Defence relating to the protection of the human rights of Trades Unionists and Human Rights Defenders⁻⁰⁶ Decree No. 2788 of 2003, under which the Regulations and Risk Assessment Committee of the Protection Programme of the Human Rights Department of the Interior and Justice Ministry are unified and regulated⁻⁰⁷ Decree No. 2816 of 2006, "under which the Human Rights Protection Programme of the Department of the Interior and Justice Ministry is drawn up and finalised and other provisions are adopted"⁻⁰⁸ Resolution No. 2138 of the Interior and Justice Ministry, under which the manual of definitions, uses and procedures of the Human Rights Protection Programme measures is adopted. 	<ul style="list-style-type: none"> Public Prosecutor's Witness Protection Programme⁻⁰⁹ 	<ul style="list-style-type: none"> General Protection Programme of the Human Rights Department of the Colombian Interior and Justice Ministry⁻¹⁰ 	<ul style="list-style-type: none"> Non-Governmental Protection Programme for Defenders of Human Rights in Colombia. (PNGPDDH): "Somos Defensores" (We are Defenders)⁻¹¹

⁻⁰⁵ <http://www.disaster-info.net/desplazados/legislacion/LEY418de1997.pdf>

⁻⁰⁶ <http://www.hchr.org.co/publico/comunicados/2003/cp0318.pdf>

⁻⁰⁷ http://www.presidencia.gov.co/prensa_new/decretoslinea/2003/octubre/02/dec2788021003.pdf

⁻⁰⁸ http://www.presidencia.gov.co/prensa_new/decretoslinea/2006/agosto/22/dec2816220806.pdf

⁻⁰⁹ <http://www.fiscalia.gov.co/PAC/general/Sistemapenal/Proteccion.htm>

⁻¹⁰ <http://www.mij.gov.co/Content/newsdetailmore.asp?id=1467&idcompany=2&idmenucategory=142>

⁻¹¹ <http://www.somosdefensores.org/>

Appendix 2: National protection systems in the Americas (continued)

Country	Declarations, legislation and policies on defenders	Legislation and policies on witnesses and victims	State and institutional structures	Non-governmental structures for defenders
Guatemala	<ul style="list-style-type: none"> Commitment No. 7 of the Global Commitment on Human Rights (AGDH) signed on 29 March 1994 by the Government of Guatemala and the Guatemalan National Revolutionary Unit (URNG)¹² Internal Agreement No. 11-2004 of the Presidential Commission on Human Rights for Guatemala (COPREDEH) created the Coordinating Unit for the Protection of Human Rights Defenders, Officers of the Law and Media Personnel Public Policy Project of Prevention and Protection for Human Rights Defenders and Other Vulnerable Groups Proposal for a Manual on Prevention and Protection for Human Rights Defenders and Other Vulnerable Groups Proposal for a list of Measures for the Prevention and Protection for Human Rights Defenders and Other Vulnerable Groups Ministerial Agreement No. 103-2008.¹³ Guatemala, 10 January 2008 	<ul style="list-style-type: none"> Law for the Protection of Parties to Legal Proceedings and People Linked to the Penal Justice Administration¹⁴ 	<ul style="list-style-type: none"> Coordinating Unit for the Protection of Human Rights Defenders, Officers of the Law, Journalists and Media Personnel of the Presidential Commission on Human Rights of Guatemala (COPREDEH)¹⁵ Public Prosecutor's Office for crimes against human rights activists, officers of the law, trades unionists and journalists divided into three public prosecution agencies each one comprising three public prosecutors Authority for the Analysis of Attacks against Human Rights Defenders in Guatemala, assigned to the First Deputy Ministry of the Ministry of the Interior 	<ul style="list-style-type: none"> Human Rights Defenders Protection Unit (UDEFEFUGUA)¹⁶

¹² <http://www.congreso.gob.gt/Docs/PAZI/ACUERDO%20GLOBAL%20SOBRE%20DERECHOS%20HUMANOS.pdf>

¹⁵ http://www.minex.gob.gt/index.php?Itemid=39&id=1225&option=com_content&task=view

¹³ <http://www.congreso.gob.gt/archivos/acuerdos/2008/gtamx103-2008.pdf>

¹⁶ <http://www.udefegua.org/>

¹⁴ http://www.congreso.gob.gt/lt/mostrat_lcy.asp?id=868

Appendix 2: National protection systems in the Americas (continued)

Country	Declarations, legislation and policies on defenders	Legislation and policies on witnesses and victims	State and institutional structures	Non-governmental structures for defenders
Brazil	<ul style="list-style-type: none"> Decree No. 6.044, of 12 February 2007 approving the National Policy for the Protection of Human Rights Defenders - PNPDDH, defining the time limit for the development of the National Plan for the Protection of Human Rights Defenders and other provisions¹⁷ Bill for the protection of defenders (under discussion in 2009; see appendices to this volume) 		<ul style="list-style-type: none"> National Programme for the Protection of Human Rights Defenders¹⁸ 	<ul style="list-style-type: none"> Participation of defenders' organisations in this national programme

¹⁷ http://legislacao.planalto.gov.br/legisla/legislacao.nsf/Vivo_Identificacao/DEC%206.044-2007?OpenDocument

¹⁸ http://www.presidencia.gov.br/estrutura_presidencia/sedh/protacao/defensores/

Appendix 2: National protection systems in the Americas (continued)

Country	Declarations, legislation and policies on defenders	Legislation and policies on witnesses and victims	State and institutional structures	Non-governmental structures for defenders
Mexico	<ul style="list-style-type: none"> Internal Regulations establishing the Programme for the Support of Human Rights Defenders, under the Unit for the Promotion and Defence of Human Rights of the Ministry of the Interior Agreement of the Board of the Commission on Human Rights of the Federal District, through which various articles of the Commission's Internal Regulations are amended and supplemented 	<ul style="list-style-type: none"> Witness Protection System of the State Attorney General's Office (PGR) 	<ul style="list-style-type: none"> Unit for the Support of Social Organisations, of the secretariat of the Interior Ministry of Mexico (UAOS)⁶¹⁹ Programme on Offences against Journalists and Civil Human Rights Defenders of the National Commission on Human Rights⁶²⁰ Rapporteur for Freedom of Speech and Support for Human Rights Defenders⁶²¹ Unit for the Promotion and Defence of Human Rights (UPDDH) of the Ministry of the Interior (SEGOB)⁶²² 	<ul style="list-style-type: none"> "<i>Todos los derechos para todos</i>" (All rights for all) network

⁶¹⁹ <http://www.organizacionessociales.segob.gob.mx/Portal/PTMain.php?nIdHeader=104&nIdPanel=81&nIdFooter=79>

⁶²¹ <http://www.cndh.org.mx/index.php?id=bol10907>

⁶²² <http://www.gobernacion.gob.mx/Portal/PTMain.php?pagina=upddh>

⁶²⁰ <http://www.cndh.org.mx/progate/agoperio/presenta.htm>

Appendix 3: Example of table of protection measures for defenders (extract from the Colombian Protection Programme)¹

Preventive Measures

- Empowerment
- Self-protection and self-security course
- Instruction in Preventive Measures
- National police patrols

Individual or Group Protection Measures	Soft Measures	Transfer	Temporary relocation taking the defender and his/her family from one area and resettlement in another which may include:	<ul style="list-style-type: none"> • National air transport • Help with land transport • Help with temporary relocation, up to three minimum wages for up to three months • Help with removals • Mobile telephones • Radio telephones, where there is no mobile signal or coverage • Antenna or means of satellite communication • Armour-plating of doors and windows • Closed circuit television • Metal detectors • Cars or paid use of taxis • Armour-plated cars • Bullet-proof jackets
		Means of communication		
	Means of transport	Measures in offices or homes	Secure means of transport, to avoid the use of transport that increases vulnerability	
	Armour-plating			

Appendix 3: Example of table of protection measures for defenders (extract from the Colombian Protection Programme)¹ (continued)

Individual or Group Protection Measures	Severe measures	Bodyguards	Personal protective equipment	
				<ul style="list-style-type: none">• Trained bodyguards (with the possibility of them being offered by different security forces)• Trusted bodyguards where the person who guarantees the safety of the defender is chosen by him/her, becomes part of the DAS, which is always the case when they meet the technical requirements (driving) and prove to be trustworthy

1

As we have mentioned in another part of this document, the second volume of this study goes into detailed analysis of these and other operational methods for the protection of defenders.

Protection of
human rights defenders:
Best practices and lessons learnt

Annexes

Annex 1: Assessing risk: threats, vulnerabilities and capacities

There is no widely accepted definition of risk, but we can say that risk refers to possible events, however uncertain, that result in harm.

In any given situation, everyone working on human rights may face a common level of danger, but not everyone is equally vulnerable to that general risk just by being in the same place. Vulnerability - the possibility that a defender or a group will suffer an attack or harm - varies according to several factors, as we will now see.

An example: *There may be a country where the Government poses a general threat against all kinds of human rights work. This means that all defenders could be at risk. But we also know that some defenders are more at risk than others; for instance, a large, well established NGO based in the capital will probably not be as vulnerable as a small, local NGO. We might say that this is common sense, but it can be interesting to analyse why this happens in order to better understand and address the security problems of defenders.*

The level of risk facing a group of defenders increases in accordance with threats that have been received and their vulnerability and capacities to those threats, as presented in this equation:¹

$$\text{RISK} = \frac{\text{THREATS X VULNERABILITIES}}{\text{CAPACITIES}}$$

Threats

Threats are the possibility that someone will harm somebody else's physical or moral integrity or property through purposeful and often violent action.² A threat assessment analyses the likelihood of a threat being put into action.

Defenders can face many different threats in a conflict scenario, including targeting, common crime and indirect threats.

The most common type of threat – targeting - aims to hinder or change a group's work, or to influence the behaviour of the people involved. Targeting is usually closely related to the work done by the defenders in question, as well as to the interests and needs of the people who are opposed to the defenders' work.

Incidental threats arise at least from:

- Being in fighting areas in armed conflicts ('being in the wrong place at the wrong time').
- Common criminal attacks, especially if defenders' work brings them to risky areas. Many cases of targeting are carried out under the cover of 'ordinary' criminal incidents.

Targeting (targeted threats) can also be seen in a complementary way: Human rights defenders may come across direct T (declared) threats, for example by receiving a death threat (see Chapter 1.3, for how to assess declared threats). There are also cases of indirect threats, when a defender close to your work is threatened and there are reasons to believe that you might be threatened next.

A summary of kinds of threats:

- Targeting (direct/declared) threats, indirect threats): threats due to your work.
- Threats of common criminal attacks.
- Incidental threats: threats due to fighting in armed conflicts.

¹ Adapted from Van Brabant (2000) and REDR.

² Dworken (1999).

Vulnerabilities

Vulnerability is the degree to which people are susceptible to loss, damage, suffering and death in the event of an attack. This varies for each defender or group, and changes with time. Vulnerability is always relative, because all people and groups are vulnerable to some extent. However, everyone has their own level and type of vulnerability, depending on their circumstances. Let's see some examples:

- Vulnerability can be about location: a defender is usually more vulnerable when s/he is out on during a field visit than when s/he is at a well known office where any attack is likely to be witnessed.
- Vulnerability can include lack of access to a phone, to safe ground transportation or to proper locks in the doors of a house. But vulnerability is also related to a lack of networks and shared responses among defenders.
- Vulnerability may also have to do with team work and fear: a defender that receives a threat may feel fear, and his/her work will be affected by fear. If s/he has no a proper way to deal with fear (somebody to talk to, a good team of colleagues, etc) chances are that s/he could makes mistakes or take poor decisions that may lead him/her to more security problems.

(There is a combined check-list of possible vulnerabilities and capacities at the end of this chapter.)

Capacities

Capacities are the strengths and resources a group or defender can access to achieve a reasonable degree of security. Examples of capacities could be training in security or legal issues, a group working together as a team, access to a phone and safe transportation, to good networks of defenders, to a proper strategy for dealing with fear, etc.

In most cases, vulnerabilities and capacities are two sides of the same coin.

For example: *Not knowing enough about your work environment work is a vulnerability, while having this knowledge is a capacity. The same can be said about having or not access to safe transportation or to good networks of defenders.*

However, in most cases behaviour is a determining factor

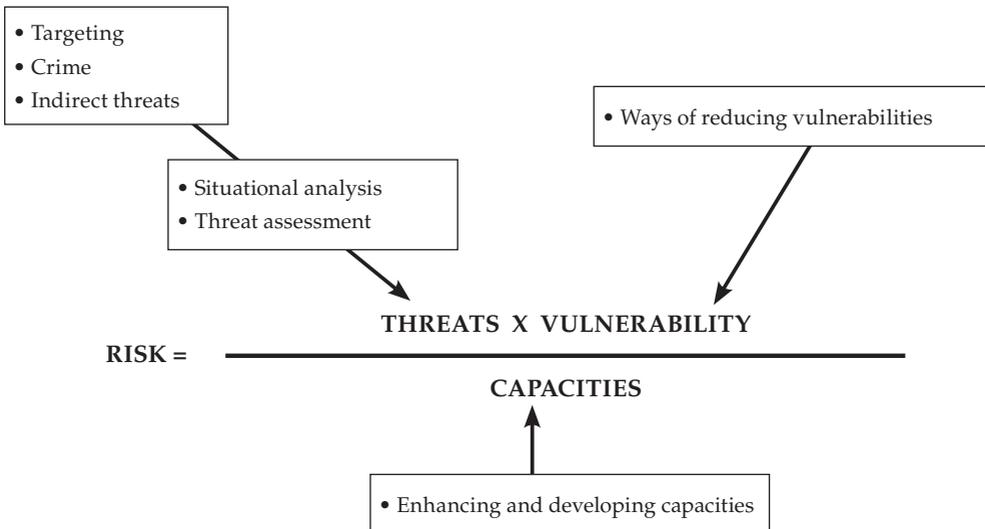
For example: *Having a phone can potentially be both a vulnerability and a capacity, depending on how it is going to be used. If it is used loudly and confidential information is communicated, it is a vulnerability. If it used discretely and confidential information is coded, it is a capacity.*

(There is a combined check-list of possible vulnerabilities and capacities at the end of this chapter).

In summary

In order to reduce risk to acceptable levels -namely, to protect- you must:

- Reduce threats
- Reduce vulnerability factors
- Increase protection capacities



Risk is a dynamic concept that changes with time and with variations in the nature of threats, vulnerabilities and capacities. This means risk must be assessed periodically, especially if your working environment, threats or vulnerabilities change. For instance, vulnerabilities can increase if a change of leadership leaves a group of defenders in a weaker position than before. Risk increases dramatically with a clear and present threat. In such cases, it is not safe to try to reduce risk by increasing capacities, because that takes time.

Security measures, such as legal training or protective barriers, can reduce risk by reducing vulnerability factors. However, such measures do not confront the main source of risk, i.e. the threats, nor the will to carry them out, especially in situations where perpetrators know they are likely to go unpunished. All major interventions in protection should therefore aim to reduce threats, in addition to reducing vulnerability and enhancing capacity.

An example: *A small group of defenders are working on land property issues in a town. When their work starts affecting the local landowner's interests they receive a clear death threat. If you apply the risk equation to their security situation, you'll see that the risk these defenders face is very high, above all due to the death threat. If you want to reduce that risk it is probably not the moment to start changing the locks on the door of their office (because the risk is not related to a break-in at the office), nor the moment to buy a cell phone for each defender (even if communication might be important to security it is unlikely to be enough if there is someone coming to kill you). In this case, a more relevant strategy would be to work on networking and generating political responses to directly confront the threat (and if that is unlikely to be effective quickly the only way to reduce the risk significantly might be to reduce the defenders exposure, perhaps by moving away for a while – being able to relocate to a safe place is also a capacity).*

Making and implementing such a decision also involves a psychosocial capacity for the defender to see that withdrawal is not a synonym of cowardice or defeat... Withdrawing can allow reflection and resuming work once better equipped.

Vulnerabilities and capacities, as well as some threats, may vary according to gender and age. You therefore need to break down your findings accordingly.

Vulnerabilities and capacities assessment

Designing a vulnerability and capacities assessment for a given group (or person) involves defining the group itself (a community, collective, NGO, individuals, etc), the physical area where it is located and the time line (your vulnerability profile will change and evolve over time). Then you can proceed to assess vulnerabilities and capacities, using the chart 1.3 at the end of this chapter as guidance.

Please note: The vulnerabilities and capacities assessment must be seen as an open-ended activity aimed at building on existing information to maintain an accurate picture of a constantly evolving situation. When assessing vulnerabilities and capacities, it is important to first draw the current inventory and only then, list the potential and desirable ones. Later, you will need to establish a process to achieve the latter.

Chart 3:

Information needed to assess a group's vulnerabilities and capacities.

"Note: Generally speaking, the information in the right column shows vulnerabilities or capacities of each component"

VULNERABILITIES AND CAPACITIES	INFORMATION NEEDED TO ASSESS THE DEFENDERS' VULNERABILITIES OR CAPACITIES IN RELATION TO THOSE COMPONENTS
Components related to geographical, physical and technical features	
Exposure	The need to be in, or to pass through, dangerous areas to carry out normal daily or occasional activities, with threatening actors in those areas.
Physical structures	The characteristics of housing (offices, homes, shelters); building materials, doors, windows, cupboards. Protective barriers. Night lights.
Offices and places open to public	Are your offices open to visitors from the general public? Are there areas reserved only for personnel? Do you have to deal with unknown people that come to your place?
Hiding places, escape routes	Are there any hiding places? How accessible are they (physical distance) and to whom (for specific individuals or the whole group)? Can you leave the area for a while if necessary?
Access to the area	How difficult is it for outside visitors (government officials, NGOs, etc.) to access the area, for example in a dangerous neighbourhood? How difficult is access for threatening actors?
Transport and accommodation	Do defenders have access to safe transportation (public or private)? Do these have particular advantages or disadvantages? Do defenders have access to safe accommodation when travelling?
Communication	Are telecommunications systems in place (radio, telephone)? Do defenders have easy access to them? Do they work properly at all times? Can they be cut by threatening actors before an attack?
Components related to conflict	
Links to conflict parties	Do defenders have links with conflict parties (relatives, from the same area, same interests) that could be unfairly used against the defenders?
Defenders' activities affecting a conflict party	Do defenders' work directly affect an actor's interests? (For example, when protecting valuable natural resources, the right to land, or similar potential targets for powerful actors) Do you work on a specially sensitive issue for powerful actors? (such as land ownership, for example)
Transportation of items and goods and written information	Do defenders have items, goods or information that could be valuable to armed groups, and therefore increase the risk of targeting? (Petrol, humanitarian aid, batteries, human rights manuals, health manuals, etc.)
Knowledge about fighting and mined areas	Do you have information about the fighting areas that could put you at risk? And about safe areas to help your security? Do you have reliable information about mined areas?

Components related to the legal and political system	
Access to authorities and to a legal system to claim your rights	Can defenders start legal processes to claim their rights? (Access to legal representation, physical presence at trials or meetings, etc.) Can defenders gain appropriate assistance from relevant authorities towards their work and protection needs?
Ability to get results from the legal system and from authorities	Are defenders legally entitled to claim their rights? Or are they subjects to repressive internal laws? Can they gain enough clout to make authorities take note of their claims?
Registration, capacity to keep accounts and legal standars	Are defenders denied legal registration or subjected to long delays? Is their organisation able to keep proper accounts and meet national legal standards? Do you use pirate computer software?
Components related to the management of information	
Sources and accuracy of information	Do defenders have reliable sources of information to base accusations on? Do defenders publicise information with the necessary accuracy and method?
Keeping, sending and receiving information	Can defenders keep information in a safe and reliable place? Could it get stolen? Can it be protected from viruses and hackers? Can you send and receive information safely? Can defenders differentiate top secret and confidential information? Do defenders keep information on them even during non-working time?
Being witnesses or having key information	Are defenders key witnesses to raise charges against a powerful actor? Do defenders have relevant and unique information for a given case or process?
Having coherent and acceptable explanation about your work and aims	Do the defenders have a clear, sustainable and coherent explanation of their work and objectives? Is this explanation acceptable, or at least tolerated, by most/all stakeholders (specially armed ones)? Are all members of the group able to provide this explanation when requested - for example at a checkpoint -?
Components related to social and organisational features	
Existence of a group structure	Is the group structured or organised in any way? Does this structure provide an acceptable level of cohesiveness to the group?
Ability to make joint decisions	Does the group's structure reflect particular interests or represent the whole group (extent of membership)? Are the main responsibilities carried out and decision-making done by only one or a few people? Are back-up systems in place for decision-making and responsibilities? To what degree is decision-making participatory? Does the group's structure allow for: a) joint decision making and implementation, b) discussing issues together, c) sporadic, ineffective meetings, d) none of the above?
Security plans and procedures	Are security rules and procedures in place? Is there a broad understanding and ownership of security procedures? Do people follow the security rules? (For more details, please see Chapter 1.8)

Security management outside of work (family and free time)	How do defenders manage their time outside of work (family and free time)? Alcohol and drug use represent great vulnerabilities. Relationships can also result in vulnerabilities (as well as strengths) How are families and friends involved in the defenders' activities?
Working conditions	Are there proper work contracts for everyone? Is there access to emergency funds? Insurances?
Recruiting people	Do you have proper procedures for recruiting personnel or collaborators or members? Do you have a specific security approach for your occasional volunteers (such as students, for example) or visitors to your organization?
Working with people or with interface organizations	Is your work done directly with people? Do you know these people well? Do you work with an organization as an interface for your work with people?
Taking care of witness or victims we work with	Do we assess the risk of victims and witnesses, etc, when we are working on specific cases? Do we have specific security measures when we meet them or when they come to our office? If they receive threats, how do we react?
Neighbourhood and social surroundings	Are defenders well socially integrated in the local area? Do some social groups see defenders' work as good or harmful? Are defenders surrounded by potentially hostile people (neighbours as informers, for example)? Are supportive neighbours part of the defenders' alarm system?
Mobilization capacity	Are defenders able to mobilize people for public activities?
Components related to psychosocial impact (group/individuals)	
Ability to manage stress and fear	Do key individuals, or the group as a whole, feel confident about their work? Do group/community members clearly express feelings of unity and joint purpose (in both words and action)? Are stress levels undermining good communications and interpersonal relationships? Do people have access to external psychological support and/or have developed internal psychosocial skills?
Deep feelings of pessimism or persecution	Are feelings of depression and loss of hope being clearly expressed (in both words and action)?
Components related to society, culture and religion	
Discrimination	Are defenders discriminated (both outside and inside the organisation) on the basis of gender, ethnicity, religion or different sexual orientation? Is there confusion between human, social, economic, identity, cultural and religious rights?
Components related work resources	
Ability to understand work context and risk	Do defenders have access to accurate information about their working environment, other stakeholders and their interests? Are defenders able to process that information and get an understanding of threats, vulnerabilities and capacities?
Ability to define action plans	Can defenders define and, in particular, implement action plans? Are there previous examples of this?

Ability to obtain advice from well informed sources	Can the group obtain reliable advice? From the right sources? Can the group make independent choices about which sources to use?
People and amount of work	Do the people or personnel available match the amount of work needed? Can you plan field visits in teams (at least two people)?
Financial resources	Do you have enough financial resources for your security? Can you manage cash in a safe way?
Knowledge about languages and areas	Do you know the languages needed for the work in this area? Do you know the area properly? (roads, villages, public phones, health centres, etc.)
Components related to national and international contacts and media	
Access to national and international networks	Do defenders have national and international contacts? To visiting delegations, embassies, other governments, etc? To community leaders, religious leaders, other people of influence? Can you issue urgent actions via other groups? Do you have access to particular organisations or membership status that enhances your protection capacities?
Access to media and ability to obtain results from them	Do defenders have access to media (national, international)? To other media (independent media)? Do defenders know how to manage media relations properly?

A risk scales: Another way to understand risk

A scales provides another way to understand this concept of risk: This is something we might call ... a "risk-meter". If we put two boxes with our threats and vulnerabilities on one of the plates of the scales, and another box with our capacities on the other plate, we will see how our risk gets increased or reduced:

FIG 1

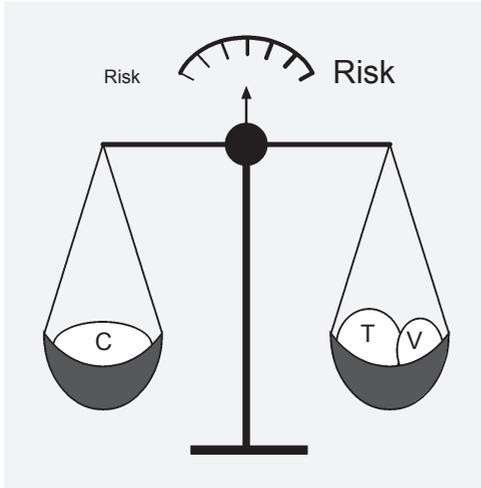
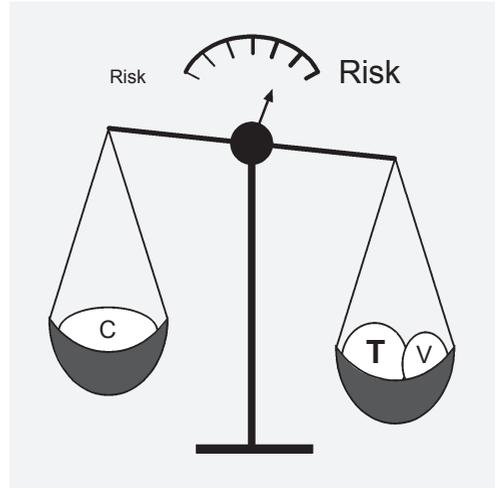
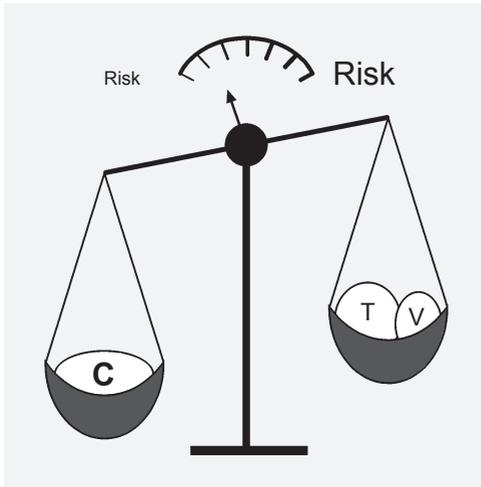


FIG. 2



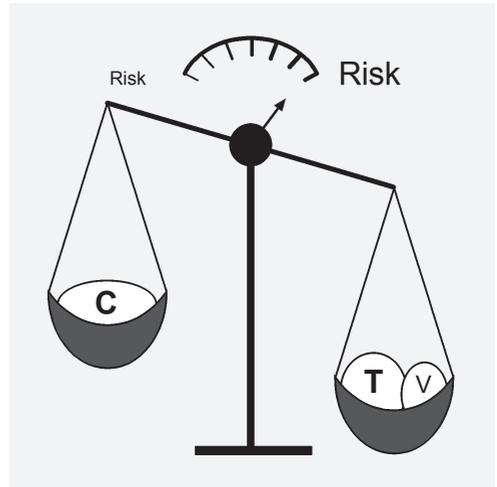
The more threats and vulnerabilities we have, the more risk we face.

FIG. 3



The more capacities we have, the less risk we face. And for reducing the risk, we can reduce our threats and our vulnerabilities, as well as increase our capacities.

FIG. 4



But ... Look at what happens if we have some big threats: Never mind we try to increase our capacities at that very moment: The scales will show a high level of risk anyway!

Annex 2: Brazil: Bill for the protection of defenders (2009)

BILL

Protection Programme for Human Rights Defenders (PPHRD) under the Special Secretariat for Human Rights of the Presidency of the Republic.¹

THE NATIONAL PARLIAMENT DECREES:

Chapter I

On the protection program for human rights defenders

ART. 1 This law establishes a Protection Program for Human Rights Defenders (PPHRD) under the Special Secretariat on Human Rights of the Presidency of the Republic. Its objective is the application of measures to protect persons or entities whose rights are threatened as a result of their activities promoting or protecting human rights.

ART. 2 Under this law human rights defenders are defined as:

- I natural persons who act in isolation or as part of a group, organisation or social movement for the promotion or defence of human rights;
- II legal entities, groups, organisations or social movements which act with the purpose of defending human rights.

ART. 3 The PPHRD focuses on human rights defenders whose rights have been violated or threatened as a result of their actions or aims.

- §1 The PPHRD protection measures may include or be extended to the spouse, companion, ascendants, descendants and dependent persons who live with the human rights defender.
- §2 The protection measures provided by the PPHRD will be based on the seriousness of the coercion or threat, as well as the difficulty involved in preventing or curbing them using conventional public security mechanisms.

ART. 4 Attacks or threats against a human rights defender are defined as any threatening behaviour intended to prevent the defender continuing his/her personal or institutional activities, and may be aimed directly or indirectly at that person, his/her relatives, friends or group members in particular by:

- I threatening his/her physical, mental, moral or economic well-being and cultural freedom or beliefs;
- II adopting discriminatory behaviour of any kind.

- §1 Inclusion in the PPHRD, the adoption of safety restrictions and other measures to protect human rights defenders are subject to their consent.
- §2 The protection of the human rights defender under art. 2, paragraph II, may cover all his/her associates or assets, depending on their relationship to the interests under threat.
- §3 Under art. 2, paragraph II, it is not necessary to seek the consent of the legal entity, institution, group, organisation or social movement for its members to be included in the PPHRD, provided they meet the requirements of article 11.

ART. 5 The PPHRD is a confidential programme of an exceptional nature and priority will be given to cooperation between federal bodies, in order to guarantee the defender's safety and enable him/her to continue to exercise his/her activities and maintain his/her physical well-being.

- §1 The Executive may sign pacts, agreements, modifications or partnerships with states, the Federal District and non-governmental organisations on how to implement the PPHRD in order to adopt the measures included in it.
- §2 To implement the PPHRD on a local level, the federal entities that are parties to the pact should set up a local deliberation council and appoint a local executive coordinator.

¹ This is not an official translation and should not be used for legal purposes..

Chapter II
The bodies of the PPHRD

ART. 6 The highest authority of the PPHRD shall be the National Deliberation Council, chaired by the National Executive Coordinator.

ART. 7 The National Deliberation Council shall be part of the Special Secretariat for Human Rights of the Presidency of the Republic, and will:

- I discuss the implementation of the National Protection Policy for Defenders of Human Rights, in accordance with this law or its regulations;
- II discuss requests for inclusion in the PPHRD;
- III rule on appeals lodged against the decisions of the local deliberation councils;
- IV support the implementation of the PPHRD in the states and the Federal District;
- V function as a PPHRD appeal body;
- VI other functions will be defined in the regulations.

Annex: The National Deliberation Council will have equal representation from the public authorities and members of civil society organisations that defend human rights, in the manner described by this regulation.

ART. 8 The National Executive Coordinator shall:

- I implement the public policy on protection of human rights defenders, complying with the requirements of the PPHRD;
- II deal with requests for inclusion in the PPHRD and pass them on to the National Deliberation Council for decision;
- III suggest security measures that match the PPHRD's cases to the deliberation council of the federal entities;
- IV propose the extension or reduction of security measures to the local deliberation council of the federal entities;
- V decide on provisional inclusion in the PPHRD in urgent cases, and on the adoption of security measures necessary to ensure the protection of human rights defenders;
- VI urge the competent authorities to take legal and administrative measures for the protection of human rights defenders;
- VII monitor, with the cooperation of other federal bodies, the implementation of the recommendations, resolutions and provisional measures of international bodies involved in protecting the work of human rights defenders, of which Brazil is a member;
- VIII create and maintain databases to consolidate statistics on violations of the safety and physical well-being of human rights defenders;
- IX promote, in collaboration with other federal bodies, action and policies at local level for the protection of the work of human rights defenders;
- X propose cooperation with international bodies for the protection of human rights defenders.

§1 The National Executive Coordinator will be supported by multidisciplinary technical expertise to be defined in this regulation.

§2 Inclusion in the PPHRD under art. 8, paragraph V, shall not imply monthly financial assistance, and must be ratified by the National Deliberation Council in the first meeting held after the incident.

ART. 9 The local deliberation councils are responsible for, inter alia:

- I discussing requests for inclusion in the PPHRD within their remit;
- II defining the security measures to be adopted for each case in the PPHRD. Financial assistance can only be granted by local deliberation councils;
- III deciding on appeals lodged against the decisions of the local executive coordinator;
- IV implementing and structuring the PPHRD;
- V seeking associations to extend and improve the PPHRD;
- VI requesting that the public authorities adopt measures guaranteeing the work of human rights defenders.

- §1 Appeals against decisions of the local deliberation councils shall be made to the National Deliberation Council.
- §2 The local deliberation council shall define the powers of the local executive coordinator according to the terms of this law and its applicable regulations.

Chapter III **On Protection Measures and Inclusion in the PPHRD**

ART. 10 The PPHRD shall include, inter alia, the following measures for human rights defenders, applied in isolation or in combination:

- I police protection;
 - II safe and suitable transport to carry out their activities;
 - III access to private radio frequencies of public security bodies, for the purposes of monitoring and making requests for help, in addition to the supply of suitable telecommunications equipment;
 - IV equipment for personal safety and for the security of the premises of the legal entity or group to which he/she belongs;
 - V adoption of measures to overcome the causes that led to inclusion in the PPHRD;
 - VI confidentiality of identity, appearance and personal data;
 - VII social, medical, psychological and legal support and assistance;
 - VIII monthly financial help to contribute to individual or family subsistence, if it is impossible for the human rights defender to hold a normal job or because he/she has no source of income;
 - IX support to meet civil and administrative obligations which require attendance in person;
 - X for civil servants or military personnel, temporary suspension of employment without forfeiting privileges and with a suspension of expiry dates;
 - XI change of residence or provisional accommodation to a secret location, compatible with protection;
 - XII transfer to the Protection Programme for Threatened Victims and Witnesses under Law 9.807 of 13 July 1999.
- §1 Monthly financial assistance shall be approved for a given period, and the maximum will be set by the National Deliberation Council at the start of each financial year.
 - §2 Measures that lead to the interruption of the human rights defender's work in his/her area of activity will only be implemented if strictly necessary for his/her security or that of his/her collaborators.
 - §3 The police force will provide the necessary collaboration and support to implement the PPHRD.
 - §4 Measures and provisions related to the PPHRD will be carried out and maintained in secret by the human rights defenders and the agents involved in carrying them out.

ART. 11. The following are requirements for the inclusion of the human rights defender in the PPHRD:

- I application for inclusion;
- II proof that the applicant's activities defend or are carried out with the intention of defending human rights;
- III established relationship between offences or threats and the subject's work as defender;
- IV acceptance of and compliance with its rules.

ART. 12. The application for inclusion in the PPHRD may be made by the human rights defender, any member of the organisation, beneficiaries of the defender's action through human rights networks, civil society organisations, the prosecution service or any other public body that has knowledge of the violation of human rights or the defender's vulnerability.

- §1 The application must be accompanied by documents or information to prove the person or the members of the organisation are human rights defenders, with a description of the threat or offence facing them.
- §2 The person concerned may request documents or information proving their involvement in human rights work and the resulting threats or offences against him/her from any public authority with the purpose of making an application.
- §3 The activities carried out in defence of human rights may be confirmed by documents and information and, if necessary, by the statutes of the entity that is to be included in the PPHRD.
- §4 The offence may be proven via statements, documents or any other form of legally admissible proof.

ART. 13. Continued inclusion in the PPHRD shall depend on the persistence of the threat, situation of vulnerability or effects of the offence.

Annex: The human rights defender may leave the PPHRD:

- I through personal choice or a formal decision taken by the majority of the members of the legal entity, institution, group, organisation or social movement;
- II by being forced to do so should they fail to comply with the rules, leading to further risk to the safety of other protected people or public agents responsible for protection.

Chapter IV On General Provisions

ART. 14. The local executive coordinator is responsible for taking suitable protection measures, which should have the consent of the human rights defender.

- §1 In the event of the human rights defender disagreeing with any of the protection measures proposed by the local executive coordinator, the adoption of other methods will depend on the signing of a statement of responsibilities and will only apply if the risks for the agents involved in the implementation of this measure do not increase.
- §2 In the case of legal entities, groups, organisations or social movements, the implementation of the protective measures can only be applied to members who give their consent.
- §3 The protective measures adopted within the scope of the PPHRD may be extended or withdrawn by the local executive coordinator according to the varied level of risk to which the defender is exposed.

ART. 15. The local executive coordinator shall make requests for appropriate protective measures to the competent authorities.

ART. 16. The Executive Power of the signatories to the agreement to implement the PPHRD shall provide the necessary training, resources or equipment to guarantee the safety of the public agents responsible for protecting the human rights defenders at risk.

ART. 17. The PPHRD may adopt measures to improve the training of the human rights defender under its protection with the intention of enhancing his/her safety.

ART. 18. Generally speaking the protective measures in Art. 10 are intended to:

- I facilitate mutual access to the intelligence systems of the different public entities responsible for public safety in the areas of activity of the human rights defender protected by the PPHRD;
- II enhance public safety;
- III provide the necessary public services to reduce the risks to human rights defenders;
- IV address the structural causes underlying the offences against the human rights defender, through comprehensive and coordinated action with the appropriate bodies and entities, including other federal entities.

Annex: Priority shall be given to the administrative and legal processes governing the assessment of the offences and the responsibility of the perpetrators, especially criminal investigations and trials in which the defender is involved as a victim or threatened witness, whether he/she is included in the PPHRD or the programme under Law 9.807 of 1999.

ART. 19. The Special Secretariat for human rights may set up a national inter-sectoral commission for the coordination of public bodies and federal entities with powers related to policies for human rights protection programmes.

ART. 20. The resources required for the implementation of the PPHRD shall come from the budget of the Special Secretariat for Human Rights.

ART. 21. The Union, the States and the Federal District, according to their respective powers, shall adopt measures to protect the work of legal entities and members of groups, organisations or social movements who find themselves in situations of risk or vulnerability as a result of their work promoting human rights.

ART. 22. This Law shall become definitive within ninety days of its publication.

ART. 23. This Law shall come into force on the date of its publication.

Brasilia,

MJ MPOG SEDH 00191 2008 PROTECION PROGRAMME FOR THREATENED HUMAN RIGHTS DEFENDERS

Brasilia, 30 October 2008

Most Excellent President of the Republic,

We submit the attached Bill “establishing the Programme for the protection of human rights defenders under threat – PPHRD– under the Special Secretariat for Human Rights of the Presidency” for the consideration of Your Excellency.

The issue emerged from discussions and debates held by members of the Working Group set up by Decrees nos. 66 and 89, both in 2003, tabled by the Special Secretariat for Human Rights, with the aim of presenting proposals for policies, actions and measures intended to guarantee the protection of human rights defenders.

The Working Group, coordinated by the Special Secretariat for Human Rights of the President of the Republic, was made up of representatives of the National Public Security Secretariat, the Federal Police, the Federal Traffic Police, the National Attorney Generals’ Council, the National Council of Police and Fire Service Commanders, the Military, the National Association of Police Officers, the Federal Prosecution Office, the Parliament, the Magistrates’ Association of Brazil, UNICEF, the Brazilian Bar and the NGOs ‘Tierra de Derechos’, ‘Movimiento Nacional de Derechos Humanos’ and ‘Centro de Justicia Global’.

International legislation was taken into account – particularly Resolution 53/144 of the UN General Assembly of 1998 – and the format of the Special Representations, both of the UN and Inter-American organisations at the heart of Resolution 1842 of the OAS. The result of this Working Group was that in October 2004 the Brazilian government, after making considerable progress with civil society organisations, officially implemented the National Programme for the Protection of Human Rights Defenders to be carried out within the remit of the Special Secretariat for Human Rights.

This programme supports the preparation of Bills n°. 2980 (2004) - which establishes the National Programme for the Protection of Human Rights Defenders and other matters, the work of MP Eduardo Valverde - n°. 3616 (2004) - which inserts a chapter in the Law governing the Programme on the Rights of Victims and Witnesses Under Threat - law n°. 9807/99 and other measures proposed by MP Iriny. Bill n°. 3616 (2004) was annexed to section 2980 (2004), and these are currently being examined by the parliamentary Constitution and Justice Commission , according to a report by MP Nelson Pellegrino, appointed on June 17th 2004.

We can assure you that the preparation of the parliamentary initiatives is intended to satisfy social demands for the formal establishment of a programme that protects the physical well-being, freedom and dignity of human rights defenders. It is obviously an initiative that we consider worthwhile.

Given that the proposals made by the MPs deal with issues that have their origin in a private initiative taken by the head of the executive, they suffer from what is known as ‘inherent defects’. Consider this: article 1 of Bill 2980 (2004) sets out to create a National Programme for the Protection of Human Rights Defenders within the remit of the Special Secretariat for Human Rights, and article 5 of Bill 3616 (2004) assigns new functions to the Federal Police and the Federal Traffic Police.

These provisions therefore suffer from the defect of not being not constitutional, in accordance with the terms of article 2 of the Federal Constitution, under which the powers of the Union are independent of each other yet act in harmony, and article 84, VI, also from the Political Charter, which gives the President of the Republic the power to determine, through a decree, the organisation and functioning of the Federal Administration when this does not increase costs and neither creates nor eliminates institutions, in the event of the initiative having its origins in ordinary law.

Progress was made in 2007 in the construction of the programme’s legal framework through wide-ranging debates in society, as a direct result of the vulnerability and threats suffered by our human rights defenders and social demands for the institutionalisation of guarantees for and protection of these citizens.

This process led to the creation of a National Policy for the Protection of Human Rights Defenders through Presidential Decree No. 6044/2007, which recognised the work of the defenders and highlighted the general principles of respect for human dignity, non-discrimination for reasons of gender, sexual orientation, ethnic or social origin, disability, nationality, occupation, race, religion, age, migratory status or any other status. It also recognised the promotion and guarantee of citizenship and human rights, respect for international treaties, human rights conventions and legislation and the universal dimension of human rights.

The PPHRD sets out to provide protection and assistance to individuals or groups, organisations or social movements for the promotion and protection of human rights and who are in a situation of risk or vulnerability as a result of their activities.

As a basic premise to understanding this policy, it is important to underline that all the efforts of the protection network for defenders are based on guaranteeing their physical well-being as agents that promote and protect human rights and denounce atrocities, eliminating delays in dealing with social issues, and impunity.

The PPHRD works along three lines: prevention, which basically consists of designing policies that deal with the causes of violations of the rights of human rights defenders and denouncing them, investigation of the threats and violations of human rights and the combination of public and federal policies to deal with the causes of these violations. There is therefore an urgent need for a law that establishes rules for organising and maintaining the protection of human rights defenders, establishing a programme and obtaining a commitment from the stakeholders involved.

At national level, the PPHRD has three state-level Coordinators and a General Coordination Institution committed to guaranteeing and protecting 45 (forty-five) defenders who are either under threat or in a vulnerable situation.

Sadly, we recall human rights defenders whose struggle was cut short, and whose deaths publicly highlighted the urgent need to find solutions for the social and economic problems that people experience in situations of vulnerability.

A symbol of the struggle for human rights was Dorothy Stang, a missionary from the Congregation of Notre Dame and a recognised defender of environmental causes and landless peasant farmers against timber merchants and stockbreeders. In 2004 she received the title of “Citizen of Pará” from the Legislative Assembly of the State of Pará and the “José Carlos Castro” Prize, awarded by the Brazilian Bar. Irma Dorothy, who had worked in Pará since 1966, died at the age of 73 in 2005, shot six times in an ambush when she was walking along a path together with two peasant workers.

Mr. President, there cannot be any democracy if the state and society do not guarantee, for all citizens, respect for the right to be safe. In addition to complying with international legislation on the protection of human rights, it is essential for the consolidation of our young Brazilian democracy to have a public policy that guarantees the dignity of the defenders of the rights of us all. The defenders of human rights play a vital role in the consolidation of the Rule of Law, supported by the separation of powers, the supremacy of the constitution and the guarantee of basic human rights.

Members of human rights organisations, lawyers, journalists, rural and indigenous leaders who protect victims and other people who work in the defence and promotion of human rights often become victims themselves. Recognising that many find themselves in a precarious situation in their work is essential for the protection of their struggle. Rights that are recognised and guaranteed for all citizens, such as freedom of speech, of conscience and religion, the right to demonstrate and hold peaceful assembly, or the right to property, physical well-being and safety are precious to human rights defenders. By defending our dignity, we refuse to be humiliated and excluded.

Mr. President, these are the reasons why we are presenting the attached Bill to Your Excellency for your consideration,

Yours respectfully,

Tarso Fernando Herz Genro, Paulo Bernardo Silva, Paulo de Tarso Vannuchi

Annex 3: Brazil: Procedural manual for programmes for the protection of human rights defenders (extract)¹

2. Programme objectives and aims

The objective of the National Programme for the Protection of Human Rights Defenders (NPPHRD), is to offer protection and support to individuals and legal entities, groups, institutions, organisations or social movements that promote, protect and defend Human Rights and which, as a consequence of their actions and activities face risks or are vulnerable as defined in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, approved by the UN General Assembly of the United Nations (UN), Resolution 53/144, of the 9th December 1998.

Violations encompass all conduct that attacks the personal or institutional activities of Human Rights Defenders (HRDs) or of the organisation or movements where they work or are active, including attacks perpetrated, albeit indirectly, against family members or close associates. Such attacks include but are not restricted to the following criminal acts : murder or attempted murder, torture, physical aggression, threats, defamation, illegal or arbitrary imprisonment, false accusations, attacks or reprisals, and attacks or reprisals motivated for reasons of politics, religion, economic status, culture, origin, ethnicity, gender, sexual orientation, colour or race, age or other forms of discrimination, or any attempt to undermine, disqualify or criminalise their activities that may negatively affect their physical, psychiatric or moral integrity, their honour, or their property.

3. Programme principles and guidelines

The NPPHRD was created in 1997 by Decree 6,044/07. Its fundamental principles are:

- Respect for the dignity of the all human beings;
- Non-discrimination for reasons of gender, sexual orientation, ethnic or social origin, mental ability, origin, nationality, professional activity, race, religion, age, immigration or other status;
- Protection and support for HRDs, irrespective of their nationality or whether they are involved in legal proceedings;
- Promotion and guarantees of citizenship rights and Human Rights;
- The universality, indivisibility and interdependence of Human Rights;
- The cross-cutting nature of gender, sexual orientation, mental disability, ethnic origin, religion, nationality, professional activity, race and age in the design and implementation of public policy.

Based on these principles, the NPPHRD will adhere to the following general and specific guidelines.

General Guidelines

- Strengthen the Federal Pact by ensuring joint and coordinated actions by all spheres of government for the protection of HRDs and to combat the causes that result in situations of risk and/or vulnerability;
- Encourage bilateral or multilateral international cooperation;
- Collaborate with national and international Non-Governmental Organisations;
- Construct networks involving all spheres of government and civil society organisations;
- Confirm the condition of individuals as HRDs and guarantee of corresponding levels of protection and attention;

¹ Special Human Rights Secretariat, March 2009, Brasilia, www.direitoshumanos.gov.br

- Encourage and carry out research and diagnostics that take into account regional diversity, guaranteeing the organisation and exchange of information;
- Encourage the training of protection professionals both for the verification of the status of HRDs and assuring they receive the attention offered them;
- Harmonise legislation and administrative procedures concerning HRDs at Federal, Provincial and Municipal levels;
- Encourage civil society participation;
- Encourage the participation of trade unions and professional associations; and
- Guarantee full and sufficient access to information and the establishment of channels for dialogue between the state, society and the media.

Specific Guidelines

Specific Guidelines for the protection of HRDs:

- Implement integral preventive measures across all sectors of society as a part of public policy in areas, including but not exclusive to, health, education, labour, security, justice, social security, communications and culture;
- Support to establish social, educational and public information campaigns internationally, nationally, regionally and locally with a specific focus on the image and actions of HRDs;
- Monitor and evaluate campaigns, with the full participation of civil society;
- Provide support to social action and strengthen civil society; and
- Strengthen existing projects and encourage initiatives to establish new projects.

Specific Guidelines covering the pursuit of those responsible for threats or acts of intimidation against HRDs:

- Cooperation between state security bodies;
- National-level cooperation in the legal sphere;
- Confidentiality in legal procedures; and
- Integrated action to identify and punish those responsible for related crimes.

Specific Guidelines covering attention for vulnerable HRDs and those at risk:

- Protection of life and limb;
- Social, medical, psychiatric and material support;
- Initiatives aimed at overcoming the causes of situations of risk or vulnerability;
- Protection of privacy, images and personal information;
- Support to fulfil civil and administrative obligations of HRDs associated with court appearances;
- Temporary suspension of activities; and
- Exceptionally, relocation or provisional shelter in a secret location as required for the protection of HRDs.

4. Programme strategies

To fulfil its objectives the NPPHRD should develop a range of strategies designed to guarantee ample coordination between the state and civil society in order to increase the levels of recognition afforded HRDs and improve the protection available. Non-exhaustive guidance is provided below to help develop strategies to guarantee the public recognition of HRDs:

- Public declarations and notices signed by high ranking figures including the President of the Republic, high visibility figures, artists and personalities stating that the work of HRDs is vital to the democratic process, highly valued and has their support;
- Distribution of information by the mass media concerning violations committed against HRDs, including when the media themselves have been responsible for the violations;
- Education, awareness-raising and training on Human Rights and the role of HRDs for the police, prosecuting authorities and courts;
- Publicity campaigns aimed at the general public in support of Human Rights and HRDs;

- Revision of the legislation covering abuse of authority and the crime of issuing threats (Art. 147, of the Penal Code);
- Incorporation of the NPPHRD into other programmes run by the Special Secretariat for Human Rights, in particular the National Human Rights Education Programme (PNEDH);
- In situ actions and emergency measures in concrete cases where the rights of HRDs are violated.

In order to guarantee high quality analysis of the risks and vulnerability of HRDs:

- Guidance for the Civilian Police on the registration of threats and other related crimes, the adoption of appropriate measures for their legal investigation and their immediate communication to the prosecuting authorities;
- Provision of information to the HRDs who have suffered violations and to the entity representing the case on the results of investigations;
- Guarantee that the prosecuting authorities investigate cases without prejudice to any other investigations that may be undertaken by other competent authorities;
- In cases involving the violation of the rights of HRDs or threats against them, act rapidly to prioritise an institutional response, communicating the actions taken to the Provincial Programme Coordinating Committee or, in cases where there is no Provincial Programme Coordinating Committee, the General Programme Coordinating Committee;
- Organise Specialised Hubs in the Provincial Civilian Police Forces, the Federal District Police and the Federal Police, in order to expedite their actions in situations of risk and/or vulnerability of HRDs and witnesses;
- Create mechanisms and criteria governing administrative and legal actions for the monitoring of each case;
- Strengthen spaces to guarantee dialogue between civil society organisations and governments in order to identify and resolve problems (especially in the case of the Councils established to treat questions related to Human Rights);
- Implement the measures specified in the PNEDH in order to contribute to the construction of a new Human Rights culture;
- Cooperate with international human rights protection organisations and adopt the resolutions and precautionary and provisional measures ordered by the Inter-American Human Rights System;
- Establish links between the NPPHRD and a range of other public policies in order to establish the best possible conditions for countering situations of risk and/or vulnerability generated by situations of conflict;
- Propose the repeal or alteration laws that criminalise strategies designed to defend Human Rights, because historically these have been used against HRDs;
- Guarantee viable conditions for the protection of public servants responsible for the protection of HRDs in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials responsible for compliance with the law.

5. Indicative guidance on security

This section highlights a set of guidance intended to guarantee greater effectiveness in the implementation of the strategies presented above and the procedures that appear in the next section. The guidance focuses on basic security measures designed to protect the communication, information, documentation and materials necessary for the protection of HRDs.

First, it is important to clarify the use of certain concepts in order to avoid confusion. In the Programme, RISK refers to the possibility that a situation might occur that may damage or compromise the normal development of activities intrinsic to the work of HRDs, including murder, whether it follows threats or was unannounced. The NPPHRD should also provide training and workshops on Risk Management, in an attempt to increase the timeliness and operational capacity of information systems and enable the mission of protection to be fulfilled with the lowest number of “losses” possible.

Classification of risks

1. **Circumstantial Risk:** conditions to which all human beings may be exposed for natural or external reasons and which may only partially be resolved by preventive systems (possible earthquakes, fire, floods, etc).
2. **Personal Risk:** individual conditions that the individual creates and whose consequences they accept as a result of their responsible conduct (informing about illegal activities or Human Rights violations, acting as a witness in criminal investigations) and/or caused by their irresponsibility (debts, vices, etc). These risks should be controlled through the application of protection and security measures.
3. **Work-related Risk (consciously assumed):** conditions assumed by an individual as a result of their work-related activities, decisions they take, their decision-making role in relation to complex situations and the management of complex information or the results they may generate. These risks should be controlled by self-protection and prevention measures taken by the institution or employer.
4. **Extended Risk:** are risks acquired by other people (family members, friends)
5. **Situational Risk:** all indirect circumstances in urban or rural zones.

Types of risk:

- The risk should be **specific and individual**, affecting an individual HRD; it should not, therefore, be a generalised risk;
- It should be **concrete**, caused by concrete, manifest events and not based on abstract supposition;
- It should be **current**, that is, not past nor future;
- It should be **relevant**, that is, it should threaten property or legal interests that are valuable to the individual;
- It should be a **serious** risk, likely to occur given the circumstances of the case as a result of which it cannot be characterised as improbable;
- It should be **clear and perceptible**, and not a possible or ill-defined risk;
- It should be **exceptional**, and, finally
- It should be **disproportionate** when compared to the benefits derived by the person from the situation that generates the risk.

Threat:

Is the manifestation of the desire to cause some form of damage to the HRD; the threat may be transmitted in a variety of ways: written, verbal (face to face, by telephone or by other means), electronic, or by any other medium.

Kinds of threat:

1. Clear and ambiguous.
2. Frank and aggressive.
3. Specific and general.
4. Simple and repeated.
5. Unconditional and conditional.
6. Proximate and remote.
7. Premeditated and impulsive.

Observations on communications and IT

- No form of communication is entirely secure; careful control should be exercised in all cases;
- Request the telephone company to carry out periodic inspections in order to protect telephone communications;
- Install call identification equipment;
- Protected individuals should be given a 24 hour emergency mobile telephone number they can call in emergency situations and the landline number of the office, made exclusively available for HRDs;

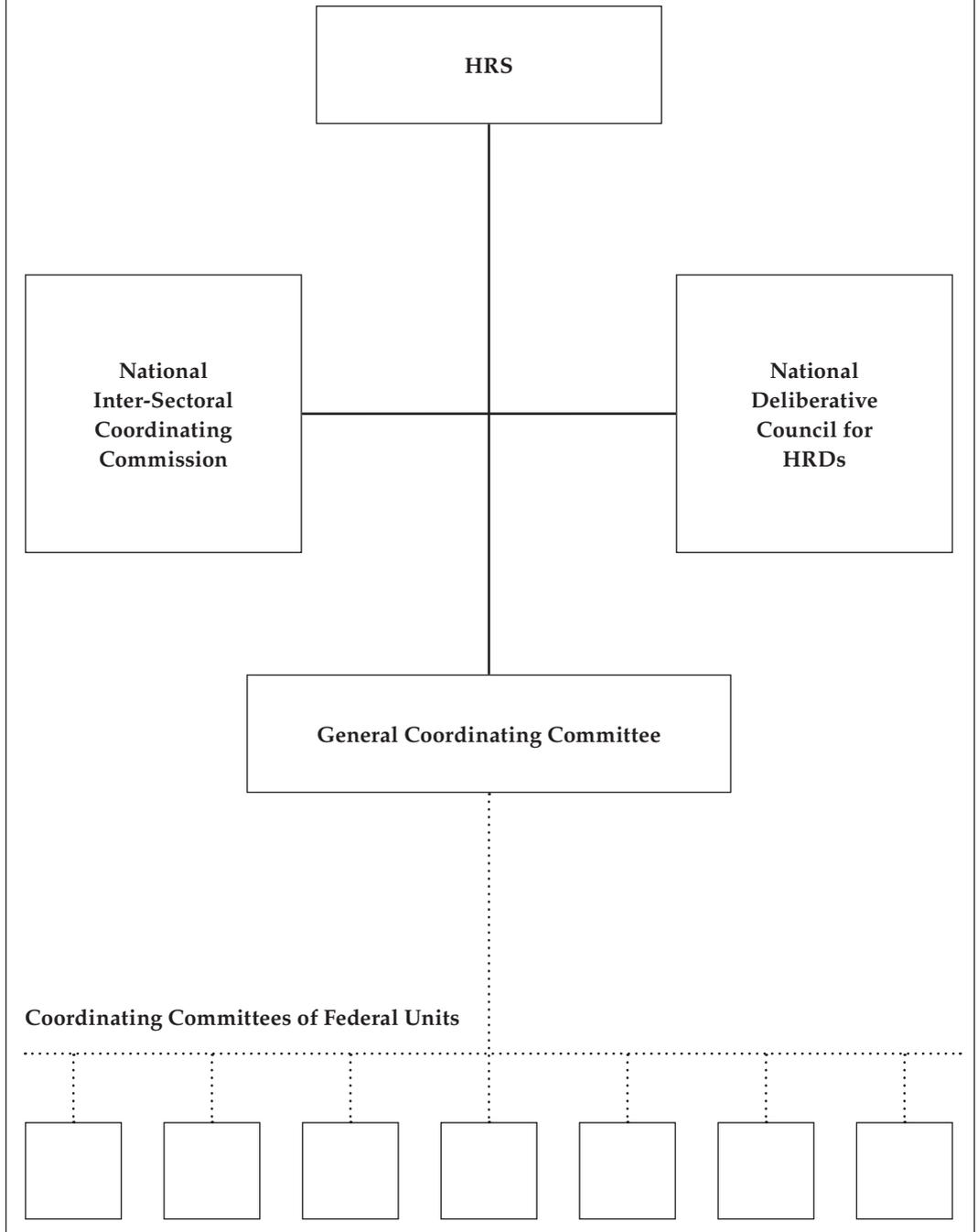
- In no circumstances should protected individuals be given access to the personal numbers of members of the Protection Team;
- Protected individuals should be made aware of the kind of support it has been agreed they may receive in an emergency situation;
- Avoid planning activities by telephone. When this cannot be avoided, use public or mobile telephones and voice distortion apparatuses. It is always more secure to speak in coded language;
- The least risky way to send messages is by fax;
- To guarantee maximum security, e-mail messages should be sent in attached archives and encryption software should be used. Confidential information should not be sent by e-mail;
- Microchips containing statistical and confidential information should not be connected to the internet;
- The personal telephones of team members should be ex-directory;
- In order to guarantee security in communications it is important to create a culture of secure communication; this is an educational process that should include the entire Protection Team, beneficiaries and volunteers.

Guidance on documentation and materials

- Security Classification (reserved, confidential, secret, top secret);
- Document Security: pay attention to the quality control, protection, reproduction and destruction of documents. Respect the following principles:
 - a. Discretionary Principle
 - b. Security Principle
 - c. Always seek a balance between the discretionary and security principles
- Exercise care in the distribution and reception of important documents and relevant legislation;
- At the end of each day collect, shred and burn papers, drafts, notes and copies of all papers with confidential contents;
- Before leaving the office, remove all confidential documents from work surfaces, storing them in their respective locked filing cabinets;
- Access to confidential documents depends on the function and not the seniority, social position or professional status of staff members;
- Each individual with knowledge of the contents of confidential documents is automatically legally responsible for their confidentiality.

6. Structure of the programme

In its structure the Programme should guarantee the coordination of the actions of the State, the Union and Federal Units, guaranteeing participation and oversight by civil society. At federal level a National Inter-Sectoral Coordinating Committee should be established to guarantee communication and coordination between the Human Rights Secretariat (HRS), the Presidency (represented with decision-making powers by the National Deliberative Council of HRDs) and Federal executive bodies.



The General Coordinating Committee and the Provincial and District Coordinating Committees should have inter-disciplinary teams. Membership of the National Deliberative Council for HRDs, established within the HRS, will ensure the participation of state employees and civil society on equal terms. It will have the following responsibilities:

- I. Decide on the implementation of the NPPHRD according to the parameters established by the law and in its regulatory framework;
- II. Discuss requests for inclusion in the NPPHRD;
- III. Determine the resources to be assigned, taking into account the decisions of the Provincial Deliberative Councils;
- IV. Support and implement the NPPHRD in participating states;
- V. Assume final responsibility and coordination of the NPPHRD at national level;
- VI. Assume other responsibilities assigned as a result of the regulation of the law.

The General Coordinating Committee of the NPPHRD has the following main responsibilities:

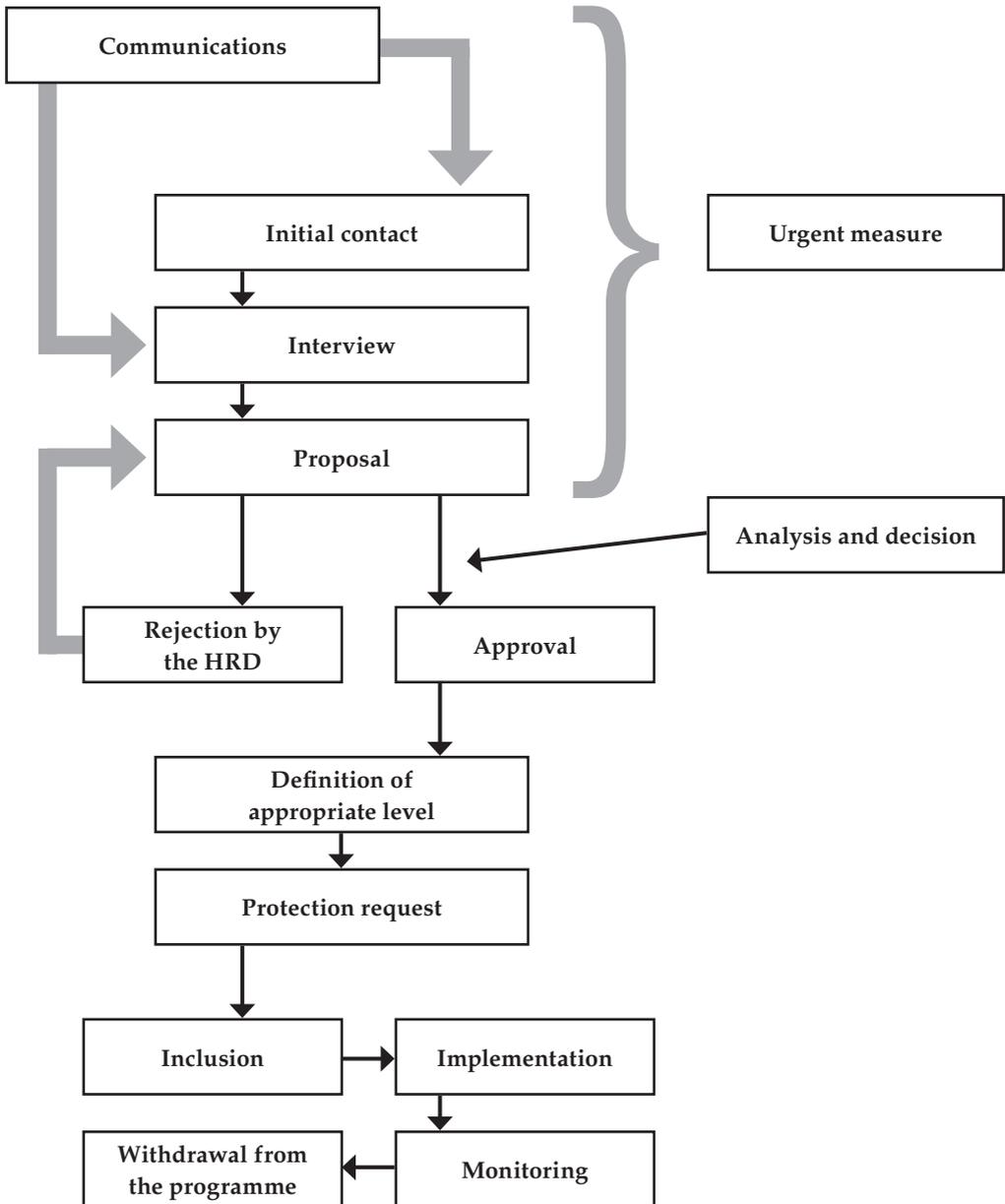
- I. Execute the state HRD protection policy according to the requirements established by the NPPHRD;
- II. Process requests for inclusion in the programme, presenting cases for decision by the Deliberating Council;
- III. Suggest a range of appropriate security measures to the Deliberating Council;
- IV. Propose increases or reductions in security measures to the Local Deliberating Council;
- V. Decide on provisional incorporation in the programme and the adoption of measures appropriate to the protection of HRDs in emergency situations;
- VI. Decide, in conjunction with the body responsible for public advocacy in the associated entity where it is based, on the reach of the judicial measures designed to protect HRDs;
- VII. In conjunction with the Federal Units, monitor the implementation of the recommendations, resolutions, and provisional measures of the international bodies of which Brazil is a member;
- VIII. Create and maintain data bases and consolidate statistics concerning HRDs and the violations committed against them;
- IX. Jointly with the Federal Units, establish local policies and actions for the protection of HRDs; and
- X. Suggest cooperation with international Human Rights protection organisations.

The members of the National Inter-Sectoral Commission will be drawn from public bodies pertaining to the Federal Executive Branch; it will have responsibility for guaranteeing cross-cutting activities for the protection of Human Rights and HRDs.

It will encourage the creation of Joint Councils and executive coordination procedures in the States that have signed agreements with the Union; these should have the same responsibilities as their national level counterparts. It is furthermore recommended that Special Risk Evaluation Commissions should be established in the Federal Units that will analyse the degree of risk and adopt emergency measures in consultation with the Coordinating Committee, with the aim of guaranteeing efficient responses to the requests for protection received.

7. Procedures

The Programme activities will be implemented through a set of procedures that have been designed taking into account the guidelines set out in this manual and the following flow chart.



At every stage, information will be gathered and recorded electronically; this will constitute the Programme's living archive but will also be the principal management tool. All staff involved in the provincial and general coordination structures of the Programme should therefore commit to maintaining the standard data base, which will be jointly administered with the beneficiaries.

The operational description of the procedures is detailed below, in adherence to the flow chart and the specimen forms reproduced in the Annex.

Communications

- Communications will be prepared by the threatened individuals or by their representatives, who may include NGOs, the prosecuting authorities or others (eg the media, the Church, international organisations, trade unions, Disk-Denúncia,² human rights audits, etc.);
- Communications should be sent to the Programme Coordinating Committees;
- All communications are to be registered in the appropriate data base, which will be developed by the General Coordinating Committee and maintained by the Provincial Coordinating Committees;
- Threatened individuals should communicate immediately with the institutions to which they belong, such as trade unions, the Church, etc.

Initial contact

- Initial contact will be established in person by the applicant; alternatively, the Programme's Technical Team will travel to the place where the threatened person is located;
- Confidentiality is guaranteed for all the information imparted during this first approach unless express authorisation is provided by the application for information to be shared;
- Once applicants have expressed their willingness to meet with the technical team they will be provided with information about the Programme;
- Following the initial contact the coordinator and the technical team will analyse the threat, conducting an exploratory examination of the situation, its implications and interconnections, and identifying the body which will serve as the reference point in the locality where the HRD is based;
- Subsequently, according to need, other people or institutions may be involved in order to optimise attention;
- Key information should be recorded in an Initial Contact Report and in written statements signed by the applicants; these statements will be used to organise the interview. (See specimen interview form in the Annex).

Emergency Measures

- It may be necessary at any given moment, pending the adoption of the other measures agreed as part of the process described here, to adopt emergency protection measures for the threatened HRDs in order to guarantee their physical safety.

Interview

- It is a principle of the programme that confidentiality is guaranteed for all the information imparted, unless express authorisation is provided by the application for it to be shared;
- Interviews are to be conducted by the technical team; the threatened HRDs may nominate a person to accompany them in the interview in order to guarantee the confidence of all participants in the process and increasing the likelihood of full and faithful recording and interpretation of the testimony;
- As a security measure, interviews should never be conducted in the offices of the organisations where the threatened HRD work;
- The threatened HRD will be attended by more than one member of the technical team, preferably in the presence of a lawyer;
- Whenever possible, video and audio recording equipment should be used, always with the consent of interviewees;
- The agreement should always incorporate the applicant's statement; if any objection is expressed great care should be taken at the point when the information is used;
- Relevant information should be recorded in the Interview Report which should be duly signed by the threatened HRDs. (See specimen interview form in the Annex).

² Translator's note: Disk-Denúncia [sic] appears to refer to campaigns intended to support the use of the telephone to report abuses to state bodies.

Proposal

- After the interview a Technical Report should be produced (specimen format attached) to include the diagnostic, risk evaluation, an expression of the willingness or otherwise of the HRD to be included in the Programme and, if they are to be incorporated, the measures proposed;
- The threatened individual should be informed of the kinds of protection the Programme is able to provide including information on the rules, preliminary recommendations, stages, etc. Their response should be duly recorded in the Technical Report;
- The case will be sent, along with the Technical Report, to be evaluated by the Provincial Coordinating Committee or, if circumstances dictate, the General Coordinating Committee.

Analysis and decision

- The Coordinating Committee to which the report was sent meets to discuss it and decide whether or not protection should be offered.
- The following factors should be taken into account during the design of the strategies:
 - a. **Sensitivity:** will the strategies provide a rapid response to the security needs of the individual or group?
 - b. **Adaptability:** will the strategies adapt rapidly to the new circumstances once the immediate danger of attack has receded?
 - c. **Sustainability:** will the strategies have long term usefulness even though the threats or attacks have not proved lethal?
 - d. **Effectiveness:** will the strategies provide adequate protection for the individuals or groups involved?
 - e. **Reversibility:** if the strategies do not work or the situation changes, is it possible to alter them?

Rejection

- The threatened individual may, within a reasonable timescale determined by the Coordinating Committee, reject the proposed protection measures. In such cases the Programme is still required to pass the case on to the relevant state bodies so that they may attempt to guarantee the protection of the HRD;
- The Programme is at liberty to refuse to include the HRD if it considers that there is no causal relationship between the threat and the activities of the HRD. In such cases the interested party may appeal to the Programme's National Council, in its capacity as superior administrative body;
- The Programme should urge action from the authorities to deal with the factors that led to the initial request for protection.

Approval

- The most appropriate security measures for the case in hand will be approved by simple majority in an ordinary or extraordinary meeting of the Provincial Coordinating Committee.

Definition of the appropriate level

When it approves the protection measures for a case the Provincial Coordinating Committee should choose the kind of protection to be offered from the following list of alternatives without prejudice to additional measures that may be deemed appropriate:

- I. Police protection;
- II. Secure and adequate transport so that the HRDs are able to continue their activities;
- III. Access to radio frequencies assigned to the security services, to be used for monitoring purposes and to request support, plus the provision of appropriate telecommunications equipment;
- IV. Provision and installation of personal security equipment for the individual and the office of the legal entity or group where the HRD works;
- V. Adoption of measures designed to overcome the causes that led to the inclusion of the HRD in the protection programme;
- VI. Protection of the identity, image and personal information of the HRD;

- VII. Social, medical, psychological and legal support and assistance;
- VIII. Monthly financial support to ensure individual or family subsistence in cases where the protected HRD is unable to carry out their habitual activities or in the total absence of income;
- IX. Support to comply with civil and administrative requirements that require the personal presence of the HRD;
- X. If the protected party is a public servant or member of the armed forces, temporary suspension of work activities without prejudice to their salary or benefits;
- XI. Change of residence or provisional lodging appropriate to the protection measures decided;
- XII. Changes to the Programme for the Protection of Victims and Witnesses set out in Law No° 9.807, of 13 July 1999.
 - a. Monthly financial support will be provided for a fixed period, the amount to be established by the council at the start of each financial year;
 - b. Measures that require the temporary suspension of the HRD's activities will be adopted only when strictly necessary for the security of the beneficiary or, in the case of organisations, its members;
 - c. The police will offer all necessary cooperation or support necessary for the implementation of each programme;
 - d. The measures and precautions related to protection programmes will be adopted, implemented and maintained so as to ensure the confidentiality of the protected parties and the agents involved in its execution.

Protection Request

- The written protection terms shall include the authorization of the threatened party, and shall be deemed to formalise the process by which they enter the programme.

Inclusion

- Inclusion will be formalised through the signing of a protocol or document in which the terms of the agreement are set out (see attached specimen);
- The Terms of Commitment and Inclusion will establish the obligations of both parties: the protected HRD and the state.

Implementation

- Refers to the protection itself, according to which all the measures agreed in the Terms of Inclusion and Commitment are carried out.

Monitoring

- Monitoring is carried out in all the phases of the application of the protection measures; it will ensure optimum implementation and consolidate the execution of the programme and the conditions under which the HRD receives protection;
- Monitoring will be carried out through periodic visits to the protected parties in the places where they carry on their activities, by providing accompaniment in the investigations or legal procedures in which they are involved, and by publishing periodic reports (see Annex);
- In addition to the regular monitoring of the Programme, periodic evaluations will be carried out by an external evaluator;
- It is the responsibility of civil society, represented in the Provincial and National Councils, to systematise and set out the results of the regular evaluations of the effectiveness of the provincial and national programmes;
- It is possible that during the execution of the protection measures it will be necessary to adopt other recommendations, including changes in the level of protection, in response to new information or changes in the situation.

Withdrawal from the Programme

- Withdrawal may occur for any of the following reasons:
 - I. Personal decision, or the formal expression of a decision taken by the majority of the members of the legal entity, institution, group, organisation or social movement; or
 - II. Compulsorily, as a result of failure to comply with the norms of the protection programme such that it implies an additional security risk to other protected parties or the public servants charged with their protection;
- A report setting out the reasons for the decision for the withdrawal must be prepared for it to be made effective.

Specimen terms of commitment and inclusion agreement

Agreement setting out the Terms of Commitment and Inclusion made between the **National Programme for the Protection of Human Rights Defenders (NPPHRD)** and _____ in order to guarantee that the latter may continue their work to promote, protect and guarantee Human Rights and universally recognised fundamental freedoms.

The State's national Programme for the Protection of Human Rights Defenders _____ (NPPHRD), represented by its Coordinating Committee _____, CONJ³ _____, whose office is represented by the NPPHRDs' Coordinating Committee for Implementation _____, bearer of Identification Document N° _____, CPF:⁴ _____,

resident and domiciled in this city, and Mr/Ms _____, have decided to sign the current agreement setting out the Terms of Commitment and Inclusion according to the following clauses and conditions:

1. The aim of the **National Programme for the Protection of Human Rights Defenders (NPPHRD)** is to protect and support individuals and legal entities, institutions, groups, organisations or social movements that promote, protect, and defend Human Rights and which, as a result of their actions and activities in these fields, face risks, or are vulnerable to, or suffer, rights violations.
2. In the case of this agreement, situations of risk, vulnerability, or violation of rights refers to any conduct intended to attack the personal or institutional activities of HRDs or social organisation or movement intended to discriminate against, disqualify or criminalise their activities, or attack their physical, psychological or moral reputation, or their property. It also covers any attack, albeit indirect, carried out against family members or loved ones, including murder or attempted murder, torture, physical aggression, threat, intimidation, defamation, illegal or arbitrary imprisonment, false accusation, attacks or reprisals or acts of discrimination carried out for political, economic or cultural reasons, or because of origin, ethnicity, gender, sexual orientation, colour, age or any other reason.
3. In order to provide the protection defined above, after examining the case, the NPPHRDs may adopt, individually or collectively, the following measures in favour of HRDs, being obliged, also, to provide "hard protection", that is, police escort, during the period of risk.
 - a. Protect life, liberty, physical integrity, property and honour;
 - b. Observe the measures taken by the police and legal authorities carried out to investigate the crimes and formulate charges;
 - c. Offer social, medical, psychological and material support;
 - d. Adopt measures to overcome the causes generated by the situation of risk and vulnerability;
 - e. Protect identity, image and personal information;
 - f. Provide support for the fulfilment of civil and administrative obligations demanded of individuals summonsed by the courts to appear as witnesses;
 - g. When relevant, guarantee the temporary suspension of activities and functions; and
 - h. Exceptionally, change the place of residence or temporary lodging to a secret location compatible with the protection offered.
4. All HRDs who wish to be included in the NPPHRD should, whenever possible, adopt the self-protection measures suggested to them, including:
 - I. Inform the police and/or the prosecuting authorities and other bodies responsible for the Defence of Human Rights;
 - II. Exercise care in their daily movements, avoiding routines, altering their physical appearance and clothing, using well lit streets, avoiding remote and isolated places and seeking always to be accompanied by others. If you notice that you are being watched or followed, remain calm, observe the observer, note their characteristics, their height, colour, age, physical features and the vehicle number plate if possible; request someone to take a photograph, and inform the authorities immediately;

3 Translator's note: acronym in the original.

4 Translator's note: acronym in the original.

- III. When travelling by bus, alight after or before your destination, observe who gets on, keeping the windows slightly open, exercise care at bus stops, traffic lights, and observe vehicles that have been driving close to the bus for a while. When travelling in a private vehicle, as well as taking these measures, be careful at intersections and in major streets, with people or vehicles that are close to entrances, or behind walls. Do not offer or accept rides unless the person is known to you;
- IV. Be aware of motorcycles, especially pillion riders when there are two people on the motorcycle;
- V. Whenever possible, avoid public places, parties, crowds, public meetings, bars, restaurants, places where fireworks are being set off, cubicles in public toilets, avoid having your back to windows and entrances; do not consume excess alcohol, and always ask others to help you with your security;
- VI. Always maintain your house well-illuminated, with the lawn cut; keeps dogs or geese, and use electronic alarms or systems designed to alert the presence of strangers and indicate their whereabouts;
- VII. Strengthen the security of the house with padlocks, and prepare a room that is difficult to access; acquire emergency equipment such as torches, candles, lanterns, bandages, medicines, etc.;
- VIII. Do not allow anyone to enter your residence without showing identification, especially if they are using company uniforms (postal service, water or electricity suppliers, prosecutors, police, public health professionals, etc.). If you do allow someone in always keep them under observation;
- IX. Acquire a mobile telephone, radio equipment, internet or other forms of immediate communication. Record suspicious or threatening phone conversations, noting the number from which the call was made;
- X. Maintain routine contact with the authorities, religious institutions and friends and establish support network with colleagues;
- XI. Change address if the threats are very serious, even temporarily avoiding contact even with those closest to you; do not stay with family members or loved ones;
- XII. Trust your instincts and feelings when it comes to self-protection: many times this can save lives.

This agreement is binding on the parties indefinitely or for the period that the situation of risk or vulnerability continues; it may be rescinded at the written request of the HRD and, once reviewed, two copies will be signed twice, the HRD keeping one copy, the other to be sent, along with the request for protection, to the Secretary of Public Security.

Place and Date

Coordinating Committee for
Implementation NPPHRD

HRD

Annex 4: Colombia: Decree 4065 (2011), Creation of the National Protection Unit – objective and structure established¹

REPUBLICA DE COLOMBIA



ADMINISTRATIVE DEPARTMENT

DECREE No. 4065, 2011
31 OCTOBER 2011

“By which the National Protection Unit (NPU) is created and its Objective and Structure established”

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA

Exercising the extraordinary faculties conferred on him by paragraphs e), f) and g) of article 18 of Law 1444 of 2011 and;

CONSIDERING

That the State should provide special protection to persons who face extraordinary or extreme risk to life, integrity, liberty and personal security or those who are responsible for executing plans, programmes, projects, actions and strategies designed to respond to these risks;

That, in order to organise, coordinate and implement the provision of this service and ensure the opportune, effective and appropriate provision of protection measures, a specialised unit should be created that will take responsibility for the functions in this area formerly carried out by the Ministry of the Interior and Justice and the Administrative Department of Security (DAS);

That paragraphs e), f) and g) of article 18 of Law 1444 of 2011 conferred extraordinary faculties on the President of the Republic to create entities or bodies within the Executive Branch and establish their objectives and structure that, in this case, shall be exercised by the National Protection Unit;

DECREES:

SECTION I

CREATION OF THE NATIONAL PROTECTION UNIT (NPU)

ARTICLE 1. Creation and Legal Nature of the National Protection Unit (NPU). Decrees the creation of the national-level administrative unit to be called the NATIONAL PROTECTION UNIT (NPU), which shall enjoy separate legal identity, administrative and financial autonomy and be responsible for controlling its own assets. The Unit shall be attached to the Ministry of the Interior, forming a part of the Administrative Area of the Ministry, and categorised as a national security body.

ARTICLE 2. Head Office. The head office of the National Protection Unit (NPU) shall be in the city of Bogotá D.C. The Board may decide to establish operational and administrative units anywhere in the country.

ARTICLE 3. Objective. The objective of the National Protection Unit (NPU) is to organise, coordinate and implement the provision of opportune, efficient, and appropriate protection services to such persons as the National Government considers require them as a result of their activities, condition or situation, be these

¹ [This] newer document outlining government policy for the protection of human rights defenders illustrates that the new approach is an improvement compared to previous policies - a result of the decision to accept some of the demands made by defenders' organisations in Colombia. We have included this document as an annex because it was published while this book was undergoing final editing and it was too late to analyse it in the main text. For updates and comments go to <http://focus.protectionline.org/>-Focus-

political, public, social, humanitarian, cultural, ethnic, gender-related, or due to their status as victims of violence, displacement, or as human rights activists or those who, because of public office or other activities that may generate risk, such as leadership of a trade union, NGO or the displaced population, face extraordinary or extreme risk to life, integrity, liberty and personal security.

Beneficiaries of the programmes run by the Public Prosecutor's Office [Fiscalía General de la Nación], the Solicitor General's Office [Procuraduría General de la Nación] and the Protection Programme for Victims and Witnesses established by the Justice and Peace Law do not fall under the responsibility of the Unit.

ARTICLE 4._ Functions. The National Protection Unit (NPU) shall have the following functions:

1. Organise, coordinate and implement protection services jointly with the relevant authorities at national and regional level.
2. In coordination with the relevant authorities, define opportune, effective, appropriate and differentiated protection measures sufficient to respond to the levels of risk identified.
3. Implement such protection programmes intended to protect the right to life, integrity, liberty and personal security as are ordered by the National Government and that fall under the responsibility of the Unit.
4. Monitor and evaluate the timeliness, appropriateness and efficiency of the protection programmes and measures implemented and the ways they are made use of by their beneficiaries, and propose such appropriate improvements as may be necessary.
5. Offer particular protection to population groups that face extraordinary or extreme risk as indicated by the National Government or identified by the risk assessments carried out by the Unit.
6. Carry out, in coordination with the competent bodies or entities, the risk assessments of persons who request protection from the programmes established by the National Government.
7. Carry out, in coordination with the competent bodies or entities, risk assessments of groups, communities and territories in order to establish protection measures.
8. Support and provide technical advice to the regional bodies responsible for protection in the design and implementation of strategies to protect the right to life, liberty, integrity and security of persons, groups and communities, especially those facing special, extraordinary or extreme risk.
9. Provide such information to the Ministry of the Interior's Human Rights Unit as is necessary to establish general guidelines for the design and implementation of the prevention and protection policies for which it is responsible.
10. Support the Ministry of the Interior by providing human, technical, logistical and administrative support for the implementation of prevention activities intended to protect the right to life, liberty, integrity and security of persons, groups and communities subject to the jurisdiction of the Colombian State, in compliance with the relevant guidelines provided by the Ministry.
11. Administer the system for the protection of information.
12. Fulfil any other functions appropriate to the nature of the Unit that may be assigned it.

ARTICLE 5._ Management and Administrative Bodies. The management and administration of the National Protection Unit (NPU) shall be the responsibility of a Management Board and Director General.

ARTICLE 6._ Management Board, membership and meetings. The Management Board shall have five members, as follows:

1. The Minister of the Interior, or delegate, who shall act as chair.
2. The Minister of Defence, or delegate.
3. The Director General of the National Police, or delegate.
4. The Director of the Presidential Programme for the Protection and Supervision of Human Rights and International Humanitarian Law, or the person acting as such.
5. The Director of Human Rights at the Ministry of the Interior.

The Director General of the National Protection Unit, (NPU), shall attend the meetings of the Management Board with voice but no vote.

The Management Board shall establish the frequency and nature of its sessions in its regulations.

ARTICLE 7._ Functions of the Management Board. The Management Board shall have the following functions:

1. Formulate management and operational strategies consistent with the policies established by the Ministry of the Interior in representation of the National Government, with any international treaties and agreements in the fields of Human rights and International Humanitarian Law that may be adopted and with the binding decisions of international Human Rights tribunals and supervisory bodies.
2. Approve annual plans, programmes and projects for inclusion in sectorial plans that follow the norms and criteria governing the National Budget as indicated by the National Planning Department, the Ministry of Finance and Public Credit and the Ministry of the Interior.
3. Evaluate the overall functioning of the National Protection Unit (NPU) according to agreed policies and plans.
4. Agree results indicators in order to guarantee the effectiveness of the Unit in ensuring enjoyment of the right to life, integrity and security for the persons under the Unit's protection.
5. Approve the body's draft budget as well as any modifications made to them.
6. Present proposals to modify the organisational and staffing structure of the National Protection Unit (NPU) for approval.
7. Adopt its own internal regulations.
8. Any other tasks indicated by the Law.

ARTICLE 8._ Director General. Administration of the Unit shall be the responsibility of a Director General, who shall be a public employee whose appointment and removal is in the gift of the President of the Republic.

ARTICLE 9._ Assets of the Unit. The resources of the National Protection Unit (NPU) shall include:

- 1) The contributions assigned by the National Budget;
- 2) Such assets, rights and resources of any kind that it may acquire or that are transferred to it in any way by the Nation or the regional authorities or other services;
- 3) Resources obtained through national or international agreements;
- 4) Resources obtained from international technical cooperation.

SECTION II

ORGANISATIONAL STRUCTURE AND FUNCTIONS OF THE DEPENDENT STRUCTURES OF THE NATIONAL PROTECTION UNIT (NPU)

ARTICLE 10._ Structure. In order to exercise its functions the National Protection Unit (NPU) shall have the following structure:

1. Management Board
2. General Directorate
 - 2.1. Legal Advisory Office
 - 2.2. Advisory Office for Planning and Information
 - 2.3. Internal Supervision Office
3. General Secretariat
4. Risk Assessment Section
5. Protection Section
6. Human Talent Section
7. Advisory and Coordination Bodies
 - 7.1. Personnel Commission
 - 7.2. Internal Control Coordination Committee.

ARTICLE 11._ Functions of the General Directorate. The functions of the General Directorate are as follows:

1. Present the Unit's overall policies of the Unit to the Management Board and, once it has been adopted, issue the administrative orders required for their implementation and ensure they are carried out.

2. Develop the Unit's Strategic Plan and the plans and programmes that are required to meet the objective of the National Protection Unit (NPU), presenting them to the Management Board, which shall discuss and approve them and ensure they are correctly implemented.
3. Coordinate the implementation of necessary preventive measures with the relevant authorities.
4. Lead the implementation of the risk assessment process for the protection programmes it is responsible for, identifying in an opportune manner, the risks levels faced by persons, groups and communities.
5. Jointly with the National Police and other bodies, design, formulate and implement measures and mechanisms for the protection of persons who face extraordinary or extreme risk and, at the request of the foreign Ministry, others for whom an international body has ordered protection measures.
6. Coordinate with the National Police concerning protection measures required by persons who face risk as a result of their official employment.
7. In cases of imminent and exceptional risk, without the need for a risk assessment and employing a differential approach, adopt provisional protection measures for the beneficiaries of the programme and inform the Committee for the Regulation and Evaluation of Risks (CRER) – or whoever acts as such – in order for it to recommend definitive measures should this be appropriate.
8. Adopt provisional protection measures for the displaced population in circumstances where the Constitutional Assumption of Risk is applicable.
9. Implement the orders contained in precautionary measures or legal rulings concerning the protection of persons, groups and communities, and inform the relevant authorities once they have been faithfully and effectively carried out.
10. Adopt, by way of administrative order, the protection recommendations ordered by the Committee for the Regulation and Evaluation of Risks (CRER) or whoever acts as such.
11. Present a proposal for internal regulation, and any modifications to the organisational and staffing structure that may be required, to the Management Board.
12. Assume responsibility for appointing the Unit's staff, other than those whose appointment is the responsibility of other authorities.
13. Assign agents and representatives capable of representing the body in legal forums and other processes requiring litigation.
14. By administrative act, create such internal working groups and advisory and coordination bodies as are necessary to ensure the functioning of the National Protection Unit (NPU) so that it may implement the services, plans, programmes and projects it has approved.
15. Adopt the regulations, establish the terms of functional and procedural manuals setting out the roles and responsibilities of staff and other procedures required for the functioning of the Unit.
16. In compliance with the relevant organic and regulatory orders present the draft budget and financial reports to the Management Board for revision and approval.
17. Order payments, issue administrative acts, carry out necessary actions and celebrate such contracts, agreements and arrangements as might be required to ensure that the National Protection Unit (NPU) functions effectively and achieves its objectives according to current regulations.
18. Establish mechanisms to ensure that requests from citizens and officials of the National Protection Unit (NPU) are dealt with opportunely.
19. Ensure internal discipline according to the terms of Law 734 of 2002 or such regulations as may modify them.
20. Establish an Integral Management System based on the Internal Control and Quality Control Systems.
21. Any other functions that may be assigned and are consistent with the nature of the body.

ARTICLE 12._ Functions of the Legal Advisory Office. The functions of the Legal Advisory Office are as follows:

1. Contribute to the formulation of strategies to strengthen the legal capacity of departments of the Unit in their areas of competence.
2. Analyse, design and endorse the administrative acts as indicated by the Director or Director's delegate where required by the Constitution or the Law.

3. Elaborate, examine and produce opinions on projected administrative acts, contracts and/or agreements that the body is requested to sign or emit as well as on other matters assigned it related to the nature of the Unit or its areas of competence.
4. Represent the body both legally and outside the legal sphere in cases and actions brought against it or that it initiates, either itself or by delegation, and supervise such processes.
5. Coordinate and process the resources, acts of revocation and, in general, all legal activities associated with the functions of the Unit that are not the responsibility of others of its departments.
6. Manage invoicing and payment of all sums owed to the Unit for whatever purpose, taking responsibility for ensuing legal action should it be required.
7. Respond to requests and enquiries falling under its area of responsibility within the Unit.
8. Contribute to the development and maintenance of the Integrated System of Institutional Management and the implementation of its recommendations in its areas of responsibility.
9. Any other functions that may be assigned and are inherent to the role of the department.

ARTICLE 13._ Functions of the Advisory Office for Planning and Information. The functions of the Advisory Office for Planning and Information are as follows:

1. Design and coordinate the Unit's planning process in its technical, economic and administrative process.
2. Define the guidelines, processes and instruments required for the formulation, monitoring and evaluation of the Unit's strategic and operational planning and coordinate and provide advice to the Unit's departments on formulating monitoring and evaluating their procedures for fulfilling the Strategic Plan and annual plans of action, according to the established procedures.
3. In coordination with the departments of the unit, and following the National Development Plan, the strategic and action plans, the Annual and Multi-annual Operational Plans and the Sectorial and Institutional Administrative Development Plans, and present them to the Director for approval.
4. Monitor the performance to budget of the Unit's plans, programmes and projects.
5. Ensure that the plans, programmes and projects of the National Protection Unit (NPU) are carried out, and prepare monitoring reports and proposals for adjustment.
6. Develop and test process, outcome and impact indicators for the sector and carry out monitoring according to systems established by the Management Board.
7. Prepare and consolidate the draft budget and present it and the multi-annual budget plan to the Director for approval.
8. Support the Unit's departments in preparing and ensuring the implementation of their investment plans whatever the source of income.
9. Organise and administer the NPU's data base of projects, arranging for approved projects to be included in the National Data Base of Investment Projects and collaborate in the identification of appropriate resources.
10. Monitor budget implementation and negotiate adjustments to the Unit's budget with the Ministry of Finance and Public Credit and the National Planning Department.
11. Ensure implementation of the Unit's plans, programmes and projects, and prepare monitoring reports and proposals for adjustment.
12. Prepare and consolidate and present any reports required by state bodies and external agents.
13. Plan, maintain and oversee the management and procedures followed by the Unit.
14. Prepare economic and financial studies, proposals and research in order to improve the quality of services.
15. Give direction to and coordinate the implementation and development of the Integrated System of Institutional Management.
16. Design policies, strategies and standards to ensure that the body's information systems are developed and implemented.
17. Formulate, revise, monitor and evaluate the Unit's Information Technology Strategic Plan its Information Technology Management System.
18. Recommend changes to the organisational structure of the Unit that contribute to its modernisation.

19. Attend to requests and enquiries that fall under its area of competence.
20. Any other functions that may be assigned and are inherent to the role of the department.

ARTICLE 14._ Functions of the Internal Control Office. The functions of the Internal Control Office are as follows:

1. Advise and support the Director General in the design, implementation and evaluation of the Internal Control System and ensure it functions correctly.
2. Develop tools and strategies to encourage a culture of internal supervision and quality control that contributes to a permanent improvement in the levels of services provided by the Unit.
3. Design such plans, methods, procedures and mechanisms as are required to monitor and evaluate the Internal Control System of the National Protection Unit (NPU).
4. Apply the management supervision system and interpret its results in order to present recommendations to the Director General, with emphasis on the process indicators designed and regularly reported on by the Advisory Office for Planning.
5. Ensure that the policies, guidelines, procedures, plans, programmes, projects and goals of the Unit are fulfilled, recommending adjustments as necessary and monitoring their implementation.
6. Advise departments on the identification and prevention of risks that might affect the achievement of their objectives.
7. Advise, accompany and support the Unit's services in the development and improvement of the Internal Control System and keep the Director informed of its functioning.
8. Present activities reports to the Director and the Coordinating Committee of the Internal Control System.
9. Prepare and consolidate the Fiscal Performance Report that has to be presented annually to the National Comptroller's Office at the start of each financial year.
10. Coordinate and consolidate responses to requests for information made by supervision and oversight bodies respecting the Unit's self-administration.
11. Support the development, maintenance and continuing improvement of the Integrated System of Institutional Management, supervising its effectiveness and ensuring its recommendations are implemented.
12. Develop evaluative auditing procedures and formulate appropriate observations and recommendations.
13. Evaluate citizen participation mechanisms and ensure they are applied.
14. Ensure that requests, petitions and complaints are dealt with speedily and efficiently, and report on actions taken.
15. Ensure that the measures adopted by the National Government, including those to fight corruption, rationalise bureaucratic procedures and reduce spending are applied, in order to contribute to improvements in the administration of resources.
16. Accompany and advise the different departments of the National Protection Unit (NPU) in the implementation and development of risk supervision process and monitor and evaluate the process.
17. Evaluate and monitor the actions of the National Protection Unit (NPU) and encourage the relevant authorities to carry out such investigations as may be required.
18. Any other functions that may be assigned and are inherent to the role of the department.

ARTICLE 15._ Functions of the General Secretariat. The functions of the General Secretariat are as follows:

1. Direct, coordinate and advance the implementation of the programmes and activities in matters relating to finance and accounting, recruitment, technical and computing support, administration and the management of documentation.
2. Jointly with the Planning and Information Office, coordinate fund-raising efforts to finance institutional plans, programmes and projects.
3. In coordination with the other departments, lead the preparation and implementation of the Unit's annual purchasing plan.
4. In coordination with the Planning and Information Office prepare the Unit's draft overall budget for presentation to the Director.

5. Plan, programme, oversee and supervise the procedures governing the storage, procurement, custody, distribution and disposal of such assets as are necessary to the efficient functioning of the Unit.
6. Elaborate the Unit's Recruitment Manual and ensure its strict application.
7. Consolidate the Unit's annual programme of monthly cash-flow supervision following to the plans presented by each department.
8. Ensure that budgets and accounting procedures are implemented correctly and tax, budgetary, accounting and cash-flow reports presented.
9. Make payments of the monies the Unit is obliged to pay under current legal rules.
10. Guarantee the sustainability of the Unit's accounting system and its financial statements.
11. Monitor and oversee the Unit's spending.
12. Apply and carry out the operation of the information systems required at the end of each financial year.
13. Coordinate the group responsible for disciplinary investigations that may be carried out into employees of the Unit and make initial decisions on cases.
14. Coordinate with the Planning and Information Office concerning the most suitable indicators for measuring the Secretariat's performance.
15. Support the development and maintenance of the Integrated Institutional Management System and ensure that the recommendations it makes in its area of competence are followed.
16. Any other functions that may be assigned and are inherent to the role of the department.

ARTICLE 16. Functions of the Risk Assessment Section. The functions of the Risk Assessment Section are as follows:

1. Develop the risk assessment procedure in order to identify opportunely and with a differential focus the levels of risk faced by persons, groups and communities that form a part of the target population of the Unit.
2. Plan and develop methodologies and strategies to evaluate the levels of risk faced by persons who face extraordinary or extreme risk to life, integrity, liberty and personal security or those who face such risks as a result of their work.
3. Analyse and monitor reports produced by national and international governmental and non-governmental bodies and organisations on the situation of risk faced by persons, groups and communities that might provide useful inputs to the risk assessments.
4. Carry out actions to establish and maintain an open channel of communication with representatives of different groups or populations that are objects of protection or with any other body that might offer information useful to preparing risk assessments.
5. In fulfilment of its established responsibilities and in coordination with the competent authorities at regional level and with affected communities, support the Ministry of the Interior's Human Rights Unit in carrying out focused risk analyses, planning for risk scenarios, defining prevention and contingency plans and implementing and monitoring any prevention measures that may be in existence.
6. Keep the system for the protection of information for which it is responsible up to date.
7. Once a year, or earlier if new facts occur that affect the level of risk, re-evaluate the levels of risk faced by the beneficiaries of the protection programme by updating their risk assessments.
8. Ensure that cases involving persons in situations of forced displacement whose circumstances are sufficiently grave and imminent for the Constitutional Presumption of Risk to be invoked are transferred immediately to the Protection Section.
9. Provide initial psycho-social support when required by persons who request protection measures.
10. Protect the information, data and computer systems that are the responsibility of the Section from all attempts to compromise the confidentiality, integrity or availability of said information.
11. Help to develop and maintain the Integrated System of Institutional Management and ensure that any recommendations relevant to its area of responsibility are fulfilled.
12. Respond to petitions and consultations related to its area of responsibility.
13. Present a plan covering its logistical and resource requirements to the General Secretariat to ensure that the department can function.
14. Any other functions that may be assigned and are inherent to the role of the department.

ARTICLE 17_ Functions of the Protection Section. The functions of the Protection Section are as follows:

1. In coordination with the National Police and other relevant state bodies, design, formulate and implement measures and mechanisms to provide protection to persons who face extraordinary or extreme risk to life, integrity, liberty and personal security or those who face such risks as a result of their work.
2. Recommend to the Director of the Unit the adoption of initial or transitory protection measures for cases that fulfil the criteria of gravity or imminence.
3. Recommend to the Director of the Unit the adoption of protection measures for persons in a situation of forced displacement whose situation is sufficiently grave and imminent for the Constitutional Presumption of Risk to be invoked.
4. Implement the protection measures adopted on the basis of recommendations made by the Committee for the Regulation and Evaluation of Risks (CRER), or whoever acts as such, to the Director of the Unit.
5. In coordination with the General Secretariat, oversee the logistical resources available to the Unit in order to ensure that the programme functions efficiently.
6. Monitor the implementation of protection measures for persons who, as a result of their official duties, are under the protection of the National Police, and provide such resources or logistical support as may be necessary, according to the responsibilities of the Unit.
7. Monitor the protection measures provided in terms of timeliness, appropriateness and effectiveness, and the use made of them by beneficiaries; when necessary, prepare an improvement plan in conjunction with other departments of the Unit, and participate in its implementation.
8. Present any reports that may be necessary given the responsibilities of the department.
9. Update the system for the protection of information in its areas of responsibility.
10. Maintain open channels of communication with the target populations of the protection programmes and respond to their concerns.
11. Support the development and maintenance of the Integrated System of Institutional Management and ensure that the recommendations falling under the department's areas of responsibility are followed.
12. Protect the information, data and computer systems that are the responsibility of the Section from all attempts to compromise the confidentiality, integrity or availability of said information.
13. Respond to petitions and consultations related to its area of responsibility.
15. Present a plan covering the needs of the department to the General Secretariat.
16. Any other functions that may be assigned and are inherent to the role of the department.

ARTICLE 18_ Functions of the Human Talent Section. The functions of the Human Talent Section are as follows:

1. Assist the General Directorate in formulating policies covering human resources management, applicable to the Unit's different services.
2. Direct and coordinate the establishment of plans covering selection, administration, development, training, performance evaluation, welfare, occupational health, organisational culture, and stimuli and incentives for the public services offered by the National Protection Unit (NPU).
3. In coordination with the Planning and Information Office, elaborate such technical studies as are required if staffing structures and administrative structures are to be modified, and prepare and adjust the manual of staff functions and responsibilities, according to current guidelines.
4. Ensure that the policies, guidelines, procedures, plans and programmes governing Human Talent are applied correctly.
5. Prepare such administrative acts as are necessary for it to fulfil its functions.
6. In coordination with other departments, respond to the needs of the Unit's Human Talent in order to ensure effective management.
7. Coordinate with the Planning and Information Office to ensure the adoption of the most appropriate indicators to measure the performance of the area.
8. Maintain and organise the personnel files of the entire Unit's staff, ensuring they are up to date.
9. Contribute to the development and maintenance of the Integrated System of Institutional Management and the implementation of its recommendations in its areas of responsibility.

10. Respond to petitions and consultations related to its area of responsibility.
11. Any other functions that may be assigned and are inherent to the role of the department.

SECTION III ADVISORY AND COORDINATION BODY

ARTICLE 19._ Advisory and Coordination Bodies. The Personnel Commission, the Internal Control Coordination Committee and other advisory and coordination bodies that may be created shall function according to the terms of Law 909 of 2004, Law 87 of 1993 and the other current legal rules and regulation.

SECTION IV FINAL PROVISIONS

ARTICLE 20._ Staff Group. Responding to the structure established by this decree and in exercise of the faculties indicated in Article 189 of the Political Constitution and in Law 489 of 1998 the National Government shall proceed to recruit such staff as shall be necessary to ensure due and correct functioning of the National Protection Unit.

The employees of the Unit shall be contracted according to standard civil service terms and conditions covering the classification and administration of staff.

Transitory Paragraph. The certificate of budgetary availability required to fund the posts of Director General and Secretary General of the National Protection Unit shall be published by the Deputy Director of Administration and Finance at the Ministry of the Interior.

ARTICLE 21._ Transfer of assets, rights and obligations. The ownership of fixed and moveable assets currently owned by the Administrative Department of Security (DAS), currently in liquidation, the Rotating Fund of the Administrative Department of Security (DAS) and the Ministry of the Interior that at the time when this decree comes into force are associated with the functioning of the NPU or are required for the National Protection Unit (NPU) to function shall remain under the control of the National Protection Unit (NPU), and shall be given in free title to it. The determination of assets and the time limits and terms governing their handover shall be indicated in the Minutes signed by the Director of the DAS, currently in liquidation, the legal representative of the DAS Rotating Fund, the delegate of the Ministry of the Interior and the Director of the National Protection Unit (NPU), which shall be deposited in the relevant Registration Office when convenient.

ARTICLE 22._ Current contracts and agreements. Current contracts and agreements, celebrated by the Ministry of the Interior and Justice – now the Ministry of the Interior – and whose object corresponds to functions and activities that fall under the responsibility of the National Protection Unit or the Protection Programme of the Human Rights Unit are understood to be passed to the National Protection Unit (NPU), which shall continue to execute them under the existing terms and conditions.

The documentation associated with these contracts and agreements should be passed to the General Secretariat of the Unit within the time limit established to this effect by the Ministry of the Interior's Director of Human Rights and the General Secretary of the National Protection Unit (NPU).

Contracts that have been signed by the Ministry of the Interior and Justice – now the Ministry of the Interior – and which have involved or still involve activities coming under the responsibility of the National Protection Unit or the Protection Program of the Ministry of the Interior's Human Rights Unit shall be liquidated by the National Protection Unit, for which purpose the Ministry of the Interior should provide all necessary documentation.

Where relevant, the Ministry of the Interior shall continue to execute the appropriations agreed by the Ministry of the Interior before the publication of this decree up to 31 December 2011.

ARTICLE 23._ Handover of archives. The archives possessed at the point when this decree enters into force by the Ministry of the Interior's Human Rights Unit and the Administrative Department of Security (DAS), currently in liquidation, and which are related to the responsibilities of the National Protection Unit, should be transferred to this body according to the terms indicated by the [respective] General Secretariats.

ARTICLE 24._ Normative References. Any reference made in the current regulations to the Administrative Department of Security (DAS) and the Ministry of the Interior's Protection Programme should be understood to refer to the National Protection Unit.

ARTICLE 25._ Inter-institutional coordination. In development of the principle of inter-institutional coordination for the realisation of State policy, the different institutions of national and regional government, and the supervisory bodies shall, according to their areas of responsibility, support the programmes implemented by the National Protection Unit (NPU).

ARTICLE 26._ Validity. The current Decree shall run from the date of its publication and supersede all measures provisions that are contrary to its terms.

BE IT PUBLISHED AND EXECUTED
Issued in Bogotá, D.C., on 31st October 2011.

The Minister Of The Interior

Germán Vargas Lleras

The Minister Of Finance And Public Credit

Juan Carlos Echeverry Garzón

**The Director Of The Department
Of Public Administration,**

Elizabeth Rodríguez Taylor

Annex 5: Colombia: Decree 2788 (2003), Committee for regulation and risk assessment of the protection programmes¹

REPUBLICA DE COLOMBIA



MINISTRY OF HOME AFFAIRS AND JUSTICE

DECREE NUMBER 2788 OF 2003
2nd OCTOBER 2003

"Establishing the Committee for Regulation and Risk Assessment of the Protection Programmes of the Human Rights Directorate of the Ministry of Home Affairs and Justice."

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,

pursuant to his constitutional and legal authority, in particular that conferred by articles 189 numeral 11 of the Political Constitution and 45 of Law 489 of 1998,

WHEREAS:

In compliance with the Preamble and article 2 of the Political Constitution, the aim of the state is to safeguard and protect the lives, dignity, assets, beliefs and other freedoms and rights recognised for persons residing in Colombia,

Article 81 of Law 418 of 1997, extended and amended by Law 782 of 2002, indicates various parameters to be followed by the National Government to implement Protection Programmes for persons who are in a situation of imminent risk affecting their lives, physical well-being, safety or freedom, due to causes related to political or ideological violence or to the internal armed conflict,

Under numeral 4 of article 17 of Decree 200 of 2003, the National Government has assigned the Human Rights Directorate of the Ministry of Home Affairs and Justice the task of designing and coordinating the general programmes for the protection and prevention of the violation of human rights, for the benefit of persons in a situation of risk, in collaboration with the Presidential Programme for the Promotion, Respect and Guarantee of Human Rights and in application of International Humanitarian Law,

The National Government, through Decrees 1592 of 2000, 1386 and 2742 of 2002, has created Protection Programmes for journalists, media personnel, mayors, members of parliament, councillors and spokespersons which are run by the Ministry of Home Affairs and Justice,

Having established the Protection Programmes the government set up the Committees for Regulation and Risk Assessment to assess the levels of risk and degrees of threat to the persons to be protected and to recommend appropriate protective measures,

It is necessary to establish the Committee for Regulation and Risk Assessment, CRER, for the Protection Programmes run by the Human Rights Directorate of the Ministry of Home Affairs and Justice,

The provisions below are the result of the agreement between the National Government and the representatives of the different target groups of the Protection Programmes, for whom the Human Rights Directorate of the Ministry of Home Affairs is responsible,

DECREES:

ARTICLE 1. - Composition of the Committee for Regulation and Risk Assessment (CRER). The Committee for Regulation and Risk Assessment of the Protection Programmes run by the Human Rights

¹ [This is] is an older document now superseded as a result of the new policies governing the National Protection Unit (October 2011). We reproduce it here to illustrate the changes that have been made to protection policies.

Directorate of the Ministry of Home Affairs and Justice shall be composed of the following representatives:

1. The Deputy Minister for Home Affairs or his/her representative, who shall chair it.
2. The Human Rights Director of the Ministry of Home Affairs and Justice or his/her representative.
3. The Director of the Presidential Programme for the Promotion, Respect and Guarantee of Human Rights and the application of International Humanitarian Law or his/her representative.
4. The Director of the Administrative Security Department or a representative from the Protection Directorate.
5. The Director-General of the National Police or his/her human rights representative.
6. The Manager of the Social Solidarity Network or his/her representative.

The human rights director of the Ministry of Home Affairs and Justice shall act as Secretary of the Committee.

Addendum 1. The Committee will be attended, with only the right to speak, by representatives from the attorney general's office of Colombia, the Ombudsman and the Office of the Treasury.

Addendum 2. The Office of the High Commissioner for Human Rights and four (4) representatives from each of the target groups of the Protection Programmes run by the Human Rights Directorate of the Ministry of Home Affairs and Justice shall participate as permanent special guests.

Addendum 3. Each of the members, taking into account their constitutional and legal competences, shall be held accountable for their actions and omissions within the framework of the Committee's functions.

Addendum 4. Non-governmental members shall only attend the sessions in which matters related to the target group are discussed. During a single session matters affecting a number of target groups may be discussed, in which case representatives of these groups shall participate in the Committee.

Addendum 5. The Technical Secretariat of the Committee shall be occupied by the government official from the Human Rights Directorate of the Ministry of Home Affairs and Justice appointed by their Director.

The duty of the Technical Secretary is to prepare the minutes of each session, which must be approved and signed by all attending committee members.

ARTICLE 2. - The functions of the Committee for Regulation and Risk Assessment (CRER). The Committee for Regulation and Risk Assessment of the Protection Programmes of the Human Rights Directorate of the Ministry of Home Affairs and Justice shall have the following functions:

1. Assess cases submitted by the Human Rights Directorate of the Ministry of Home Affairs and Justice and, as an exception, by any Committee member. This assessment shall be carried out taking into account the target groups of the Protection Programmes and the applicable rules of procedure.
2. Consider the technical assessments on levels of risk and degrees of threat and the technical studies on secure premises, according to each case.
3. Recommend the protective measures it considers appropriate.
4. Periodically monitor the implementation of the protective measures, and based on this monitoring, recommend any adjustments.
5. Create its own rules of procedure.
6. Take any other action necessary to pursue its objectives.

ARTICLE 3. - The meetings of the Committee for Regulation and Risk Assessment, CRER. The Committee shall hold a session at least once every month to attend to each one of the target groups of the Protection Programme of the Human Rights Directorate of the Ministry of Home Affairs and Justice, following an invitation by the Deputy Minister for Home Affairs or the Director of Human Rights of the Ministry of Home Affairs and Justice.

Additionally, extraordinary meetings of the Committee shall be held when deemed appropriate by the Deputy Minister for Home Affairs or the Director of Human Rights of the Ministry of Home Affairs and Justice, or when two (2) or more members of the Committee so request.

Addendum 1. The Committee for Regulation and Risk Assessment, CRER, shall hold its sessions at the office of the Human Rights Directorate of the Ministry of Home Affairs and Justice or at a location agreed upon by its members.

Addendum 2. There shall be a quorum for the purposes of debate in the Committee when a number equal to or greater than 50% of the representatives of the target groups and the institutional representatives are in attendance. There will be a quorum for the purposes of a vote when an absolute majority of committee members are present.

ARTICLE 4. - The provision of protective measures. The protective measures recommended by the Committee shall be implemented by the Ministry of Home Affairs and Justice through the Human Rights Directorate, following the signing of the document of commitment by the beneficiary of the Protection Programme. The Human Rights Directorate shall establish rapid procedures for the signing of these documents.

In an obvious emergency, the human rights director of the Ministry of Home Affairs and Justice may adopt and/or request, without the need for prior approval, protective measures for the recipients of the protection programmes under his responsibility, and shall report to the Committee in the next session, in order to allow it to revise them and recommend definitive measures.

Persons interested in being covered by a Protection Programme must prove that there is a direct connection between the threat or risk and the position held or the activity carried out within the organisation to which they belong.

In any event, in the course of their activities the members of the Committee for Regulation and Risk Assessment, CRER, of the Protection Programmes of the Human Rights Directorate of the Ministry of Home Affairs and Justice, must comply with the principles described in articles 83 and 209 of the Political Constitution.

Addendum 1. In order to be admitted to the Protection Programmes run by the Human Rights Directorate of the Ministry of Home Affairs and Justice, the interested party must fill in the form of the directorate and attach any relevant annexes. Failing this a written application containing a minimum amount of evidence to identify the risk or threat factors may be made. In this way their eligibility for the Protection Programme shall be vouched for.

The completed application form must be filed at the offices of the Human Rights Directorate of the Ministry of Home Affairs and Justice.

Addendum 2. In the cases mentioned in the second indent of this article, a commitment document shall be signed within ten (10) calendar days following the implementation of the definitive measures.

Addendum 3. The Protective measures shall be temporary, subject to periodic review and may be suspended temporarily or definitively, in accordance with the relevant rules of procedure.

ARTICLE 5. - Budgetary requirements. The implementation of the protective measures recommended by the Committee shall be subject to an available budget. If there is no budget, the Human Rights Directorate of the Ministry of Home Affairs and Justice must coordinate the implementation of transitional supplementary measures with the national, departmental or local authorities.

ARTICLE 6. - Applicability. This Decree is not applicable to the Special Programme on Comprehensive Protection for leaders, members and survivors of the Patriotic Union and the Colombian Communist Party, to which Decree 978 of 2000, amended by Decree 262 of 2001, is applicable.

ARTICLE 7. - Validity. This Decree shall come into effect on the date of its publication and shall repeal any provisions that are contrary to it.

LET IT BE KNOWN AND ENFORCED.

Issued in Bogotá, D.C., on 2nd October 2003.

ÁLVARO URIBE VÉLEZ

The Minister for Home Affairs and Justice,

Fernando Londoño Hoyos

Annex 6: Guatemala: National policy for prevention and protection of human rights defenders and other vulnerable groups (2009)

INTRODUCTION

The Firm and Lasting Peace Agreements of 1996 provide a basic agenda for the judicial, political, economic, cultural and social transformation of the State, by means of the new public administration enshrined in democracy, peace and the constitutional rule of law which facilitate the protection of the individual, thus guaranteeing life, physical well-being, freedom, equality, non-discrimination, justice, security, peace and comprehensive development, with the common good as the ultimate aim.

In the last decade, the numerous and constant acts committed against human rights defenders, officers of the law, witnesses, journalists, trade unionists and media personnel have not only attracted national and international attention but have also given rise to countless recommendations to our country – both in agreements and independently - by international and Inter-American bodies as well as several visits by these bodies to Guatemala.

The governmental plan of the Constitutional President of the Republic, Engineer Álvaro Colom Caballeros, set forth in his First Government Report as part of the Security and Rule of Law Policy, establishes human rights as its third objective, emphasising the need to seek observance and compliance with the international conventions signed and ratified by the state on this issue. This constitutes a return to the mandate to generate a public policy of protection for human rights defenders, on which consultations are being held internally at state level and with civil society, with the support of the Office of the High Commissioner for Human Rights in Guatemala.

Our Government regrets, rejects and publicly condemns all action that directly or indirectly threatens the work of institutions or organisations that encourage, defend, protect or guarantee human rights and universal freedoms, committed by individuals or groups whose overriding interest is to instil a permanent atmosphere of terror and insecurity, preventing these sectors of society from developing in normal, safe conditions but above all collectively spreading a climate of terror, fear and silence.

The Global Human Rights Accord of 1994 contains the commitments and obligations adopted by the Government for the benefit of the Judiciary, the Human Rights Prosecutor, the Public Prosecutor's Office and the individuals or organisations that work in the field of human rights. Special prevention and protection measures need to be implemented to effectively guarantee their work, which contributes to democratic change by increasing citizens' participation, improving living standards and social, political and economic conditions, reducing social and political tensions and creating a peaceful, tolerant society in which to live.

The Government of Guatemala recognises the key role played by human rights defenders who, individually or collectively, encourage and defend civil, political, economic, social and cultural rights and contribute to guaranteeing the exercise of universal freedoms and the proper operation of democratic institutions. Their activities promote greater awareness and observance of human rights, safeguarding democracy and the Rule of Law.

Democracy does not simply consist of holding free elections on a regular basis but also entails the acceptance of other imperatives such as the separation of powers, the independence of the judiciary, the protection of human rights and the transparency of political funding. Participation and diversity are fundamental aspects of democracy.

The situation of vulnerability and risk faced by officers of the law in Guatemala must be viewed in the general and specific context of the observance, guarantee and exercise of human rights, in a fragile democracy that characterises Guatemala as a weak state and at the same time prevents some of the premises of the Rule of Law from being implemented, such as compliance with the law, equality before the law, legal security and certainty, the binding nature of the law for each and every person, and due process.

Therefore various factors contribute to impunity *de facto* or *de jure*, which make the judicial sector vulnerable regardless of the type of jurisdiction and powers. This is illustrated in various different ways, ranging from subtle acts such as corruption, internal and external pressures and meddling, to acts that threaten the

lives and physical well-being of magistrates, judges, experts, lawyers, victims, legal applicants, the police, joint plaintiffs, witnesses and/or prosecutors.

For this reason it is imperative to adopt a National Policy on Prevention and Protection that fully responds to the level of urgency, threat, risk and vulnerability associated with the professional or occupational activities of promoting, upholding, guaranteeing and protecting fundamental rights, the consequences of which have not been able to be addressed by the normal procedure established by the Constitution and other state legislation.

This Public Policy, in accordance with the National Policy on Human Rights and the National Action Plan on Human Rights, proposes dynamic, efficient mechanisms by means of a framework of reference, with the essential goal of strengthening existing national systems and programmes on protection, and setting up whatever other programmes are necessary for the state to meet its obligations.

The success of this initiative requires a commitment from the state, non-governmental organisations and society as a whole, with the hitherto continuous support of international cooperation. It should be reiterated that firm political determination from every state body is indispensable. They must draft comprehensive, sustainable solutions and translate these into public policies that establish single-minded, coordinated and institutional management of the forms of action that need to be undertaken.

Therefore, on issuing this National Policy on the Prevention and Protection of Human Rights Defenders and Other Vulnerable Groups, we are upholding the commitment we made in the National Agreement for the Advancement of Security and Justice,¹ which, amongst other points, contains **Policies and Institutions for Criminal Investigations and Investigations against Impunity (Topic IV)** for creating Comprehensive Protection Programmes for Officers of the Law and Human Rights Defenders.

V. Proposal

The proposal is, in accordance with the duty of the state, to provide a strategic, coordinated, structured and permanent framework involving the public sector, civil society and international cooperation bodies that guarantees prevention and protection. This is understood as a standard service that creates, improves and strengthens the specialist infrastructure, in order to respond comprehensively with dynamic, efficient and effective mechanisms in line with the level of urgency, threat, risk or vulnerability to which human rights defenders, magistrates, judges, prosecutors, lawyers, witnesses, experts, journalists, trade unionists, media personnel and other vulnerable groups are exposed as a result of activities related to their professions or occupations, with the aim of avoiding irreparable damage.

The intention is to guarantee human rights under threat and ensure that regulations are in place to define the powers of the authorities, appropriate transfer of resources, their best use and the practical implementation of national, regional and/or global measures while the conditions of risk and vulnerability persist. This will help to counteract the state of defencelessness, lack of governmental control and impunity, and contribute to strengthening democratic institutions and the Rule of Law.

VI. Guiding Principles

Every action related to prevention and protection in this policy shall be governed by the following guiding principles, which will serve as a conceptual guide and framework of reference for their implementation.

1. Prevention

The institutions responsible for guaranteeing security shall adopt effective, exhaustive strategies to prevent intimidation and/or attacks, identifying the potential factors or elements that generate violence, taking into account the periods of greatest vulnerability and risk, developing early-warning systems and emergency, contingency and crisis management plans.

2. Efficacy

All the governmental and institutional bodies responsible for the different prevention and/or protection programmes established by national and international legislation shall work in a coordinated and cooperative manner to avoid any duplication of procedures and optimise material and human resources.

¹ Signed on 15 April 2009 by the Congress of the Republic, the Executive Body, the Supreme Court of Justice and the Public Prosecutor's Office, with the support of the University of San Carlos de Guatemala, the Evangelical Alliance of Guatemala, the Archbishopric of Guatemala and the Human Rights Prosecutor. National Theatre of the Miguel Ángel Asturias Cultural Centre, Ciudad de Guatemala.

To achieve the anticipated results, the powers and responsibilities of central, autonomous and independent authorities shall be clearly defined to guarantee consistency and the appropriate allocation of budgetary and logistic resources, and any such mechanisms shall be implemented without re-victimizing the beneficiary or his/her family members.

3. Suitability

Given the particularly urgent and serious nature and necessity of prevention and/or protection - precautionary, provisional and security measures and urgent appeals - the mechanisms for the coordination, adoption and provision of the protective measures shall be simple, accessible and processed in accordance with the needs of the beneficiaries, depending on the level of threat, risk or vulnerability. They should also comply in good faith with national and international obligations.

4. Jurisdiction

With the exception of the requirements of ordinary legal procedures, the preventative and/or protective actions to enforce precautionary, provisional and security measures and urgent appeals shall not prejudice the substance of the matter and shall be adopted immediately to guarantee the non-violation and free exercise of human rights and universal freedoms. As these are precautionary measures, the rigour or ritual involved shall not be the same as for other protective mechanisms in Guatemalan legislation, but rather applied on the basis of the *pro persona* principle.

Likewise, administrative, legislative, political or any other type of measures should be developed to implement judicial measures for national prevention and/or protection that govern the action of public sector employees in situations of imminent danger or risk when exercising human rights. These should be simple, free of complicated procedures, cost-free and characterised by all other aspects that inform due process.

5. Voluntary nature

The acceptance or withdrawal of the prevention and/or protection system adopted shall be voluntary, notwithstanding the reasons for exclusion given in each of the regulations governing the different mechanisms, at all times being based on the principle of legality. Therefore the adoption of precautionary, provisional and security preventative and/or protective measures should be in consultation with the beneficiaries in order to guarantee their relevance and allow them to do their work.

However, it is necessary to establish reasons for exclusion or withdrawal from this mechanism when the beneficiary commits unlawful acts or behaves in such a way that his/her safety or that of other people is endangered. The state institutions shall ensure due process is guaranteed at the time of withdrawing any such protective mechanisms.

6. Equal treatment and non-discrimination

The national human rights institutions and organisations responsible for the mechanisms of prevention and/or protection shall observe the guarantee of equal treatment and non-discrimination during the process of requesting, adopting, providing or implementing the measures. Therefore no differences whatsoever shall be made due to gender, ethnicity, social or economic status, sexual preference or orientation, language, nationality, religion, political opinion or any other motive when providing this service.

7. Meetings and consultations

It is essential that state institutions, beneficiaries and civil society – human rights organisations, trade unionists, journalists' associations and other vulnerable associations – establish channels for consultation and stable, respectful and constructive dialogue in order to identify needs and assess the performance of the preventative and/or protective measures.

8. Specialisation

All the state institutions that coordinate and cooperate in the adoption and implementation of preventive and/or protective measures shall ensure that their security forces are qualified to properly defend vulnerable or threatened people. Therefore the process of selection, recruitment and training must be carried out with the utmost transparency and with the participation of the target population benefitting from the preventative and/or protective mechanisms and programs, equipping them with appropriate knowledge in this area and information on best practices in human rights, the duty of the state and international human rights law.

9. Confidentiality

All aspects relating to precautionary, provisional and security preventative and/or protective procedures shall be confidential in order not to compromise the safety or increase the level of vulnerability of the beneficiaries.²

10. Temporary nature

The preventative and/or protective measures shall have a fixed duration of six (6) months, which may be extended by an equal period. However, these measures shall be provided for any reasonable period during which the conditions that led to their implementation persist, assuming these are still serious and urgent and there is a need to prevent irreparable damage.

11. Graduation and proportionality

The prevention and/or protection system shall be adopted and implemented in accordance with the situation or degree of threat, danger or risk, according to the risk and/or vulnerability study and analysis.

12. Comprehensive and binding

All preventative and/or protective procedures shall be based on the link between the threat, danger or risk and the activity of the beneficiary; in other words, if they occur during or because of this activity. This principle shall inform the action and services that the national preventative and/or protective mechanisms and programmes offer the beneficiary, facilitating coordination, cooperation, information and follow-up of investigations undertaken by the Public Prosecutor's Office and the National Civil Police into the incidents that gave rise to them.

VII. Cross-cutting issues

This section includes topics which should be implemented intrinsically, comprehensively and appropriately in every section of the National Policy on the Prevention and Protection of Human Rights Defenders and Other Vulnerable Groups.

7.1 Gender perspective and equality

The preventative and protective mechanisms should encompass the gender and equality perspective in order to guarantee equal opportunity, equal treatment and non-discrimination. This means implementing a gender analysis as part of the evaluation indicators for the National Policy for Prevention and Protection, as well as other governmental and state actions relating to this issue.

The causes of inequality, exclusion and discrimination that resulted in internal armed conflict are still part of daily life. This exposes women, *in particular those of indigenous origin, to the risk of violence triggered by multiple discrimination motivated by gender, ethnicity and class. This is particularly the case for female human rights defenders, lawyers, judges, prosecutors, journalists and media personnel.*³

In other words, this is about addressing the specific needs of women in terms of risk prevention and/or protection, given that their status as women makes them more vulnerable to, and a target of, other kinds of attacks and intimidations. This translates to different forms of violence based on gender; simply by their presence, women can arouse hostility and challenge cultural, religious or social taboos relating to the role that has been assigned by a patriarchal system to women in a particular country or society.

There may be various forms of aggression such as physical, verbal, psychological and even sexual harassment and rape. On other occasions it can take on the more subtle form of discrediting women's personal, moral or professional integrity.

2 This right shall be exercised in accordance with Articles 24, 28, 29, 30, 31, 44 and 45 of the Political Constitution of the Republic of Guatemala. In the event that any invoked reservation is presented, the information shall be requested in accordance with the procedural regulations so a Guarantee Control Judge can raise the case, especially in military or diplomatic matters of national security, or with regard to details provided by private individuals under guarantee of confidentiality.

3 Violence against women goes unpunished, as the authorities do not investigate these cases nor arrest or punish the offenders. In this respect, the absence of the rule of law contributes to a never-ending series of violent acts against women, including murder, rape, domestic violence, sexual harassment and sexual exploitation. The institutions responsible for security and justice have not reacted with due diligence, particularly with regard to a recent series of brutal killings of women which continues to be unresolved. Report from the Special Rapporteur Yakin Ertürk on violence against women, its causes and consequences to the United Nations Economic and Social Council E/CN.4/2005/72/Add.3 of 10 February 2005.

Therefore the implementation of a preventative and/or protective mechanism for the beneficiary/ies should match the risk or threat, the needs of the woman/women, the context, and the occupation or profession of the woman/women. This applies both to challenging the cause of the threat and selecting the appropriate protection personnel.

7.2 Multiculturalism

When adopting prevention and protection mechanisms, there is a need to look beyond cultural alliances, most importantly because, as pointed out by Rapporteur Jean in his Mission in Guatemala, *“access to justice is limited by various factors including, inter alia, non-implementation by the courts of international human rights treaties and agreements and the lack of appropriate legislation. Indigenous peoples experience particular difficulty in accessing this for reasons such as discrimination, lack of court interpreters and non-recognition of the customary laws of their indigenous legal authorities. These factors result in impunity due to the violation of human rights.”*⁴

In its Conclusions presented in the Report on Guatemala: Justice and Social Inclusion, paragraph 434, the Inter-American Commission stated that:

“The State should in turn ensure that indigenous peoples, women and children do not suffer from different forms of discrimination and social marginalization. The social exclusion that the Commission has witnessed in Guatemala includes lack of access to justice and obstacles to the effective exercise of civil, political, economic, social and cultural human rights of these sectors of society”.

“The elimination of all forms of discrimination, especially for reasons of gender, ethnicity and race, and different forms of intolerance, the promotion and protection of the human rights of indigenous peoples and respect for ethnic, cultural and religious diversity, contribute to strengthening democracy and citizen participation.”

With this and the previous topics in mind, the remarks of the Special Rapporteur, Yakin Ertürk, on violence against women, its causes and consequences in her Report to the United Nations Economic and Social Council are particularly relevant:

“The peace agreements signed in 1996 put an end to 36 years of civil war in Guatemala and included provisions designed specifically to protect the rights of women and indigenous peoples. Despite these achievements, inadequate implementation has prevented women and indigenous groups from benefiting from these provisions and has contributed to the atmosphere of insecurity and violence that still characterises Guatemalan society”.

7.3 Justice

In order for every sector in the National Policy for Prevention and Protection to work without any kind of fear, it is not enough to simply offer them the necessary resources and protection. A judicial system also needs to be established in order to:

- a. Investigate serious past and present violations of human rights and prevent impunity
- b. Facilitate access to justice and prevent illegal forces from acting, as well as threats, intimidations and murder of human rights defenders, trade unionists, witnesses, journalists, victims and aggrieved parties, and officers of the law
- c. Provide adequate protection for officers of the law, representatives of the community and those who stand for the solidarity demonstrated by the active stance of citizens against acts of intimidation and the administration of justice.

Judges should act as the guardians of the rights and freedoms of every citizen and at the same time guarantee the legal protection of human rights, the fight against discrimination and impunity, and support the right to redress. As the legal system plays a fundamental role in promoting and protecting human rights it should be financially independent from other authorities. An equal balance should be struck in investments in the different areas of the Judiciary, whether these are the Public Prosecutor's Office, defence lawyers or prosecutors.⁵

A key aspect to enable the legal system to win citizens' confidence is its capacity to settle disputes in an effective and impartial way throughout the country. This will combat the uncertainty and lack of trust in the judicial system that is used as a pretext for privatising security and vigilante-style justice. These phenomena

4 See the Special Rapporteur's Report on the Right to Food presented at the 64th session, paragraph 30, on Access to Justice and Human Rights Institutions E/CN.4/2006/44/Add.1, 18 January 2006 (see report by the Special Representative of the Secretary General on the situation of defenders of indigenous peoples E/CN.4/2006/44/Add.1, page 16, human rights E/CN.4/2003/104/Add.2, Paragraph 63).

5 Horacio Ravenna, Access to Justice and Impunity, Regional Workshop on Democracy, Human Rights and the Rule of Law, organised by the office of the UN High Commissioner for Human Rights (UNHCHR) and the Ibero-American Institute of Human Rights (IIHR), San José de Costa Rica, Costa Rica, September 2005.

entail just as much risk as the attacks against which victims are trying to protect themselves. For this reason, the protection and strengthening of the administration of justice forms the basis of this policy to strengthen the rule of law.

7.4 Democratic Security

The aim of this National Policy for Prevention and Protection is, inter alia, to try to gradually achieve the right level of protection and safety to enable its beneficiaries to freely exercise their human rights.

At the same time, it aims to ensure that safety measures are efficiently put into practice whenever circumstances demand them [...] **establishing special units of the National Civil Police and Public Prosecutor's Office**, with the necessary resources and capabilities, so they can work in a coordinated way to investigate these incidents with due diligence (...).⁶

However, ideally Democratic Security would be developed, which entails the existence of a state capable of promoting development which, in turn, leads to better welfare for the population. This should translate into development policies i.e. the target of reference should be the human being in the fullest sense, as an individual who interacts with his/her social and natural environment, based on national interests. In other words, respect for the essential dignity of human beings, improving their quality of life and fully developing their potential are essential requirements for security at every level.

Therefore achieving Democratic Security entails providing the essential conditions to guarantee protection and security for every individual in exercising their universal freedoms and human rights, strengthening and guaranteeing the rule of law across the whole country by reinforcing and legitimising democratic authority, allowing institutions to freely exercise their authority, facilitating the rule of law and the active participation of the country's citizens in matters of common interest.

Democracy cannot be sustainable without strict adherence to the principles of non-discrimination, including the protection of people who belong to national, ethnic, religious or linguistic minorities or indigenous peoples, and by constantly striving to eliminate extreme poverty, underdevelopment, marginalisation, economic inequality and social exclusion.⁷

7.5 Prioritisation of vulnerable groups

The National Policy for Prevention and Protection should focus on the target population in order to comply with the recommendations of human rights mechanisms laid down both in agreements and created independently. Above all the policy should effectively guarantee their work, which contributes to democratic transformation, increasing citizens' participation and improving living, social, political and economic conditions, reducing social and political tensions and creating an environment of tolerance and peaceful coexistence.

There is no doubt that one of the tasks required for the democratic consolidation of our country will be precisely this strengthening of the system for the protection of human rights, in which once again the involvement of society will play a key role.

It will therefore need to address certain categories or sectors of society that are at risk of violence – to their lives, physical well-being, safety or freedom – such as:

- a. Leaders or activists of political groups, especially opposition parties
- b. Leaders or activists of social, civic and community associations, trade unions, farming associations and ethnic groups
- c. Leaders or activists of human rights organisations
- d. Victims of crime, the abuse of power and/or witnesses of examples of human rights violations or infringements of international humanitarian law, regardless of whether or not they have initiated the respective criminal, disciplinary or administrative processes
- e. Journalists and media personnel who publicise, defend, preserve and restore human rights and promote the implementation of International Humanitarian Law, or who exercise the right to freedom of speech
- f. Mayors, councillors and trade unionists who are at risk due to the legitimate exercise of their profession.

These persons are a priority whenever a complaint has been lodged with the competent bodies and there is no national protection mechanism in place to protect them.

6 OAS, General Assembly, Resolution AG/RES. 2067 (XXXV-0/05), of 7 June 2005, cited in the Report on the Situation of Human Rights Defenders, Page 38.

7 Democratic Communities, *Declaration of Santiago*, April 2005.

7.6 Comprehensive nature of human rights

In order for the Prevention and Protection Programme of this policy to be effective and produce the anticipated results, it must be backed up by a **strong political commitment from the state**.

The programme is part of the **National Policy on Human Rights and the National Human Rights Plan**, which is a political priority in all the decision-making institutional bodies at both central and local levels. It should ensure the existence of regulations that clearly define the powers and responsibilities of the central and decentralised authorities, and guarantee a consistent transfer of competences and resources from national to local bodies.⁸

*"...we will not have development without security, we will not have security without development, and we will not have either security or development if human rights are not respected"*⁹

The observance, promotion and protection of human rights is an intrinsic element of any democratic system, so we can state that there is an indivisible relationship between democracy, the rule of law and human rights. Thus to the extent to which a democratic regime can guarantee the rule of law and respect for human rights for all the inhabitants of a state, the strengthening of any of these elements has a direct impact on the strength of the others. For example, the strengthening of democratic institutions and full implementation of the rule of law increase the possibility that human rights will be respected, promoted and protected.

7.7 The fight against corruption and impunity

According to the expert Rooke, corruption facilitates and causes human rights abuses and is the enemy of good government. What is needed to fight against corruption is to foster transparency, accountability, the participation of civil society and fundamentally, the political will to attack and change the institutional systems that foster, facilitate or allow structural corruption to become established.

The United Nations Rapporteur Lois Joinet recognises four main principles on the subject of the violation of civil and political rights:

1. The right to know
2. The right to justice
3. The right to redress
4. The guarantee that offences will not recur.¹⁰

On the subject of economic, social and cultural rights, their Rapporteur, Magistrate El Hadji Guise, showed that the practices that lead to violations of Economic, Social, and Cultural rights (ESC) include debt, structural adjustment programmes, corruption, fiscal and customs fraud and other economic crimes. The consequences may be:

1. Violations of collective or community rights
2. Violations of individual ESC rights
3. Violations of the ESC rights of vulnerable groups.¹¹

The French legal expert Joinet, in his *"Final Report on the Question of Impunity of the Perpetrators of Human Rights Violations"*, which was presented to the UN Human Rights Commission in 1998, attempts the following definition:

"Impunity is understood as the impossibility, de jure or de facto, of calling the perpetrators of human rights violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, convicted including being sentenced to make reparations to their victims."

Impunity, understood as *"non-accountability"*, *"absence of punishment"* or *"immunity from sentencing"* can manifest itself in two ways, which are not mutually exclusive: a) statutory impunity and b) structural impunity.¹²

8 IACHR "Report on the Situation of Human Rights Defenders in the Americas", Organisation of American States (2006), Page 39.

9 Report from the Secretary General, *A Wider Concept of Freedom: Development, Security and Human Rights for All*, A759/2005/paragraph 17.

10 E/CN.4/Sub.2/1997/20/Rev.1.

11 E/CN.4Sub.2/1997/Rev.1.

12 Kai Ambos, the classification of impunity. In *"Impunity and International Criminal Law."* Editorial Ad-Hoc. Buenos Aires, Argentina (1999).

A. Statutory or legal impunity – *de jure*

The source of statutory or legal impunity, as its name indicates, is found in a law that entails the state's express abdication of the aims and sanctions inherent in its punitive authority.¹³ We believe it is important to note that there are gaps in the substantive or civil procedural law that prevents the state from exercising *ius puniendi*.

More specifically, in his appeal against the "law against victims", Joinet pointed out that these serious offences often go unpunished by virtue of judicial impunity ("*de jure*") that makes use of institutions such as prescription, pardon and amnesty.

The Vienna Declaration and Plan of Action are explicit in calling for the abolition of laws that protect the impunity of the most serious human rights violations.

It should be borne in mind that the measures that impeded access to justice for these serious crimes through pardons or amnesties were regarded as being against the American Convention on Human Rights in the Inter-American system.

B. Structural impunity – *de facto*

It is well known that it is not only in the judicial system that the issue of impunity needs to be tackled. As well as impunity *de jure* there is also impunity *de facto*, and though the legislative framework clearly defines people's human rights and the legal obligations of the state that are part of its duty to guarantee constitutional order, this framework should provide the inspiration for public policies to protect and defend human rights.

This concerns the protection of victims, their families, witnesses, the civil parties in lawsuits and lawyers, civil servants and magistrates involved in protecting and defending these people.

Once again, there should be no impunity for those who work against these people by putting obstacles in the way of processes that seek the truth, justice and redress. This requires a vigilant attitude from a democratic state imposing the rule of law which is the only body capable of guaranteeing the functions of building dignity, protecting memory, truth and justice.

Structural impunity comes from a series of factors of an endogenous or exogenous nature which affect the duties of criminal justice. Despite the existence of a legal system which should be capable of reacting with criminal sanctions or exercising *ius puniendo*, these factors lead to the state adopting a negligent approach to the investigation and punishment of those responsible for serious human rights violations, thus making the duty of criminal justice illusory. At the same time, this situation undermines the credibility of, and society's trust in, the institutions responsible for ensuring justice is done, creating a spiral of impunity that can end up affecting the rule of law in its entirety.¹⁴

According to Pablo Saavedra Alessandri, the **exogenous factors** – those found outside the legal or judicial sphere – which promote structural impunity are expressed in: a) the absence of complaints about punishable deeds due to the fear of reprisals or other negative consequences, and b) a simple lack of trust in the judicial system as a viable alternative that is capable of solving the disputes that are brought before it. Meanwhile the **endogenous factors** – those found within the legal system – are expressed in: a) the existence of special legislation for sentencing certain crimes b) insufficient investigative action by the authorities c) a lack of cooperation from the authorities d) an overloaded criminal justice system.¹⁵

Meanwhile, according to the legal expert *Manuel E. Ventura Robles*, the concept of 'impunity' does not, in its strictest sense, describe a legal matter but rather a phenomenon of legal, social, cultural, psychological and even economic dimensions. In general terms, this can be understood as the lack of sentencing, non-accountability or the absence of punishment, which evidently run counter to the widely-understood concepts of impunity, imputability and immunity.¹⁶

We know that during the internal armed conflict there were massive, systematic, extremely serious violations of human rights which contributed to the collapse of law and public order, with a culture of fear and silence prevailing for more than three decades.

13 Definition provided by Dr Sergio Garcia Ramirez in *International Jurisdiction, Human Rights*.

14 Kai Ambos, the definition of impunity. In "*Impunity and International Criminal Law*." Editorial Ad-Hoc. Buenos Aires, Argentina (1999).

15 Pablo Saavedra Alessandri, Secretary of the Inter-American Court of Human Rights, in Response to the Jurisprudence of the Inter-American Court to the Various Forms of Impunity in Serious Violations of Human Rights and their Consequences. Page 399 (2004).

16 Manuel Ventura Robles is a Judge at the Inter-American Court of Human Rights and spoke on Jurisprudence of the Inter-American Court of Human Rights and the Subject of Justice in relation to Access to Justice and Impunity at the "Regional Workshop on Democracy, Human Rights and the Rule of Law", invited by the Office of the UN High Commissioner for Human Rights (UNHCHR), between 5 and 7 September 2005, "Access to Justice and Impunity".

Improving awareness of human rights and the rule of law and restoring confidence in state institutions is the way to gradually build a culture of justice, one that addresses the development of human abilities and long-term sustainable development, while fighting against impunity.

VIII. Strategic objectives

General Objective

The democratic rule of law is strengthened through the implementation of an comprehensive, well-structured public policy that is driven by the different state sectors and civil society and effectively addresses the problem of security. It should guarantee a favourable environment for the work of human rights defenders, trade unionists, officers of the law, parties to proceedings, victims of crime, journalists and media personnel as well as other vulnerable groups, helping to consolidate democracy.

This policy establishes the framework for strengthening the institutional capabilities of the state and civil society, ensuring that human rights are better respected, promoted, protected and guaranteed, and also ensuring that the State of Guatemala guarantees effective compliance with the protection measures called for by the United Nations Rapporteurs and Special Representatives, the UN Special Mechanisms and the Inter-American Commission and Court of Human Rights, and also develops a national mechanism for prevention and protection.

Specific Objectives

Specific objective 1: the fight against corruption and impunity

The institutions responsible for security and justice, and for their supervision and monitoring, shall adopt effective and exhaustive strategies to prevent corruption. To do so, a monitoring mechanism shall be defined to reduce power and create a counter-power, limiting the opportunities that make civil servants and public sector workers in the national security or intelligence services vulnerable to corruption and cronyism.

The fight against corruption must be one of the main objectives of the new mandate of the Ministry of the Interior and the reform process of the National Civil Police, so it is essential to tackle this issue head-on. In this fight it must first be understood that efficiency and corruption are antagonistic, since in order for an individual or collective to take advantage of what is public for personal or private gain they are unlikely to be efficient at what they do. Secondly, corruption is the main cause of distrust, discredit or lack of institutional legitimacy vis-à-vis citizens and thirdly, the beneficiaries of corruption, on seeing their interests served, turn into the main opponents of change.

The fight against corruption and impunity as a public policy and the process of supporting and promoting the International Commission Against Impunity in Guatemala (CICIG) should focus on the fundamental objective of tackling and breaking up illegal security forces and clandestine security organisations (CIACS), eradicating impunity and strengthening the legal system.

Our government has already started supporting and promoting the CICIG through the creation of the Presidential Commission for the Support of the International Commission Against Impunity in Guatemala, as an interim measure, through Governmental Agreement No. 65-2009.

The state investigation and criminal justice system will be strengthened in every aspect, primarily enabling it to penalise homicides and other violent actions against individuals who, like trade unionists, judges, witnesses, joint plaintiffs, victims, magistrates, journalists, media personnel and human rights defenders, are victims of intolerance and above all, impunity.

Specific Objective 2: Improving and strengthening mechanisms and programmes for prevention and protection

The intention is to develop preventative mechanisms and to improve and strengthen existing protective mechanisms and programmes for the benefit of human rights defenders, parties to proceedings, media personnel and other vulnerable groups whose lives, physical well-being, freedom, security or other universal freedoms are threatened or at imminent risk of violence as a result of common crime, organised crime, illegal or clandestine security forces working in parallel to the official forces.

We have taken the first steps by passing the Central American Convention for the Protection of Victims, Witnesses, Experts and other Persons involved in criminal investigations and prosecutions, especially drug-related activities and organised crime.

The essential mechanism for protecting the lives and other rights of our citizens is to strengthen the rule of law across the whole country. However, many Guatemalans need special attention as they are the direct and immediate victims of violence generated by organised crime or illegal groups whose intention is to spread fear, terror and impunity and hence make the law inoperable.

It is therefore essential for the state and civil society to jointly design, promote and implement a National Plan of Action on prevention and protection that contains mechanisms to promote and orchestrate the United National Declaration on Human Rights Defenders and action to protect the victims of serious crimes and the abuse of power: judges, lawyers, public prosecutors, human rights defenders, journalists and media personnel.

Specific Objective 3: the Culture of Human Rights

The intention is to promote a culture of human rights in which public servants publicly recognise the legitimate function of human rights defenders, trade unionists, journalists, media personnel, officers of the law and other parties to proceedings. To do so the periods of greatest vulnerability must be taken into account, and support and protection made evident, but most importantly a culture of non-violence should prevail, encouraging the peaceful resolution of conflicts and coexistence as the fundamental basis for the prevention and prosecution of crime.

IX. Action to be taken

To achieve these specific objectives, governmental and non-governmental institutions, with the collaboration of the international community, shall pursue the following action:

9.1 Establish a programme against corruption and impunity

A programme against corruption and impunity that has a legislative and institutional framework shall be developed in order to take following action:

- a. Develop mechanisms for public complaints to be made to the legal system – a dedicated telephone line or email address for acts relating to offences, the abuse of police power or acts of political intimidation and persecution, or those of illegal or clandestine forces operating in parallel to the official security forces.
- b. Mechanisms for the public to complain to the legal system about acts related to violations of human rights and international humanitarian law, corruption and criminal acts that involve de jure and de facto impunity.
- c. Continue the process of declassifying archives, documents, information and intelligence of the state security forces from the period of the internal armed conflict.
- d. Support and strengthen the process of Historical Clarification, the Dignification of Victims and National Reconciliation.
- e. In accordance with Article 30 of the Political Constitution of the Republic of Guatemala, Article 244 of the Criminal Procedure Code, Legislative Decree 92-94, and the Law on Access to Information 57-2008 of the Congress of the Republic, state institutions are required to hand over information for human rights cases requested by public prosecutors and judges to support judicial investigations and processes, without state secrecy and national security becoming obstacles or mechanisms of impunity.
- f. Public mechanisms to legitimise and strengthen the legal system, the culture of peace and human rights in order to improve governance and maintain democracy.
- g. Information and awareness-raising campaigns about the importance of the CICIG Convention and the cooperation of the international community in the fight against impunity.
- h. The creation of alliances with the media so they can adequately inform the public about the results of investigations and procedural activities intended to legitimise and enhance the validity of the legal system.
- i. Develop actions to cleanse the Public Administration, especially the General Directorate of Migration and the ports and airports department – the main focus of human trafficking. This criminal activity is the third source of revenue internationally after drugs and arms trafficking.
- j. Promote and strengthen judicial independence and fiscal autonomy, carrying out a cleansing process and prosecuting any officers of the law involved in acts of corruption and the perpetration of criminal acts, thus encouraging access to justice.
- k. Review, reform or repeal any legislation that provides incentives for corruption and impunity, promoting legal initiatives and sanctioning and enacting laws that allow them to be fought and punished. These acts specifically include illegal enrichment, international bribery, undue use of reserved or privileged information by public sector employees for their own personal gain, the diversion of assets or property, cash or securities given to public sector employees for their own benefit or that of third parties during the course of their job.

- l. Legislate against and punish vexatious litigation, i.e. the malicious use of judicial resources by litigant lawyers who represent defendants on charges of corruption or other criminal acts with the aim of complicating the process and thus absolving those responsible from any criminal sanctions. Vexatious litigation also includes the fraudulent use of resources that have been created to ensure due criminal process and judicial guarantees.
- m. Redefine the Public Prosecutor's policy against crime, and strengthen the prosecutors' offices dealing with corruption and crimes against officers of the law, human rights activists, trade unionists, journalists and crimes from the past.
- n. Reform Criminal Code Decree 17-73 of the Congress of the Republic on criminal acts and crimes that threaten Freedom of Speech and Freedom of the Press, as legally protected rights.
- o. Develop a national strategy to fight against organised crime.
- p. Implement the law against organised crime to positive effect and develop the Directorate General for Civil Intelligence.
- q. Prevent and combat corruption in the private sector, promoting improvements to auditing and accountability regulations in the private sector and, where necessary, providing for effective civil, administrative or criminal sanctions that are proportionate and dissuasive in the event of any breach of these measures.
- r. Approve, sanction and enact Initiative 4021 of the Congress of the Republic which proposes a law on asset recovery.
- s. Include in the Criminal Code the offences listed in the Inter-American Convention Against Corruption (Decree 15-2001) and the United Nations Convention Against International Organised Crime (Decree 87-2003), ratified by the Congress of the Republic, such as: bribery of foreign public sector employees and cronyism, illegal enrichment, bribery in the private sector, embezzlement or misappropriation of assets in the private sector, money-laundering of criminal gains, receiving of stolen goods, undue use of reserved or confidential information, diversion of assets, illegal profit, failure to declare, failure to transfer rights, criminalisation of acts of corruption committed in the private sector, and accounting crimes.
- t. Reform the sentences for cases of corruption envisaged in Criminal Code Decree 17-73 of the Congress of the Republic on crimes committed by public sector employees, increasing them in proportion to the damage or social impact caused.
- u. Review and reform administrative legislation – the Civil Service Law, the law on honesty and liability of public servants and public sector employees, the Organic Budget Law, the State Contracting Law, the Accounting Control Law including taxation and customs, especially the section on evasion.
- v. Propose a law to protect people who report acts of corruption.
- w. Reform Decree 70-96 on Protecting Parties to Proceedings and People involved in the Criminal Justice Administration, bringing it into line with international best practice.
- x. Re-initiate work on a Law on Comprehensive Assistance for the Victims of Crime.
- y. Implement the AFIS system established in the Law on the National Citizens' Register as an essential tool for the Ministry of the Interior and the Public Prosecutor's Office.
- z. Implement the recommendations of the Group of Experts on Maritime Drug Trafficking held in the City of Mexico in 2005.¹⁷
- aa. Review and combat the privatisation of police work – paramilitary-type neighbourhood groups, vigilantes – and the large market in services offered by security companies which allows private vigilantes or bodyguards to be contracted, over whom there is no control.

17 **Inter-American Committee on Ports** GROUP OF EXPERTS ON THE OAS/Ser.L/XIV.4 MARITIME DRUG TRAFFICKING CICAD/doc.3/05 of 25-27 October 2005 Mexico City, Mexico. Original: English FINAL REPORT (preliminary version)

- **Recommendation 3.** – Effective controls at ports and of maritime drug trafficking.
- **Recommendation 4.** – Systems of gathering data currently used in ports.
- **Recommendation 6.** – Establishment of an inter-institutional council or committee to coordinate the joint implementation of anti-drug security in ports.
- **Recommendation 11.** – Effective, systematic control of chemical cargo passing through ports in order to prevent its illegal diversion.
- **Recommendation 12.** – Strengthening of security in the free zones of ports and in free ports.

- bb. Prevent, combat and punish the practice of lynching.
- cc. Draw up a guide for contracting private security and surveillance services.
- dd. Create a State or National Register of Public Security Personnel and National Civil Police, the National Army and the Secretariat of Administrative and Security Matters.
- ee. Create a State or National Register of Arms and/or Equipment – weapons belonging to the security forces.¹⁸
- ff. Establish a Directorate General for Control of Arms and Ammunition – DIGECAM.
- gg. Create a State or National Register for Private Security and Surveillance Services.
- hh. Establish a Supervisory Authority for Private Security and Surveillance.

9.2 Creation of a prevention and protection system

- a. Mapping of the current distribution of competences and powers between the different institutions responsible for providing and implementing protection mechanisms and programmes.
- b. Diagnosis of the main obstacles or problems, challenges and goals of the special protection services (the state's duty to guarantee protection) provided for human rights defenders, trade unionists, judges, prosecutors, lawyers, victims of crime, witnesses, journalists and media personnel.
- c. Systematically determine the powers and competences of the institutions responsible for protection mechanisms and programmes, with the participation of civil society, placing priority on the needs of beneficiaries.
- d. Instigate and approve by Government Accord a Prevention and Protection Programme for Human Rights Defenders and other Vulnerable Groups.
- e. Design the regulations for the Prevention and Protection Programme and obtain approval from the Ministry of the Interior.
- f. Design the manual for the Prevention and Protection Programme for Human Rights Defenders and other Vulnerable Groups and obtain approval from the Ministry of the Interior.
- g. Instruct the authorities – public sector employees – by means of directives or circulars in order to facilitate open dialogue at the very highest level with civil society organisations so they are not perceived as the 'enemy' or 'anti-establishment'.
- h. Recognize the importance of women in the defence, promotion and implementation of human rights, guaranteeing them protective measures that accommodate gender and cultural identity.
- i. Strengthen economic and human resources and logistics to protect parties to proceedings and people associated with the criminal justice system within the Public Prosecutor's Office, in accordance with Decree 70-96.
- j. Develop a coordination mechanism for precautionary and provisional measures and urgent action by the Ministry of the Interior and the Presidential Human Rights Commission that includes the participation of other governmental, state and civil society bodies in order to evaluate, monitor and verify compliance with these measures.
- k. Encourage the participation of state and civil society institutions and bodies in putting together an Early Warning System,¹⁹ in accordance with the state's duty to provide prevention, protection, preservation and restoration of the human rights and universal freedoms of the beneficiaries.
- l. Ensure and strengthen the financial, budgetary and administrative independence of COPREDEH and hence the unity and protection of human rights defenders.
- m. Strengthen the National Civil Police, especially in terms of human rights, crime prevention, gender, multiculturalism, executive security, the security of premises and preventative intelligence.
- n. Establish, as a permanent mechanism, the Body of Analysis on Attacks of Human Rights Activists set up by Ministerial Agreement No. 103-2008 of the Ministry of the Interior, and include in its members a representative from the Presidential Human Rights Commission.
- o. Carry out a purge of the state security forces.

¹⁸ This aspect has already been addressed in Articles 82 and 83 of Initiative 3902 which recommended passing the Arms and Munitions Law at the plenary of the Congress of the Republic on 7 October 2008.

¹⁹ A system of generating an alert that would allow the identification of risks and threats of common, organised and/or trans-national crime against public safety or the safety of vulnerable sectors, in accordance with the social, political or cultural context, in order to ensure a rapid, effective response to risk prevention and counteract threat, risks or criminal activities, reducing the vulnerability of people, assets or institutions.

- p. Professionalise the security forces and corps so they are properly equipped to provide protection to people at risk and vulnerable people, by creating elite forces.
- q. Focus on preventative and protective actions.
- r. Set up a committee within the structure of the Ministry of the Interior to draw up studies on risks, threats and/or vulnerability, upgrading the prevention and protection systems for these vulnerable groups.
- s. Promote risk or conflict studies at a local and regional level so that their results offer increased opportunities for clearer and better national, departmental and municipal prevention policies.
- t. Draw up security, protection, emergency, contingency and crisis management plans.
- u. Implement, with the collaboration of civil society, an observatory to protect human rights defenders, officers of the law, trade unionists, journalists and media personnel.
- v. Promote and implement administrative, legislative, political and any other kind of measures to develop or perfect judicial protective mechanisms nationwide, which govern the actions of civil servants and public sector employees in situations of imminent risk or threat when defending human rights. These should be cost-free and based on simplicity, economy of procedure and other aspects that inform due process.
- w. Develop informal mechanisms and fora for conflict resolution between individuals or groups from civil society organisations and civil and/or military authorities.
- x. Promote the activities of human rights defenders and officers of the law.
- y. Encourage the adoption of national and international cooperation agreements to guarantee protection in the event that the protected person and his/her family are obliged to leave the country.
- z. Strengthen the security division of the Judicial Body (USOJ) and create within the Ministry of the Interior, or using a new model available to the executive body,²⁰ a Judicial Security Division to guarantee the secure execution of judicial processes and the protection of magistrates, judges and their families. This Judicial Security Division should have the following structure: 1) Judicial Operations 2) Centre for the Analysis of Judicial Security 3) Judicial Services 4) Protection Intelligence Office 5) an administration office.
- aa. Create an elite security corps to protect judges and prosecutors responsible for pursuit, indictment and prosecution of alleged members of organised crime groups.
- bb. Provide regular training for the security staff of the Judicial Body and the Public Prosecutor's Office in security techniques and protective systems.

9.3 Programme to instil a culture of Human Rights

- a. Issue a public statement from the Government of Guatemala in which it recognises the importance for the country as a whole of the work carried out by human rights defenders, officers of the law, journalists and media personnel.
- b. Provide regular public recognition for the legitimacy of the activities of human rights defenders, farmers' leaders, trade unionists, media personnel and journalists.
- c. Strengthen human rights infrastructure by creating a National Human Rights Commission in accordance with the Paris Principles on National Human Rights Institutions.
- d. Raise awareness and train members of the police forces on the respect and protection of human rights defenders, officers of the law, journalists and media personnel, to ensure that security measures, whether precautionary or provisional, are effectively put into place during the time warranted by the situation of risk.
- e. Form alliances with the mass media to run awareness-raising campaigns on respect for and the protection of officers of the law, human rights defenders and journalists.
- f. Run strategic campaigns to raise the media's awareness of the importance of the activities of human rights defenders, judges, prosecutors, litigant lawyers, public defence lawyers, the police, journalists and media personnel.
- g. Undertake educational and awareness-raising activities aimed at all public servants and state employees and at society in general in order to make them aware of the role played by human rights defenders, judges, prosecutors, litigant lawyers, public defence lawyers, the police, trade unionists, journalists and media personnel.

20 The National Security and Justice Accord refers to the creation of a Ministry of Public Security and a Ministry of Justice.

- h. Coordinate, between human rights prosecutors, the Presidential Human Rights Commission and the National Institute of Public Administration, a national programme on the culture of human rights for public servants and public sector employees.
- i. Review and update the curriculum in the state educational system to encourage and promote human rights, with an across-the-board focus on gender and multiculturalism.
- j. Publish and disseminate state reports on mechanisms adopted, both in agreements and independently.
- k. Promote the implementation of best practice in human rights in the state security forces avoiding, above all, the excessive use of force in public demonstrations or evictions by using the appropriate measures for planning, prevention and investigation.
- l. Implement the United Nations Declaration on Human Rights Defenders.
- m. Promote the decentralisation of public human rights policy.
- n. Promote the National Plan of Action on Human Rights, creating the relevant Governmental Accord and subsequently ratifying it before the UN General Secretary.
- o. Promote a programme for a Culture of Peace and National Reconciliation.
- p. Instigate the process of disarmament and control of firearms possession. To do so it will be necessary, inter alia, to regulate the possession of firearms on the public highway, public places and recreational areas in order to instigate periods when carrying firearms is prohibited.
- q. Develop national disarmament campaigns.
- r. Train the police in the subject of human rights and care for victims, depending on the type of crime, in order to generate a culture of respect for and promotion of human rights.
- s. Re-focus the Local Security Councils to perform crime-prevention tasks rather than act as vigilantes, paramilitary patrols and/or people's courts under the pretext of being indigenous tribunals or applying vigilante-style justice.

Signed on 15 April 2009 by the Congress of the Republic, the Executive Body, the Supreme Court of Justice and the Ministry of the Interior, with the support of the University of San Carlos de Guatemala, the Evangelical Alliance of Guatemala, the Archbishop of Guatemala and the Human Rights Prosecutor. National Theatre of the Miguel Ángel Asturias Cultural Centre, Ciudad de Guatemala.

Annex 7: Guatemala: Agreement to create an Analysis Institution (2008)



MINISTRY OF THE INTERIOR

Agreement to create an Institution for the Analysis of Attacks against Human Rights Defenders in Guatemala.

MINISTERIAL AGREEMENT NO. 103-2008

Guatemala, 10 January 2008

Whereas in accordance with Article 36 of the law of the Executive, the Ministry of the Interior is responsible for formulating policies, complying and ensuring compliance with the legal system in order to maintain peace and public order, the safety of individuals and their assets and to guarantee their rights; and that for this purpose it is responsible, inter alia, for drawing up and implementing plans for public safety and for all matters relating to the maintenance of public order and the safety of individuals and their assets;

Whereas in enforcing these powers for the purposes of preventing attacks against human rights defenders in Guatemala, it is advisable to establish a institution whose function shall be to analyse the patterns of these attacks, if they exist, by means of specific scientific methodology that is approved and agreed by all parties;

Therefore

In exercising the functions assigned under Article 194, subsections a) and f) of the Political Constitution of the Republic of Guatemala, and based on the provisions of Article 27, subsections c), f) and m) and Article 36, subsection m), of the Law of the Executive, Decree 114-97, of the Congress of the Republic,

It is hereby agreed

ARTICLE 1 - To create an Institution for the Analysis of Attacks against Human Rights Defenders in Guatemala, hereafter "the Institution", reporting to the First Vice-Minister of the Ministry of the Interior, whose function will be to analyse, in context, the patterns of attacks against human rights observers and defenders, if they exist, by means of specific scientific methodology approved and agreed upon by the members of this Institution.

This institution shall be set up for four years from the date this agreement comes into force.

ARTICLE 2 - The institution shall be made up of:

- a) A representative from the Ministry of the Interior, who will act as coordinator;
- b) A representative from the General Directorate for Civil Intelligence (DIGICI);
- c) The Head of the Human Rights Department of the Criminal Investigation Division (DINC) of the National Civil Police;
- d) A representative from the Public Prosecutor's Office, specifically the Public Prosecutor from the Human Rights Department;
- e) Two representatives from national human rights organisations;
- f) One representative from an international human rights organisation.

The members of the institution shall be public servants at the highest hierarchical level within the institution they represent, or be specially designated representatives for this specific purpose, who exercise sufficient power to take decisions within the institution they represent. They will offer their services to the institution without remuneration.

ARTICLE 3 - The members of the institution shall provide the necessary information, in accordance with their particular area of competence, to study the cases to be analysed in the course of their work, complying with any restrictions established by law on this issue. The governmental institutions and civil organisations involved shall facilitate and provide their full cooperation for the analysis of each case in the study, the purpose of which shall be to identify patterns of attack against human rights defenders.

ARTICLE 4 - The institution will hold an ordinary meeting once a week and an extraordinary meeting whenever necessary, subject to advance notice from the coordinator. Its reports or recommendations shall be approved by consensus.

ARTICLE 5 - The quorum for a meeting of the institution to be considered valid shall be half the number of members plus one.

ARTICLE 6 - The institution shall draft a set of rules of procedure and shall allocate tasks that are of a strictly administrative nature, within sixty days of the date this agreement comes into effect.

ARTICLE 7 - This agreement shall become effective on the day following its publication in the *Diario del Centro América*.

Let it be notified



Adela Canacho de Torreblanca
Ministra de Gobernación



Ezequiel Rodríguez
Viceministro Administrativo
Ministerio de Gobernación



(E-079-2008)-23-enero

Annex 8: Guatemala: Catalogue of measures for the prevention of human rights abuses and protection of human rights defenders and other particularly vulnerable groups (Guatemala, February 2008)

Foreword

The Unidad de Coordinación de Protección (Protection Coordination Unit, PCU) was established in early 2004 as a dependency of the Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (Presidential Coordinating Commission of Executive Branch Policies on Human Rights, COPREDEH), to strengthen governmental action by encouraging the adoption of protection measures – that is, precautionary and provisional measures and urgent calls for action. The PCU is responsible for adopting, monitoring and evaluating the protection measures adopted and for keeping international Human Rights protection bodies informed of progress.

As a result of discussions between governmental and civil society organisations and the International Community a range of deficiencies have become apparent, including:

- a. The absence of an integrated protection policy;
- b. Defective national-level protection mechanisms and programmes;
- c. An absence of risk and vulnerability assessments;
- d. Deficient services;
- e. The adoption of inappropriate measures;
- f. Improvised security schemes; and
- g. Little or no investigation of the facts leading to the adoption of special measures.¹

Building on these findings, this document draws on the experiences and evolution of the Human Rights prevention and protection measures requested by civil society organisations, individual applicants and the Human Rights Ombudsman's office (the Procurador de los Derechos Humanos) that were adopted by the Guatemalan state in fulfilment of its Treaty and Non-Treaty Human Rights obligations before the United Nations and the Organisation of American States.

In response to this situation, the Catalogue of Measures for the Prevention of Human Rights Abuses and the Protection of Human Rights Defenders and other Particularly Vulnerable Groups, is intended to contribute to the implementation of Objective 2 of the Public Prevention and Protection Policy, namely to:

“Develop, improve and strengthen existing protection mechanisms and programmes that benefit Human Rights Defenders (HRDs), others implicated in legal proceedings, and other vulnerable groups who have suffered threats or whose lives, physical integrity, freedom, security and other universal freedoms are in immediate danger as a result of actions of common criminals, organised crime or illegal, clandestine or parallel security bodies”.

These measures are intended to guarantee the fulfilment of the objectives and actions contained in this Public Policy and to guarantee the security and protection of the social sectors mentioned above that have been subjected to threats, intimidation, persecution and/or attempts on their lives and physical integrity as a result of their activities and in exercise of their rights.

¹ 29 November 2004: Seminar on the First Proposal for a Protection Policy, National Plan of Action for the Protection and Cataloguing of Protection Measures; June 2006: First Workshop for HRDs; 12 December 2006: First Inter-institutional Meeting to Analyse Prevention and Protection Programmes and Mechanisms; and the February 2007 workshop “Towards Improved Protection for HRDs in Guatemala”.

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1. Introduction

While the social, economic, political and legal circumstances in the country have produced changes in the Human Rights situation and in prospects for the construction of peace following the Internal Armed Conflict which ended with the signing of the Peace Accords, serious problems remain.

The illustrious Inter-American Commission of Human Rights, of the Organization of American States indicated in 2003 that “In recent years the fundamental rights of citizens have been constantly violated as a result of citizen insecurity..., and as the result of pacts of aggression, harassment and intimidation controlled or tolerated by state spheres or by its parallel structures...”²

In 2004, the United Nations Verification Mission in Guatemala (MINUGUA) found that “violence, a product of different phenomena such as organised crime, youth gangs, and illegal bodies and clandestine security apparatuses have become a national priority because of their effects on public security and in creating a state of social alarm.”³

However, neither the state institutions nor society at large have fully recognised the meaning of these transformations, with the result that the ghosts of the past continue to haunt the present.

The many explanations for these phenomena include the fact that the years of conflict have not only created a legacy of resentment and a culture of violence that in turn generates injustice, authoritarian, antisocial and predatory attitudes, but also an environment of discrimination, racism, inequality, corruption and impunity that taken together mean that there is still a need to investigate and punish grave Human Rights violations committed during the internal armed conflict, as well as a whole range of violations and criminal acts that continue to be committed.

Today, it remains difficult to ensure guarantees and the respect, defence and protection of Human Rights. The multiple factors that in the past led to the violation of individual and collective civil, political, economic, social and cultural rights remain present.

This situation is manifested in organised crime, common criminality, youth gangs, drugs trafficking, lynchings, vendettas, community or local-level violence, gender-based and domestic violence, in violence against women, administrators and other employees of the legal system, others implicated in legal proceedings [sujetos legales], HRDs, journalists and other communications professionals.

Given these circumstances, especially in the context of recent events involving the National Civilian Police - whose agents were involved in the unacceptable murder of four Salvadoran citizens and the subsequent murder in a detention centre of the four members of the Criminal Investigations Division accused of the crime - there the security forces have been discredited and are widely distrusted, and there is widespread condemnation of state responsibility for criminal acts.

The challenges faced by male and female HRDs, employees of the legal system, others implicated in legal proceedings, victims of abuses of power, journalists and other communications professionals, trade unionists and other vulnerable groups who work in situations of threat and intimidation demand that the state should develop dynamic and effective mechanisms to respond to their security needs.

Today, recourse to supranational prevention and protection mechanisms challenges the security services and the Guatemalan state to develop a specialised infrastructure capable of guaranteeing, among other things:

- a) A Prevention and Protection Programme;
- b) Strengthened institutions;
- c) Improved coordination and cooperation;
- d) Training for security personnel;
- e) The development of a civilian intelligence service;
- f) Effective investigation and punishment of perpetrators;
- g) Analysis and assessment of risks and vulnerability;
- h) A standard prevention and protection mechanism that strengthens state Human Rights policies and the National Plan of Action in favour of these groups and individuals.

2 Inter-American Commission of Human Rights, “Justicia e Inclusión Social los desafíos de la democracia en Guatemala” Organization of American States (2003) p. 45.

3 Ninth Report of the Secretary General on the Verification of the Peace Accords, 30 August 2004, par. 4.

The Guatemalan government believes it is necessary to develop a comparative framework for the protection of certain sectors of society, including those indicated above, in order to maximise the efforts of the security forces to guarantee the enjoyment of their rights and fundamental freedoms.

Now is the time to provide a convincing response to the increased levels of violence committed against some sectors of society with which unscrupulous groups, illegal armed groups, clandestine security organisations and parallel powers increase the vulnerability of certain sectors of society that, through their activities, contribute to the development of democracy, justice, peace and respect for Human Rights. Thus, the many responsibilities of the Guatemalan state include the obligation to prevent and pursue crime within a framework of respect for Human Rights and a commitment to combating hidden or invisible forces.⁴

Given this situation, it is important to develop constitutional and ordinary legal norms that recognise the fundamental rights of the Guatemalan population and establish new mechanisms for their protection.

While it is the case that the Prevention and Protection Policy has established national mechanisms for the protection of Human Rights, these do not comply with international standards established under International Human Rights Law.⁵

Consequently, the aim of this Catalogue is to:

1. Strengthen the institutional capacity of the state and of society to implement a Prevention and Protection Programme and, as a result, increase the guarantees and respect, promotion, and protection of Human Rights, and hold the Guatemalan state accountable for the effective fulfilment of the protection measures requested by the UN Rapporteurs, Special Representatives and Special Mechanisms and by the Inter American Court and Commission of Human Rights.
2. Ensure inter-institutional coordination and cooperation between the existing mechanisms and programmes for the protection of threatened sectors, optimising the response and avoiding duplication between the different national protection mechanisms.
3. Offer preventive and protection measures to vulnerable individuals and groups that are threatened as a consequence of their activities and in exercise of their rights; protecting and guaranteeing their right to life, physical integrity, other universal freedoms and their ability to continue carrying out their activities.
4. Instil confidence in these vulnerable populations in the state institutions responsible for guaranteeing their protection and safety through the implementation of the State Prevention and Protection Programme.
5. Combat and reduce levels of insecurity, vulnerability and risk faced by these groups in pursuit of their activities and in exercising their rights, including the right to protect and defend Human Rights and to fight impunity.
6. Provide a standard prevention and protection service in accordance with the seriousness of each particular case, tailored to the needs of the beneficiaries, free of discrimination and guaranteeing equal treatment.
7. Contribute to the functioning of democracy, promoting and strengthening the Rule of Law, protecting vulnerable sectors from the groups and individuals that attack them and, as a consequence, imperil social harmony and democracy.

4 In *The Future of Democracy*, Norberto Bobbio defines Invisible Powers as those which act at the margins of democratic and jurisdictional controls, that resist and refuse to respect, legality and which, when they do not manipulate or corrupt them, pressure political institutions, by the use of force if necessary, in order to produce environments that enable them to preserve their privileged political space and pursue interests contrary to the national. p. 21

5 Protection for witnesses, trade unionists, journalists and others involved in legal processes (witnesses, victims, the aggrieved, experts, consultants, co-accusers, etc) is covered by the *Ley para la Protección de Sujetos Procesales y Personas Vinculadas a la Administración de Justicia* (Law for the Protection of Parties to Trials and Persons Involved in the Administration of Justice); Criminal Legislative Decree No 70-96; *Ley Orgánica de la Procuraduría General de la Nación*: Decreto Legislativo Número 67-2002 (Law Creating the Office of the Solicitor General: Legislative Decree No 67-2002); *Ley contra la Delincuencia Organizada*: Decreto Legislativo número 21-2006 (Law to Combat Organised Crime: Legislative Decree No 21-2006); *Código Procesal Civil y Mercantil*: Decreto Ley Número 107 (Civil and Commercial Code; Decree Law No 107); *Reglamento de Organización de la Policía Nacional Civil*, y *Acuerdo Gubernativo 662-2005*, 9 de diciembre de 2005- del Decreto Legislativo Número 11-97 *Ley de la Policía Nacional Civil* (Regulation covering the Structuring of the National Civilian Police and Governmental Agreement No 662-2005, 9 December 2005 of the Legislative Decree No 11-97villian Police Law. See also the prevention and protection measures developed by the Legal System and the Prosecuting Authorities.

2. Guiding principles

All the protection measures contained in the Prevention and Protection Programme, the Plan of Action, this Catalogue, and the Programme it presents will be governed by the following principles:

1. Prevention.

The institutions responsible for providing protection will adopt effective and exhaustive strategies to prevent attacks, intimidation or acts committed against HRDs, judges, prosecutors, lawyers, witnesses, and others implicated in legal proceedings, journalists and other communications professionals and trade unionists. In development of these responsibilities they will take into account the periods of greatest vulnerability, and develop early warning systems.

2. Efficiency.

All the government and state bodies responsible for the different prevention and protection programmes established under national and international legislation will coordinate and cooperate between themselves in order to avoid duplication in their procedures and maximise material and human resources. In order to guarantee the hoped-for results, the scope and responsibilities of the centralised authorities will be clearly defined, guaranteeing their coherence, the budgets and logistical support they require and the implementation of the protection measures, while avoiding victimising the beneficiaries or their family members a second time.

3. Appropriateness.

Given the particular urgency and extreme seriousness of the situations confronted, and the need for protection measures, including precautionary, provisional or other security measures and calls for urgent action, the procedures governing the coordination, adoption and implementation of protection measures should be simple, accessible, delivered according to the needs of the beneficiaries, and in compliance with national and international obligations.

4. Tutelary functions.

Except when ordinary legal procedures are followed, protection activities designed to comply with precautionary, provisional or other security measures including calls for urgent action, do not enter into detail concerning the causes of the situation but are adopted immediately in order to prevent attacks and permit the free exercise of Human Rights and universal freedoms, according to the pro persona principle.⁶ This is because precautionary and provisional measures do not require the same rigour and procedural complexity that is prescribed in Guatemalan legislation.

Consequently, various administrative, legislative, political and other procedures need to be adopted if the legal protection measures to be implemented in the country are to be capable of regulating the actions of public servants and employees in cases where HRDs face immediate threats or risk that affect their ability to defend Human Rights. **These procedures should be inspired in principles of due process, being for example simple, administratively uncomplicated, and free to the user.**

5. The voluntary principle.

Without prejudice to the reasons for exclusion defined in the regulations governing the different prevention and protection mechanisms, acceptance in the protection scheme, and any decision to withdraw from it, should be voluntary, according to legal principal. Consequently, all precautionary, provisional or other security measures should only be adopted following consultation with the beneficiaries so that their appropriateness be guaranteed and beneficiaries are able to continue with their activities.

However, the reasons for exclusion and withdrawal from the protection mechanism should be clearly defined, and include cases where the beneficiary breaks the law or acts in ways that negatively affect the security of others. The state bodies must ensure that due process is guaranteed should prevention and protection measures be withdrawn.

6 Translator's note [sic]: The term pro persona appears to refer 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 interpretation that most favours the respect for rights.

6. Equal treatment and non-discrimination.

The national Human Rights bodies and the entities responsible for prevention and protection measures will, when responding to orders or requests for inclusion, acceptance, delivery and implementation of protection measures, must ensure equal treatment and non-discrimination. Consequently there will be no differential treatment or discrimination whatever in the provision of services for reasons of gender, ethnic origin, social or economic condition, sexual preference or orientation, language, nationality, religion, political opinion or any other reason. **However, special or specific procedures should be adopted for female beneficiaries because of the greater levels of risk and vulnerability associated with their gender.**

7. The principles of negotiation and consultation.

Stable channels for respectful and constructive consultation and dialogue should be established between state bodies, beneficiaries and civil society (including Human Rights organisations, trade unions, journalists' associations and other vulnerable sectors) so that their needs may be analysed and appropriate protection measures offered.

8. Specialisation.

All state institutions involved in the adoption and implementation of protection measures will ensure that security teams and bodyguards are fully trained so that they are able to offer adequate protection to vulnerable persons and those at risk.

Their recruitment, induction and re-training should be carried out with complete transparency and with the participation of the population for whom the programmes have been designed; they should, furthermore, be trained in good practice in Human Rights, the responsibilities of the state and International Human Rights Law.

9. Confidentiality.

All aspects related to protection procedures – whether precautionary, provisional or other security measures – are to be developed according to strict criteria of confidentiality so as not to increase the levels of vulnerability of the beneficiaries.⁷

10. Timescale.

Protection measures will initially be granted for a reasonable period of six (6) months, extendable for a further six (6) months on expiry. However, they will always be granted for a reasonable period that coincides with the duration of the risk that led to their adoption in the first place.

11. Incrementalism and proportionality.

The prevention or protection offered, and the associated plan, will be implemented according to the degree or situation of threat, danger or risk to life, physical integrity, security or freedom of the beneficiaries identified in the analysis of risk and vulnerability.

12. Incorporation and the integral nature of the programme.

All protection procedures are rooted in the connection between the threat, the danger or risk and the activity of the beneficiary (HRDs, servants of the legal system, others implicated in legal proceedings, victims of abuses of power, journalists, including communications professionals, trade unionists and other vulnerable groups). That is, their need for protection results from their activities.

This principle should inform all the actions and services offered by the national prevention and protection programmes, enabling coordination, cooperation, information exchange and monitoring of the investigations carried out by the prosecuting authorities and the National Civilian Police into the circumstances that led to protection being offered.

⁷ This right will be exercised according to articles 24, 28, 29, 30, 31, 44 and 45 of the Guatemalan Political Constitution. Should any reservation be lodged, clarifying information should be requested in accordance with the procedural rules according to which a Supervisory Judge of Guarantees (Juez Contralor de Garantías) will be responsible for dealing with it, especially in cases related to military or diplomatic affairs relating to national security or to matters raised by individuals covered by guarantees of confidentiality.

3. The prevention and protection programme

The Guatemalan government, in fulfilment of the recommendations of Treaty and Non-Treaty Mechanisms for the protection of Human Rights, has produced this Catalogue to present the Programme for the Prevention of Human Rights Abuses and Protection of HRDs, servants of the legal system, others implicated in legal proceedings, journalists, trade unionists, communications professionals, and other vulnerable groups.

3.1 Target population of the prevention and protection programme

While the constitutionally enshrined duty to provide guarantees establishes that protection should be available to the whole population or every inhabitant of the country, these principles incorporate a principle of positive discrimination or affirmative action that responds to the urgency and vulnerability that characterises the professional activities of those who defend fundamental rights.

The programme forms a part of the Public Human Rights Policy and the associated National Action Plan and should be implemented proactively as a national mechanism, complementary and contributing to, the other prevention and protection measures defined in constitutional and ordinary legislation, statutory regulation or individualised legislation described in the Prevention and Protection Programme.

However, the programme should respond to requests for the adoption of security or protection measures required by supranational Human Rights protection mechanisms, including preventive or precautionary measures or calls for urgent action.

Thus, the prevention, protection, preservation and reestablishment of the rights of the reporting party are intended to respond to benefit sections of society whose lives, physical integrity, security or freedom are at risk because of their activities. These include:

1. Leaders and activists of Human Rights organisations.
2. Administrators and other servants of the Legal System.
3. Leaders and activists of social, civic and community organisations, interest groups, trade unions, peasants and ethnic groups.
4. Leaders and activists of political organisations, especially those in opposition.
5. Victims of crimes, the abuse of power and/or witnesses or experts in cases of Human Rights abuses and infractions of International Humanitarian Law (IHL), independently of whether the respective penal, disciplinary or administrative proceedings have been initiated.
6. Journalists and communications professionals who, in development of their professional activities, take on the dissemination, defence, preservation and re-establishment of Human Rights and the application of IHL.
7. Mayors, municipal councillors and representatives who, in the course of their activities, are exposed to risk.
8. In the case of population groups identified in numbers 2, 5 and 6 above, providing they are not already covered by a different protection system or beneficiaries of the "System for the Protection of Witnesses and Other Legal Servants involved in the Administration of Criminal Justice" as defined in Legislative Decree No 70-96

3.2 Structure of the prevention and protection programme

3.2.1 COPREDEH

The Presidential Coordinating Commission of Executive Branch Policies on Human Rights, or COPREDEH, is the body responsible for coordinating the actions of ministries and other dependencies of the Executive charged with ensuring the application and protection of Human Rights in the country.⁸

In 2004 the COPREDEH, in exercise of its responsibility for implementing the Executive's Human Rights Policy, created the Protection Coordination Unit (PCU), a specialised body that coordinates, adopts and monitors protection measures. The PCU is, furthermore, responsible for producing periodic reports on protection activities for the international and Inter-American Human Rights protection systems.

This Catalogue has been produced jointly by the state and civil society organisations in fulfilment of the recommendations of the international and/or regional Human Rights protection mechanisms.

8 According to Government Agreements Nos 404-91, 486-91, 468-91, 586-91, 549-91, 222-92 and 162-95.

3.2.1.1 The protection coordinatio unit –PCU-

The Protection Coordination Unit has the following objectives:

A. **Overall Objective:** Ensure that the state guarantees effective compliance with the protection measures requested by the Inter-American Commission (Precautionary Measures) and the Inter-American Court (Provisional Measures) and the Calls for Urgent Action formulated by the United Nations and/or measures requested by the Programme's target population and included in the National System for Prevention and Protection. The PCU compiles information on the implementation, assessment and fulfilment of the Programme which is presented in periodic reports presented to supranational mechanisms for the prevention and protection of Human Rights.

B. **Specific Objectives:** Develop a flexible and effective coordination of protection measures between the entities responsible for guaranteeing the security of the recipients of threats, taking into account the needs of victims, in order to avoid reprisals and/or Human Rights violations.

Ensure that security measures (calls for urgent action and/or Precautionary and Provisional Measures) are put into effective practice during the period demanded by the risks in question.

According to the terms of the Programme the prevention and protection schemes should be submitted to the Committee for the Assessment of Risks and Prevention and Protection Measures, so that the schemes adopted to fulfil international or regional Human Rights obligations, and those adopted as part of the National Programme, may be evaluated and monitored.

3.2.2 Committee for the assessment of risks and protection measures (CERPM)

The Committee for the Assessment of Risks and Protection Measures is created to establish the levels of risk and to evaluate, recommend and/or approve the prevention and protection measures required in each individual case.

The Committee will carry out assessments of risk, vulnerability or conflict levels at national regional and local level whose results will offer the best possibility of deciding on the establishment and implementation of national, departmental and municipal prevention policies. The regional assessments of risk will permit the adoption of more general and strategic measures suitable for a determined region.

As well as providing a mechanism for reaching agreements, the PCU will be authorised to specify the protection measures that have been requested; the delegates representing different sectors of the protected population will, jointly with state employees, present and analyse the cases, verify the information contained in them, and suggest and approve the protection measures to be adopted.

The Committee will play an essential role confirming the information provided and, in the final analysis, will determine who is to be included from among the target population, who will benefit from the scheme and under what conditions.

This form of participation permits, in principle, close collaboration between the different participants in the programme, facilitates the procedures to be followed, and guarantees the quality of the information available.

The PCU will have the following membership:

1. The Director of COPREDEH, who will act as chair of the Committee.
2. A delegate of the *Instancia de Análisis de Ataques Contra Defensores de Derechos Humanos en Guatemala* (Office for the Analysis of Attacks against HRDs in Guatemala), a dependency of the Vice-Ministry for Security in the Ministry of the Interior (*Ministerio de Gobernación*).
3. A representative of the Judicial Branch or a delegate of the *Unidad de Seguridad* (Security Unit).
4. The Director of the *Dirección General de Inteligencia Civil* (General Directorate of Civilian Intelligence) or a delegate of the Director.
5. A representative of the *División de Protección a Personalidades* (Division for the Protection of Public Figures) and/or the *División de Protección y Seguridad Pública* (Division for the Protection of Public Safety) and/or the *Oficina de Derechos Humanos de la Policía Nacional Civil* (Human Rights Department of the National Civilian Police), as appropriate.
6. A representative of the *Unidad de Relaciones Internacionales del Ministerio de Trabajo y Previsión Social* (International Relations Unit of the Ministry of Labour and Social Security).
7. A delegate or representative of the prosecuting authorities (special invitation).
8. Two (2) national-level civil society delegates (drawn from Human Rights organisations, trade unions, interest groups and administrators and other servants of the justice system).
9. Two (2) national-level delegates in representation of journalists and the communications profession.

Representatives of the public supervision bodies (*órganos de control*):

10. A delegate of the Human Rights Ombudsman.
11. A delegate of the Solicitor General's Office (*Procurador General de la Nación*).

The CERPM will meet regularly, every two weeks, and extraordinarily as necessary in situations of extreme seriousness or urgency.

The CERPM will prepare its own internal regulations to ensure it functions efficiently and provides an acceptable service to its beneficiaries.

3.2.2.1 Procedures for requesting national protection

The implementation of the Prevention and Protection Programme at national level requires:

1. The presentation of a written application to the PCU. The original complaint lodged with the competent authority (legal body, prosecuting authorities, National Civilian Police or the Solicitor General's Office) should be annexed to the application.
2. The PCU will pass the application and annexed documentation to the CERPM as long as no national protection mechanism has previously been agreed, or an application is still pending, in which case responsibility will lie with a different state or governmental body.
3. The CERPM will analyse and evaluate the case and, depending on its urgency, make its decision within a reasonable period, not exceeding two calendar weeks.
4. If the Committee approves the application the decision should be formally noted; the committee will adopt the prevention and protection measures it considers pertinent according to the assessment of risk and vulnerability, and will decide which administrative body will be responsible for providing protection during a reasonable period of up to six (6) months, renewable up to a maximum of one (1) year.
5. In special and extraordinary cases the measures may be extended after a review of the evidence of risk provided by the victims, who should present documentation or provide the evidence requested of them in order to continue enjoying the benefits of the protection scheme.

All decisions or resolutions of the CERPM should be communicated to the applicants in writing.

3.2.2.2 Criteria for accepting cases

1. Applicants should belong to one of the target groups specified by the Prevention and Protection Programme.
2. They should present their complaint to the competent authorities and make the case known to the legal system.
3. If they belong to a target organisation they should have the backing of the organisation. In the case of journalists or communications professionals support may be provided by the Association of Guatemalan Journalists or another organisation or mass media operation.
4. They should demonstrate their leadership role, which should be ratified by a local organisation and/or entity. In the absence of such ratification there should be direct evidence of their involvement in the struggle for justice, against impunity, or in favour of civil, political, economic, social and cultural rights.
5. There should be a causal relation between the threat and the risk.
6. The competent local or regional authorities should be made aware of the situation of risk or the threat against the applicant.
7. The request for protection should have no other motivation beyond protecting the life, integrity, security or personal freedom of the applicant.
8. The protection requested should not be the responsibility of any other state body; if it is, the case will be passed on to the respective body for it to study.
9. The acceptance of a candidate for protection should not be such that it presents insurmountable obstacles to the security or protection scheme run by the Interior Ministry.
10. The results of the technical assessment of risks and the level of threat against the individual should be taken into account when a prevention scheme is adopted or when it implies protection of premises.

3.2.2.3 Treatment of urgent cases

When treating urgent cases the CERPM should observe the following procedure:

1. In the case of applications for protection presented by supranational Human Rights protection bodies the PCU will coordinate, adopt, and monitor the prevention and protection measures

according to the circumstances of the case. It will send a copy of the file to the Committee, which will review it and evaluate the risks and protection measures or schemes adopted. The PCU will contribute any information necessary for the production of reports; it will expedite procedures for the adoption or reestablishment of the protection scheme according to the needs of the beneficiaries and the level of risk the scheme is intended to combat.

2. In the case of applications presented by individuals or national organisations, and where the victims face actual or imminent risk (cases in which the National Protection System should be applied), the PCU will:
 - a) verify whether the person faces immediate risk to life, integrity and/or liberty;
 - b) whether the evidence demonstrates this to be the case – a decision requiring the backing or support of a civil society representative or a member of the CERPM competent to express an opinion (eg the Interior Ministry, the Solicitor General, members of the Early Warning System and COPREDEH);
 - c) coordinate and adopt the appropriate prevention and/or protection measures.

Initially, a phone call, e-mail, radio communication or fax sent to COPREDEH or the CERPM will be sufficient. The PCU will send a copy of the file to the CERPM, which will carry out the actions described in the previous section. Urgent national protection measures will be adopted for an initial period of two (2) months; if they are extended, they will be brought into line with the national procedure described above.

3.2.2.4 Assessment or Re-assessment of Prevention and Protection Measures.

In order to carry out these activities the PCU should:

1. Periodically interview beneficiaries.
2. Request contextualised or detailed reports of the preventive or protective security measures that have been offered.
3. contextualised information on advances in investigations and legal processes.
4. Determine whether new or repeated actions exist that might increase levels of vulnerability or risk.
5. The Committee should carry out intermediary assessments of risk and threat.

The implementation of these measures should guarantee that timely, true, detailed and trustworthy information is obtained to enable the evaluation or re-evaluation of the protection measures, in order to assess adequately the facts that motivated their adoption.

The results of this exercise will permit the objectives of the protection measures to be adapted and the components or resources adjusted in line with the prevention or protection measures agreed. If necessary, the security scheme should be redefined, leading to the **RESTRUCTURING OF THE SECURITY MODEL**.

The PCU will present a report of the proposed re-evaluation to the CERPM, which will evaluate the PCU's actions; the CERPM enjoys the ultimate authority of suspending the measures is incorporated in the national mechanism.

The evaluation is to be developed through a process monitoring the detection of any distortions in the prevention and protection measures that may be detected. It is important to carry out this exercise regularly so that the process is not discredited or delegitimized.

3.2.2.5 Reasons for the Refusing or Withdrawing Protection

The reasons for exclusion or withdrawal from the mechanism in the case of national or international measures are as follows:

When the beneficiaries:

1. Carry out or have carried out illegal acts or are subject to legal proceedings in the national justice system. This applies to individuals covered both by national and supranational protection. It does not cover people who have been deprived of liberty in circumstances constitute a threat to the right to life;
2. Conduct themselves in such a way that they endanger themselves or others;
3. Use the security measures they are offered for reasons other than those programmed;
4. Withdraw voluntarily from the proposed scheme;
5. Are no longer at risk or in danger;
6. Are no longer covered by supranational protection measures; or
7. Any other reason defined by the CERPM.

3.3 Early Warning System

In order to prevent attacks, acts of intimidation and threats against these sectors the CERPM should implement an Early Warning System (EWS), with the participation of state and government bodies and civil society organisations. The EWS will be developed with the participation and cooperation of the Vice Presidency, the Presidential Human Rights Commission, the Legal System, the Human Rights Ombudsman, and the Secretariat for Strategic Analysis, the Directorate General of Civilian Intelligence, the Ministry of Labour and Social Security, the Urban and Rural Development Councils and the Ministries of the Interior and of Defence.

The principal function of the EWS is: *to produce warnings that identify risks and threats faced by HRDs, judges, prosecutors, lawyers, victims, witnesses, trade unionists, journalists, communications professionals and other members of the vulnerable groups covered by the programme and who work in different regions of the country and under different social, political or cultural contexts.*

The EWS is established to provide: *Rapid and Effective Prevention of Risk and Confront threats, thereby diminishing the susceptibility to attack of persons, property or institutions.*⁹

While the function of the EWS is to provide the members of the CERPM with analysis of possible scenarios of risk and vulnerability and the outlines of a plan, **it should never act as a substitute for the State Intelligence Service, nor be used for ends other than those established in its objectives.**

3.3.1 Basic Elements of the EWS

- a. Prevent abuses, ensuring that prevention or protection measures are taken at an early stage of events.
- b. Provide the information necessary for the effective coordination of prevention or protection measures.

3.3.2 Specific Objectives

- a. Guarantee an early response to threats or risks, and implement emergency or urgent measures designed to protect the right to life, physical integrity, security, and other universal freedoms.
- b. Replace the existing culture of improvisation with a culture of prevention.
- c. Encourage a culture for the promotion, respect, guarantee and defence of Human Rights and peace.
- d. Strengthen the institutions of civilian power through cooperation and coordination for the prevention and reduction of risks and threats.
- e. Decentralise Human Rights prevention and protection mechanisms and develop local infrastructures in order to encourage joint responsibility between the state and civil society in safeguarding HRDs, servants of the legal system, others implicated in legal proceedings, journalists, trade unionists, communications professionals, and other vulnerable groups such as mayors, local representatives and municipal council members.
- f. Obtain the most accurate information possible on the events or circumstances that cause risk and threat.
- g. Contribute to governability, in order to increase the sense of security among those who have been threatened.

3.4 Elite Prevention and Protection Unit

With the aim of increasing the professionalism and specialisation of the security details and bodyguards provided by the Ministry of Government, a re-engineering process was carried out, involving various measures including winding up the Protection and Security Section and, establishing in its place, under the terms of Government Agreement No 662 of 2005, the Protection and Security Divisions, and the Division for the Protection of Public Figures, or DPP. These bodies constitute an elite protection force and are responsible for coordinating the implementation of the protection measures.

The members of these units have also received training in executive security, provided by the Presidential Secretariat of Administrative Affairs and Security in order to ensure that they are optimally trained to provide protection to people who are vulnerable or at risk.

There is also, however, a need to establish an Elite Security and Protection Corps (CESP) under the Ministry of Government, with as many members as is deemed necessary, who will be responsible for personal security (through the provision of bodyguards) and the protection of office buildings.

⁹ Author's personal formulation.

To achieve this there should be a process covering recruitment (involving polygraph tests), induction, training and re-training. This process should be conducted with the utmost transparency and count with the participation of representatives of the target population of the programme.

The CESP should be a specialist service for the provision of bodyguards; it will exist with the sole aim of protecting people at risk; its members should belong to a state security body and be subject to its discipline. The role of the CESP should be clearly differentiated from that of the intelligence and counter-intelligence services. Its instructors, supervisors and security experts should therefore work exclusively for the CESP, which should have its own dedicated offices.

If the beneficiaries should for valid reasons, decide not to accept protection from CESP agents or from the DPP they will receive support to contact their own bodyguards in whom they have full confidence privately. Should this occur, the state will instruct appropriate personnel to provide training for the privately recruited bodyguards and will provide them with the necessary weaponry to be able fully to carry out the activities for which they were contracted.

Privately contracted security personnel may be recruited in the following ways:

- a) As temporary security details employed by the CESP; in this case they are to be subject to the same terms of employment as permanent employees of the CESP.
- b) As private security personnel, employed by the CESP but responding to the beneficiaries of the programme. In this case, the security personnel will be subject to the laws and legal rules regulating the carrying of arms by individuals and private security firms. They shall also be entirely responsible for the arms they carry, which will be assigned them by the beneficiary.

In conclusion, in order to fulfil the Treaty and Non-Treaty recommendations made to it, the Guatemalan state should make sufficient resources available to guarantee adequate and effective protection measures for the target population, for as long as is necessary, when their personal security or their lives are in danger or when they are at risk.

3.4.1 Special Training by the CESP

The CESP should provide Human Rights training, with an emphasis on state responsibility and International Human Rights Law.

The members of this elite corps should be capable of designing and implementing security strategies and actions based on the needs of the users, to elaborate diagnoses, propose the use of resources and research events that result in insecurity, to take decisions concerning security and elements of security strategy.

The CESP will carry out assessments of risk and implement the measures adopted, including those intended to provide security and protection to offices and private homes. The results will be passed on to the CERPM; if such studies do not exist, the reports prepared by the Office for the Analysis of Attacks against HRDs will be made available.¹⁰

The specialised training and capacity-building courses should include a presentation of the Cooper Color Code, described in the section on risk analysis in the Prevention and Protection Manual.

3.5 The Office for the Analysis of Attacks against HRDs

The Office for the Analysis of Attacks against HRDs began operations in July 2007 under the terms of Ministerial Agreement No. 103-2008, signed by the Vice Minister of Security in the Ministry of Government and published on 23 January 2008 in the Central American Official Gazette.

The Office is established for a period of four (4) years.

3.5.1 Purpose

The office is charged with investigating Human Rights violations and attacks on Human Rights activists. Its function is to analyse, in context, the patterns of attacks against observers and defenders of Human Rights, should they exist, by applying a scientific method defined, approved and agreed between its members.

3.5.2 Membership

Article 2 stipulates that membership should be as follows:

- a) A representative of the Ministry of Government who will serve as coordinator;
- b) A representative of the General Directorate of [Civilian] Intelligence;

¹⁰ Christopher J. Simovich is Senior Vicepresident of U.S. Security Care, Inc., a member of ASIS International; his article "Protección de Ejecutivos: Servir y Proteger, published in the Foro de Profesionales Latinoamericanos de Seguridad listed the topics that should be covered by security details.

- c) The Director of the Human Rights Division of the Criminal Intelligence Division of the National Civilian Police;
- d) A representative of the prosecuting authorities, specifically from the Human Rights Section of the Public Prosecutor's Office;
- e) Two national-level representatives of civil society organisations; and
- f) A representative drawn from among international Human Rights organisations.

4. Medidas de Prevención y Protección

The Prevention and Protection Manual is *an instrument containing a minimum range of measures that, according to the context and reality, or situation, of the country. It is dynamic, currently still under construction, and important for prioritising prevention and protection measures.*

Along these lines, prevention and protection measures will be adopted according to the Security Plan. This process will involve Risk Mapping, a Contingency Plan and an Emergency Plan, which will be summarised in the Prevention and Protection Manual.

4.1 Prevention Measures

These measures include all actions intended to avoid situations of vulnerability or risk that might be faced by HRDs, communications professionals, administrators and other employees of the legal system, victims or others implicated in legal proceedings, victims of abuses of power, journalists, trade unionists and other vulnerable groups. They are also intended to prevent attacks against, and otherwise to help, individuals who have been subjected to direct threats, intimidation, persecution or any violent act committed against their person, who are in a situation of risk and/or where there are indications that they are in danger.

The Measures are classified as follows:

- A. General
- B. Promotion and Support
- C. Self-Protection
- D. Monitoring of Risk Situations

A. General Measures

a. Emergency Fund

In order to prevent disruption in the work of social or Human Rights organisations whose office premises are vulnerable to the theft of their equipment or work materials, the government should provide funds within COPREDEH's overall budget for the establishment of an Emergency Fund.

b. National and International Networks

An emergency response system should be established as part of the regular operation of the EWS to respond to situations of imminent risk; the situation should also encourage cooperation and support to Human Rights organisations and other vulnerable groups by strengthening accompaniment by national and international organisations.

When the accompaniment is provided by foreigners, the Ministry of Labour and Social Security and the Foreign Ministry should facilitate their stay in the country by providing special permits, as currently they are only offered tourist visas valid for 90 days, and frequently they will not have not been resident for the period of one year necessary to apply for such a permit.

Consequently, permanent national and/or international accompaniment mechanisms should be developed to provide backing to the legal and legitimate actions of the target groups and to reduce or prevent aggressions carried out by public servants or private individuals.

c. Directory of Contacts

Governmental and non-governmental organisations should jointly create a directory and an emergency network capable of responding immediately to attacks against HRDs and other vulnerable groups.

Various people or organisations – including colleagues in the zones of risk and in their office premises – will maintain an up to date list of emergency contacts.

The list should contain the telephone contact of organisations defending fundamental rights who are able to mobilise an international response when necessary.

B. Promotion and support

Government and other state and non-governmental institutions will develop and promote a Human Rights culture that guarantees unequivocal public recognition of the fundamental role played by HRDs, administrators and other employees of the legal system, journalists and other communications professionals in guaranteeing democracy and the Rule of Law.

Actions that should be reflected in the activities of state, municipal, autonomous, semi-autonomous and decentralised bodies include:

- a. Campaigns, publicity and diffusion of information by television, radio and the written press.
- b. Public statements
- c. Training on the work of HRDs
- d. Scenarios for dialogue.

These actions will be developed in order to guarantee that the protection and promotion of Human Rights carried out by HRDs is recognised as a legitimate activity carried out by Human Rights organisations. Educational and communications campaigns or activities aimed at state agents and society at large should therefore be developed in the press concerning the individual or collective work of these vulnerable sectors.

Government and other state bodies and autonomous and semi-autonomous or decentralised agencies should, at the highest level, develop participatory scenarios for dialogue with Human Rights organisations in order to understand their views on the development of public policy.

They should also facilitate processes to reduce tension between civilian and military authorities and social or Human Rights organisations with the aim of preventing illegal or violent acts against them, especially in periods of heightened conflict or vulnerability that affect the exercise of civil, political, economic, social and cultural rights.

Administrative guidelines should also be established to avoid the excessive, irrational, disproportionate or inopportune use of force in public demonstrations, illegal or arbitrary intervention against the homes of vulnerable groups or in the offices of organisations, their correspondence, or communications.¹¹

It is the responsibility of the state to promote and facilitate Human Rights education at all levels of the education system and ensure that the bodies responsible for the curriculums used in the training of lawyers, employees of the legal system, public servants and the armed forces ensure they include Human Rights education.

This training and education is particularly important in order to ensure that members of the armed forces respect HRDs and that high ranking officials affirm unequivocally the legitimacy and importance of the activities of HRDs and their organisations.

The training should emphasise state responsibility and international Human Rights law.

The state will guarantee and support the development of governmental and non-governmental institutions for the defence, promotion and realisation of Human Rights protection by rolling out the following programmes:

1. **Training Programme for Public Servants and Employees in the, Promotion, Protection and Realisation of Human Rights:** In order to communicate the importance of respect for Human Rights and assure that they are fully respected, a Human Rights education programme should be designed for public servants and employees; its organising principles should involve, among other focuses, publicising the role of administrative acts, freedom of expression, access to state archives and records, the right of assembly, to demonstrate and of association, action against violators, and the legitimacy of resistance in the context of civil, political, economic, social and cultural rights.
2. **Awareness-Raising Campaign for the Promotion, Protection, Defence, Guarantee and Respect for Universally Recognised Rights Guaranteed under International Law.** The campaign should legitimise actions to promote, protect, defend and guarantee respect for Human Rights that are advanced, in exercise of their rights, by individual or groups such as HRDs, journalists, judges, prosecutors, lawyers, and social, indigenous and community leaders.

¹¹ For example, according to Governmental Agreement No. 645-05 of 6 December 2005 the Executive Organ should create the norms governing access to information in conformity with international standards based on the principles of transparency and social audits. Articles 30 and 31 of the Constitution state that all other state bodies should develop ordinary, regulatory or individualised guidelines covering access to information.

3. **Programmes to provide Mechanisms or Scenarios to Reduce Tension between Individuals and Groups and Civil or Military Authorities.** These programmes should contribute to reducing the levels of conflict that affect the safety of HRDs, administrators and other servants of the legal system, journalists, and victims of serious crimes and abuses of power.

Through these initiatives it will be possible to reduce the climate of public accusations or defamatory statements by state employees and some press commentators who claim that the activities of these groups destabilises the state, and who contribute thereby to a general belief that the groups are linked to terrorist or former guerrilla groups.

4. **Information Programme for Legal Institutions:** According to article 30 of the Guatemalan Constitution, article 244 of the Code of Criminal Procedure and Legislative Decree No. 92-94, state institutions should provide information concerning Human Rights to prosecutors and judges whenever requested by HRDs in order to expedite legal investigations and trials; State Secrecy and National Security arguments should not be allowed to act as an obstacle or as mechanisms of impunity.
5. **Programme for the De-Classification of Intelligence Archives, Documents and Information:** In this connection it is important to note the declaration made on 25 February 2008 by the President of the Republic, Álvaro Colom Caballeros that the military archives would be opened in order to enable the clarification of events that occurred during the internal armed conflict. The President also signed the Chapultepec Declaration and promised to approve a freedom of information law.

The state is made vulnerable by those who abuse Human Rights and not by those who denounce their abuse.

Intelligence archives and reports compiled by the state security bodies on social and Human Rights organisations should be examined and clarified, rectified and/or destroyed, and the philosophy behind their compilation redefined.

Telephone lines or other means of communication used by Human Rights organisations and HRDs, administrators or servant of the legal system and victims of crimes and/or abuses of power should not be intercepted.

This rule does not apply to cases covered by the Law against Organised Crime (Legislative Decree No. 21-2006) and the Regulations Governing Special Methods of Investigation and Interceptions of Telephones and other Communications Media (Government Agreement No. 188 -2007) or the Law of the Directorate of Civilian Intelligence.

C. Self-Protection Measures

The beneficiary population of the Prevention and Protection Programme should receive training in self-protection measures, especially as concerns their social and private lives, so as to reduce their levels of vulnerability. For example, self protection in social, public or private life covers the home, vehicle, family and social network, itineraries and transport, as well as the protection of correspondence. Therefore, the following Manuals should be developed:

- a. Manual on Self-Protection Measures.
- b. Self-Protection Courses

Everybody involved should develop prevention, protection and self-protection mechanisms, particularly in cases involving HRDs or where the protected person is a woman, leaving her vulnerable to verbal abuse, sexual harassment, rape, or abusive acts deriving from her gender.

In other words, an attack may consist of bringing a woman into disrepute or questioning her reputation or her moral integrity.

Consequently, the specific needs of women who face threats should be taken into account. This does not mean ignoring that men, too, face threats, but that they are more often faced by women, especially when they emanate from common criminality.

Maintaining contact means staying alive. At least one trusted individual should know the itinerary of the beneficiary so they can act if they fail to return when expected.

Sensitive issues or activities should not be discussed by telephone. Mafia or clandestine apparatuses have their own intelligence services – involving pedestrians, shopkeepers, taxi drivers, hotel receptionists and waiters; they also have access to interception equipment and remote listening devices.

These precautions also apply to the use of e-mail. It is recommended to use generic e-mail accounts such as yahoo or hotmail which are harder to trace. Personal names should not be used and previously agreed codes should be used in order to make communication more secure.

D. Monitoring Risk Situations

Protection and security measures should be monitored while the situation of risk demands them and the PCU, CESP and the CERPM should develop methods designed to systematise information. That is:

- a. Permanent Monitoring
- b. Periodic Evaluations
- c. Evaluation of Risk Criteria

4.2 Protection Measures

Protection measures are intended essentially to protect the life, physical integrity, personal security and freedom of threatened individuals or who are subject to intimidation as a result of their Human Rights activities or who have suffered attacks. These measures may be proactive (dissuasion or prevention) or reactive (security).

As basic protection Manuals recommend, these measures should be understood as a security system that is established in the immediate circle of a given individual or physical space and makes it possible to control immediate events in order to prevent attacks against the individual or their property.

The protection measures permit the effects of aggressive acts to be neutralised, removed or diminished and those responsible for them to be detained. The aim of any protection service is to surround the person with a protective curtain, or capsule, which impedes any act of aggression.

Consequently, the Protection and Security Divisions, the Division for the Protection of Public Figures and the Elite Security and Protection Corps are responsible – according to their areas of competence and according to risk levels – with creating protective curtains as follows:

- a. Watch and protect buildings and office premises as necessary.
- b. Ensure the protection and security of beneficiaries.
- c. Protect persons and property, as necessary.

The protection measures adopted may be: **Static** or **Dynamic**. The former refers to what is known in Guatemala as “fixed place” measures (de puesto fijo), put in place to protect buildings, offices or places of residence; the security agents in these cases remain in the vicinity of the point they are protecting.

Dynamic measures involve a team of protection agents responsible for the security of a person, whom they should accompany in all their movements.

There is a third mechanism - known as **counter-surveillance** – that requires a degree of awareness , or self-protection, on the part of the beneficiary and of the security detail and that is designed to confront the trailing of beneficiaries carried out on foot and/or in vehicles, using public transport, on major roads or in isolated areas, in urban, semi-urban, or rural areas.

For example, the beneficiaries should protect themselves and their families by recognising when they are being watched. Beneficiaries should engage in things as simple, for example, as observing an unknown car parked near the residence or office premises, or the arrival of a suspicious street seller in the neighbourhood.

The confluence of all these varied measures is usually known as **Integral Protection**, consisting of a permanent mechanism that is constructed around an individual to guarantee their safety. These mechanisms will involve dynamic, static and counter-surveillance activities.

This having been said it is important to clarify that Integral Protection extends to all aspects of the individual: their physical integrity, place of residence, image, family, activities, etc. It is impossible to guarantee 100% efficiency; but it is a utopia must not be renounced.

Integral Protection seeks to increase the effects of prevention and reduce reactive activities. It is therefore necessary to develop hypotheses that help understand the causes of an attack, be they political, ideological, psychological, racial, religious, personal, sociological or terrorist.

There is common tendency to think of attacks in generic terms; it is therefore important to differentiate between the different sources of risk. Different security measures need to be adopted in the face of murder, physical aggression, kidnap, acts committed by hostile groups or acts of negligence: routine kills.¹²

Consequently, protection measures are classified as follows:

- A. Immediate
 - i. Material
 - ii. Human Aspects of Protection
 - iii. Investigation
- B. Medium Term
 - i. Personal
 - ii. Investigation
 - iii. Institutional

A. Immediate Measures

i. Immediate Protection Materials

1. Individual

- a) Provision of communication equipment (cell phones, radios)
- b) Radios connected to police networks
- c) Bullet-proof vehicles
- d) Bullet-proof vests
- e) Evacuation by land, sea or air

2. Place of residence or office premises

- a) Metal detectors
- b) Video equipment at entrances
- c) Security doors and other protection systems including alarms
- d) Emergency telephone lines
- e) Call identification

ii. The Human Element

Assigning Protection Personnel

- a) Protection from designated agents – bodyguards
- b) Installation of “fixed place” security
- c) Mobile monitoring unit

In addition to the aspects already covered in the relevant sections, when fixed place or perimeter security is planned using a mobile monitoring unit the following factors should also be taken into account:¹³

- Emergency lighting
- Barriers placed at entrances
- Designated parking bays
- Pedestrian access
- Points for reception of goods and packages
- Traffic control

¹² For Luis Estupiñán Chaustre, it is possible to avoid routine if all interested parties adhere to, accept and implement established measures, if everyone fulfils the guidelines and no one is shy of commenting when someone fails to do so. The greatest difficulty with security schemes is maintaining their rigorous implementation. The ability of attackers to violate protection schemes resides in their patience. They are constantly on the prowl, waiting for some routine to emerge or exceptions to occur. Security questions are a whole; security is not the exclusive realm of specialists and no system or scheme of protection is infallible. The point is to maintain the scheme alive, and this can only be achieved through collective action.

¹³ Factors recommended by Mark Lowers, Tony Raker and Jim Rodgers, in their article on Perimeter Security published in Security Management, December 2001.

- Visibility inside vehicles
- Stairways and lifts/elevators

iii. Investigation

- a) Documentation of facts
- b) Initiation of the investigation

As is indicated in the Prevention and Protection Policy and in this Catalogue, if prevention and protection measures are to be successful it is important to establish specialised security and protection units - that is, the CESP. Units should also be created within the prosecuting authorities; these should count with the necessary resources and training to coordinate actions and respond with guaranteed quality to the events that led initially to the adoption of precautionary and provisional measures or urgent calls for action.

The best Preventive Measure is prompt, effective and exhaustive investigation into those responsible for the threats, intimidation and other acts which increase the level or degree of risk and are committed against these sectors by the groups responsible for the attacks.

It is therefore important that the Guatemalan state adopts the recommendations of the CICIG, in order to prevent *de facto* and *de jure* impunity generated by the violation of Human Rights, or infractions of IHL during the internal armed conflict and today.

B. Medium Term Protection Measures

i. Personal Measures

- a) Temporary relocation outside the area of risk
- b) Installation of security equipment.
- c) Requests for an processing of asylum or refugee status

When the risk or threat requires these measures to be implemented the government and other state bodies will ensure the provision of a certificate of risk that may be used when requesting asylum or refugee status. Human Rights and IHL strategies should be developed to make this possible, as should a network of safe houses located outside the area of risk where threatened individuals will be assured of protection.

ii. Investigation

- a) Monitoring complaints
- b) Impartial and exhaustive investigation, and
- c) Punishment for perpetrators

The strengthening of legal institutions and security bodies, and fulfilment of article 245 of the Constitution, requires that the groups, clandestine security bodies and parallel structures that attack the target population should be investigated, pursued and combated.

It has been shown that these groups are responsible for operations against the political opposition, Human Rights activists, administrators of justice and other legal servants, others implicated in legal proceedings, trade unionists, and social, indigenous and peasant leaders when they criticise government decisions, or encourage and lead the struggle against impunity, corruption and the fight against organised crime.

The state will conduct rapid and impartial investigations or ensure the necessary enquiries are carried out, when there are rational motives for believing that a violation of fundamental freedoms has occurred.

iii. Institutional

The implementation of official protection measures will respond to the following objectives:

- a. Strengthen the COPREDEH with human, financial and logistical resources, facilitating as a result greater autonomy of action for the PCU, or Defenders' Unit.
- b. Strengthen and implement the programme for the protection of witnesses and others implicated in legal proceedings, linked to the administration of criminal justice and that also benefits journalists, other communications professionals and trade unionists; the Protection Council should be created, and the regulations observed.
- c. Approval of the Law for the Integral Attendance of Victims of Crime.
- d. Approval of the the Ministry of Government's Prevention and Protection Manual
- e. Develop and systematise the Programme for the Protection of Judges, Magistrates and other Servants of the Administration of Justice developed by the legal authorities.

- f. Develop the actions set out in the National Human Rights Plan along with its Sectoral Operational Plans defined in the State Human Rights Policy.
- g. Training for investigators in the National Civilian Police and the Prosecuting Authorities.
- h. Establish the Ministry of Government's Office for the Analysis of Attacks against HRDs as a permanent body.
- i. Create the Elite Security and Protection Corps within the Ministry of Government.
- j. Dismantle illegal groups and clandestine security apparatuses.
- k. Contribute to or collaborate with the CICIG.
- l. The Ministries of Government and Defence should publish ministerial guidelines covering the respect and protection of HRDs, employees of the legal system, journalists and other communications professionals and trade unionists.
- m. Develop a model of preventive security to advance the mission and vision of a democratic, preventive, investigative and communitarian model of society.
- n. Government and state bodies should count with the human, budgetary and logistical resources necessary to guarantee the implementation of adequate and effective protection measures when the personal security and lives of the sectors referred to in this Catalogue are at risk.

Annex 9: Nepal: Human Rights Defenders Bill 2066 (2009) [Draft proposal]¹

PREAMBLE

The executive parliament has drafted this act in accordance with an interim constitution taking into the account that Nepal has been the party to various international covenants, treaties and agreements related to the protection, promotion and respect of human rights; excellently evaluating the significant role played by Nepalese human rights defenders at the time of Nepal's democratic movement (Loktantrik Aandolan), and recalling the national obligations following the adoption of UN General assembly of the "declaration 1998 on the rights and responsibilities of the individuals, groups and different social bodies regarding the promotion and protection of human rights and fundamental freedom which has been universally accepted"; and also taking into the consideration that threats to life looms on the human rights defenders actively engaged in Nepal's human rights movement, and protection and promotion of human rights can be achieved through the protection and management of their services; the need, therefore, has been felt for this Act.

Chapter One Preliminary

1. Name in short and beginning:

1. This Act is called Human Rights Defenders Security Act, 2066
2. This act will be immediately regulated.

2. Definition. In this Act, if not interpreted differently due to issues or instances:

- a. **Human rights defenders** mean any of the citizens, group of citizens or organization which are protecting and promoting human rights either in an individual capacity or in both organized or spontaneous manner. This term also indicates human rights activists, legal professionals, media personnel, social worker, health personnels or any other individuals who are actively engaged for the promotion and protection of human rights
- b. **Government bodies** mean associations, institutions or bodies established/created and being run in accordance with the existing law
- c. **Officials** refer to President or members including member secretary
- d. **Local administration** refers to district administration office, district police office or local police office or any other similar existing or ad hoc governmental security mechanisms
- e. **Commission** it should mean that it is a human rights defenders commission established in accordance with this law
- f. **By stipulated or in accordance with the stipulation** mean that it is stipulated in accordance with this law or stipulated as per the regulations of this Act.

Chapter Two Role, Responsibilities and Rights of Human Rights Defenders

3. Rights of Human Rights Defender: Human Rights Defenders will have the rights as follows:

1. Protect, promote and fulfil human rights in both individual and organized form
2. Establish/run or participate in any organization or association, as per the existing legislation, with an objective to protect and promote human rights
3. Receive, send or disseminate any human rights related information
4. Promote or widely disseminate or facilitate human rights related new principles and conduct necessary activities to obtain public support
5. Bring the immediate attention of government or concerned parties against any State or non-State actions taken against, or have the strong probability of being against, the human rights norms; and to organize peaceful protest programmes to meet this purpose

¹ Draft proposal sent by the Nepalese NGO Informal Sector Service Center (INSEC, <http://www.insec.org.np>), in September 2009, prior to it being discussed by the relevant authorities in Nepal.

6. Provide/receive legal or other forms of assistance for the protection of human rights
7. Provide necessary support to hold the government responsible to national and international human rights obligations; and create public census to serve this purpose
8. Receive assistance from the government bodies to access the places where either human rights have been violated or there is a strong possibility of human rights being violated; while visiting in and out of such places for the purpose of information collection, receive support from the local government bodies and security forces
9. Organize various programmes on both individual or in coordination with Government organizations or non-Government organizations/associations to protect and promote human rights
10. Provide suggestions to the government and other concerned bodies regarding the protection and promotion of human rights.

4. Responsibilities of Human Rights Defenders – Responsibilities of Human Rights Defenders will be as follows:

1. Advocate for all human rights for all
2. Abide by or made others to abide by the existing legislation while carrying on with their own activities
3. Be sensitive while collecting and disseminating information related to national security, sovereignty and indivisibility, social and religious harmony and national unity
4. To always consider the sensitivity and confidentiality of the victim side while carrying out your activities
5. To prioritise the security to life and relief of the individuals who could be victims or injured or are at risk rather than just collection of information
6. To carry on with your actions or make others carry on their action without creating obstacles in the investigation or enquiries being conducted by the state bodies in relation to establish the guilty or the crime
7. To completely support the other human rights defenders who could be at risk due to security or other reasons
8. To always practice and make others practice the universal understanding of human rights and its principles.

**Chapter Three
Human Rights Defenders Commission**

5. Human Rights Defenders Commission

1. Nepal Government will establish Human Rights Defenders Commission
2. The commission will be a continuous authoritarian autonomous institution. Can acquire, buy and sell assets as an individual
3. Officials and members will be in the commission as following:
 - a. Member nominated by the Commission from (amongst) the human rights commission members *Chairperson*
 - b. One legal expert nominated by Nepal Bar Association from (amongst) the senior advocate/advocates who have been actively engaged in human rights field for the last 15 years *member*
 - c. One journalist nominated by Federation of Nepalese Journalists from (amongst) the journalists whose journalism has been actively engaged in human rights and been collecting and disseminating news on human rights for the last 15 years *member*
 - d. Four human rights defenders with at least one woman nominated by Nepal Government, upon the recommendation of National Human Rights Commission, selected from (amongst) the famous human rights defenders who have been actively engaged and contributed in this field *member*
 - e. Joint-Secretary of Home Ministry, Nepal Government *member*
 - f. First Class Official serving in Nepal Justice Service, nominated by Nepal Government *member secretary*

6. Tenure of the Commission Officials

1. Except for the ex-officio, the tenure of other officials will be of 4 years
2. As per sub-article-1 - the appointed officials can be re-appointed.

7. Ineligibility The individuals as mentioned in the following will not be eligible to be appointed in the commission:

1. Has been found guilty in human rights violation charge
2. Has received sentence in Criminal cases effecting his/her moral degradation
3. Has been charged with corruption
4. Is neither below 25 years of an age nor above or has completed 70 years of an age
5. Has to have at least bachelors degree or has not completed any of the equivalent and relevant academic degree
6. Has been appointed or nominated in government service at the time of appointment in the commission.

Chapter Four

Role, Responsibilities and Rights of Human Rights Defenders Commission

8. Role, Responsibilities and Rights of the Commission:

Role, Responsibilities and Rights of the Commission will be as follows:

1. To take or to make others take up necessary actions regarding the protection of human rights defenders' service
2. To make or to make others take up necessary provisions with regards to coordination amongst all concerned parties to minimize the risk that the human rights defenders set out to collect information might face in their working areas
3. Collect details on human rights defenders and on the basis of which distribute human rights defenders identity card to the human on the basis
4. Formulate and implement code of conduct for human rights defenders
5. Organize national-level human rights defenders representational gathering at least once; prepare and submit a report to the government on the working condition of the human rights defenders
6. Either in coordination with other human rights defenders or alone, take or to make others take up necessary actions for the prevention of abuses against human rights defenders
7. To formulate and implement human rights defenders' protection policy and to have it implemented
8. Assist national human rights commission and Nepal government as required to implement human rights defenders declaration; and conduct necessary programmes to serve the purpose
9. To prepare and submit an annual report to UN special rapporteur on the security condition of human rights defenders, security to their service, human rights defenders related activities carried out by the government and non-government parties and the situation of the human rights defenders
10. Assist Nepal government or national human rights defenders as required on the protection and to capacitate professional competency of the human rights defenders
11. Distribute and renew institutional or individual membership of human rights defenders as identified.

Chapter Five

Protection of Human Rights Defenders' Service

9. Security of Human Rights Defenders

1. In the course of their professional activities, human rights defenders have to be supported by all government or administrative or security bodies, political parties and concerned all parties including local individuals – for or against – of the place where human rights have been violated or where the strong probability of the human rights violation exists; and each human rights defender holds the right to receive support in relation to the concerned subject
2. Local administration or the government bodies will have the responsibility to provide as much possible security as it is in its reach to the human rights defenders if such a request is made by the human rights defenders while collecting and disseminating information on their visit to and from the places where human rights violation has taken place or a strong probability of such violation exists

3. Local administration or the government bodies will have the responsibility to provide information as sought by the human rights defenders – during their visit, stay or in the aftermath of the incident – related to the places where human rights violation has taken place or a strong probability of such violation exists
4. Except in criminal cases, human rights defenders should not be arrested while they are fulfilling their professional responsibilities related to incidence of human rights violations or in due course of other investigations
5. In relation to any of the activities/actions carried out by the human rights defenders as human rights defenders, no case should be filed in the court against human rights defenders, and s/he will not be asked to be witness against his wishes and forcefully compel him/her to make public the information that s/he has received in his capacity.

Chapter Six **Right to Remedy**

10 Right to Remedy

1. As per this Law, human rights defenders can lodge complaint with the district court on the difficulties that they face if they are deprived of the use of facilities or against the restrictions imposed except in the cases when it is in accordance with this Act allowing the human rights defenders to enjoy their rights and facilities as per the act
 2. If such complaint is received, as per the law, the concerned district court can issue an order asking the defendant to be present with a reply in writing within three days
 3. After receiving the defendant's reply in writing, or after the time frame given to receive the defendant's reply passes out, the district court has to prioritise the case and decide on whether or not the concerned party should be subjected to the rights as per this Act
 4. If the decision is for the rights to be subjected as per sub-article 3, such order should be sent to the concerned party as soon as possible through the use of the most efficient means
 5. After receiving the order as per sub-article 3, the concerned party should immediately implement the order
 6. While executing the case or sidelining it as per this Act, the district court can use the rights that it has received from the existing law.
- 11. Interim Order** – As required, the court can hold unilateral hearing and can issue an interim order on the complaint received as per the sub-article 1; or an interim order can be issued by the district court after listening to both the parties. The other party can lodge a complaint with a court if an interim order has been issued based on the unilateral hearing requesting for its annulment; in such a case, the court may annul or modify its previous order. However, if such an interim order has been issued after receiving the written reply then this article will not be viewed as being an obstacle to the decision of the case.
- 12. Penalty Compensation** – According to this Act, the individuals or the concerned official who are not implementing the court order can be subjected to district court fine up to 10,000/- NPR and a letter can be sent to the concerned department directing appropriate departmental action. The amounts fined as such will be collected as the government dues.
- 13. Provision related to Appeal** – According to this law, the concerned party expressing dissatisfaction against the district court's decision on penalty/compensation may lodge an appeal with the concerned Appellate Court within the 15 days of the decision made. Hence, if such an appeal is received then the concerned Appellate Court will have to immediately proceed with and decide on the case as per this act.
- 14. Court Date and Extension** – According to this law, the concerned court can provide the court date or its extension up to 5 days if it is foreseen that the reply cannot be received in the previously decided court date or the appeal cannot be lodged within that time frame owing to situations beyond control.

Chapter Seven **Human Rights Defenders Fund**

- 15. Fund** – A fund will exist in the commission where the amount will be deposited as mentioned in the following:
- a. Contribution or loan received by the Commission from the government or non-government areas
 - b. Individual or institutional membership fee received from the human rights defenders

- c. Assisting contribution received from the national or international individuals or organizations/associations
- d. Amounts received from the assets of Commission
- e. Amount received from any other sources.

16. Use of Fund – Fund will be used by the joint signature of Fund Committee President or any member or secretary authorized by him/her.

Chapter Eight Miscellaneous

17. Action against contempt of the court – In the case under this Act, if an individual does not implement the court's decision or creates obstacles during or while implementing the decision, then the court can take action against such an individual for holding contempt of the court.

18. Contact with Nepal Government – Commission can contact Nepal Government through Home Ministry.

19. Office – Central office of the Commission will be in Kathmandu. It itself can open its regional and contact offices after pre-informing Nepal government. Till such offices are operated, with a pre-consent of National Human Rights Commission, Commission can operate its office in National Human Rights Commission's office.

20. Provision related to Personnel and Expense of the Commission – Nepal government has to provide the required personnel to the Commission. The officials and personnel of the Commission will be provided with the stipulated salary and allowances. These will be provided as stipulated by Nepal Government till the Commission stipulates on the salary and expenses.

21. Right to formulate Regulations

1. For the fulfilment of this Act, the Commission can formulate the rules and regulations as felt necessary
2. Rules and regulations as per sub-article 1 will be in force following the approval of Nepal Government.

22. As per the existing law – Everything mentioned in this Act will be as per this Act and other existing laws.

Annex 10: Democratic Republic of the Congo: Draft Bill on the Protection of Human Rights Defenders (2008)

DRAFT BILL – BKB

Preamble

We, as members of the National Assembly,
meeting in plenary session,

- Mindful of the situation and determined to introduce the democratic rule of law founded on respect for human rights, and committed to guaranteeing, with no form of discrimination, the effective exercise and enjoyment of fundamental rights and freedoms for all Congolese citizens
- Reaffirming the elemental principles of the United Nations Charter of 26 June 1945, the Universal Declaration of Human Rights of 10 December 1948, international agreements and other conventions and protocols on human rights
- Likewise reaffirming the provisions of the Declaration on Human Rights Defenders presented by the United Nations Commission on Human Rights in 1998 and adopted by the United Nations General Assembly on 9 December 1998 in its resolution 53/144
- Having regard to the mandate of the Special Representative of the United Nations Secretary General for Human Rights Defenders
- Having regard to the significant number – some 500 – of national and local organisations for the promotion and protection of human rights currently operating in the Democratic Republic of the Congo and the essential role they play in the rule of law and in the establishment of justice
- Whereas human rights defenders are increasingly the target of attacks, death threats, arbitrary imprisonment and exile, and that their rights are held in contempt by those in power in many countries, with total impunity, and in the absence of any legal framework to protect human rights defenders
- Recognising the role played by human rights defenders and the ability of Congolese organisations for the defence of human rights to collaborate with the human rights protection bodies of the United Nations and other competent regional and national institutions on matters related to the promotion of human rights
- Considering the need to establish a national legal framework for the protection of human rights defenders
- Underlining the fact that the primary responsibility and duty to protect the fundamental rights and freedoms of all citizens lies with the State
- Recognising that individuals, groups and associations have the right and the responsibility to encourage respect for human rights and fundamental freedoms, and to disseminate them both nationally and internationally
- Taking inspiration from the guidelines and from the role of the diplomatic missions of the European Union in relation to human rights defenders
- We hereby approve and pass this law.

Section I: General provisions:

ARTICLE 1: This law has been drawn up based on the current Constitution of the Democratic Republic of the Congo, particularly its provisions relating to fundamental freedoms, rights and obligations of its citizens and international legal instruments, in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and the Declaration on Human Rights of 1998.

ARTICLE 2: This law guarantees that the inviolable rights, freedoms and work of Congolese human rights defenders will be safeguarded.

ARTICLE 3: The public authorities shall respect and protect the rights, freedoms and work of human rights defenders.

Section II:

Definition of the role of human rights defenders

ARTICLE 4: The definition of human rights defenders is enshrined in the first article of the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which states that *“Everyone has the right, individually and in association with others, to promote and to strive for the protection and implementation of human rights and fundamental freedoms at national and international level.”*

ARTICLE 5: Human rights defenders are individuals, groups and organs of society which promote and protect universally recognised human rights and fundamental freedoms. They are dedicated to the promotion, protection and practical implementation of economic, social and cultural rights. They also promote and protect the rights of the members of groups such as indigenous communities. This definition does not include individuals or groups who commit acts of violence or who propagate violence.

ARTICLE 6: Although the primary responsibility for the promotion and protection of human rights lies with the state, it is evident that individuals, groups and organs of society make a significant contribution to promoting the cause of human rights. In particular, human rights defenders:

- Make offences public
- Try to ensure that the victims of these offences can exercise their legal rights by providing them with legal, psychological, medical and other assistance
- Fight against the culture of impunity that serves to hide systematic and repeated violations of human rights and fundamental freedoms.

Section III:

Foundations of the mission of human rights defenders:

ARTICLE 7: The mission of human rights defenders is based on the application of the different international legal instruments detailed below:

- Articles 18, 19 and 20 of the Universal Declaration of Human Rights of 10/12/1948 which state that everyone, including human rights defenders, has the right to enjoy freedom of thought, speech, peaceful assembly and association
- Freedom of opinion and speech includes the right to hold opinions without interference, the right to seek and receive information and ideas, and the right to disseminate them through any media regardless of frontiers
- Articles 21 and 22 of the International Covenant on Civil and Political Rights of 1996, which also guarantee the freedom of peaceful assembly and free association for human rights defenders in order to protect their interests
- Article 10 of the African Charter on Human and Peoples’ Rights of 1981 which recognises that every individual shall have the right to freely constitute associations, provided that he abides by the law
- The provisions of the Declaration of 1998 on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

ARTICLE 8: In the national domain, the mission of human rights defenders is based on the provisions of the current Constitution of the Democratic Republic of the Congo, especially those relating to the individual freedoms in articles 17, 18, 19, 22, 23, 24, 25, 26, 27, 30 and 37.

* *Equally, law No. 004/2001 of 20 July 2001 regarding the freedom to create and join not-for-profit associations in the Democratic Republic of the Congo.*

Section IV:

The rights and protection of human rights defenders

ARTICLE 9: Human rights defenders, like all other people, individually and in association with others, have the right to promote and strive for the protection and implementation of human rights and fundamental freedoms both nationally and internationally.

ARTICLE 10: For the purpose of promoting and protecting human rights and fundamental freedoms, human rights defenders have the right, individually or in association with others, both nationally and internationally:

- To meet or assemble peacefully
- To form, join and participate in non-governmental organisations, associations or groups
- To communicate with non-governmental or intergovernmental organisations.

ARTICLE 11: They also have the right:

- To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information regarding how those rights and freedoms are made effective in domestic legislative, judicial and administrative systems
- To freely publish, communicate or disseminate to others ideas, information and knowledge on all human rights and fundamental freedoms
- To study, discuss, form and hold opinions on the respect, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to these matters.

ARTICLE 12: Human rights defenders also have the right to develop and discuss new human rights ideas and principles and to advocate their acceptance.

ARTICLE 13: The right to participate effectively, without being exposed to discrimination, in the government of his or her country and in the conduct of public affairs.

This particularly includes the right, individually and in association with others, to submit criticism and proposals intended to improve the way government institutions and agencies involved in public affairs operate, and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and implementation of human rights and fundamental freedoms.

ARTICLE 14: When exercising human rights and fundamental freedoms, including the promotion and protection of human rights, the right, individually and in association with others, to lodge an appeal and be protected in the event of the violation of those rights.

To this end, any human rights defender whose rights or freedoms are allegedly violated has the right, either in person or through legally authorised representation, to submit a complaint and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law, and to obtain from such an authority a decision, in accordance with the law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of any decision and verdict, without undue delay.

ARTICLE 15: To this end, human rights defenders have the right, individually and in association with others, in particular:

- To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the state legal system, which shall render their decision on the complaint without undue delay
- To attend public hearings, proceedings and trials in order to form an opinion on their compliance with national law and applicable international obligations and commitments
- To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

ARTICLE 16: In accordance with applicable international instruments and procedures, human rights defenders have the right, individually and in association with others, to communicate freely and benefit from unhindered access to international bodies with general or special competence to receive and consider information on matters of human rights and fundamental freedoms.

ARTICLE 17: Human rights defenders have the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

In this respect, they have the right to be protected effectively under national law when reacting against or opposing, through peaceful means, activities and acts attributable to the state, including those by omission, that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

ARTICLE 18: Human rights defenders have the right, individually and in association with others, to request, receive and make use of resources, under article 37 of the current Constitution of the Democratic Republic of the Congo, for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the Declaration on Human Rights Defenders of 1998.

ARTICLE 19: In the event of imminent danger that threatens the lives of human rights defenders, they have the right to save their lives and seek the protection of the European Union's accredited diplomatic missions in the Democratic Republic of the Congo or those of other African nations that agree to shelter and protect them. The right to seek exile abroad is recognised in Article 14 of the Universal Declaration of Human Rights of 1948 and Article 33 of the current Constitution of the Democratic Republic of the Congo.

Section V:

Duties and obligations of human rights defenders

ARTICLE 20: In exercising their mission, human rights defenders, like any other citizens, have a duty to respect other people's rights and the laws in force in the Democratic Republic of the Congo.

They also have the obligation, during the exercise of their functions, to respect the provisions of articles 27 to 29 of the African Charter on Human and Peoples' Rights of 1987 concerning citizens' rights.

ARTICLE 21: Human rights defenders must be guided in their mission by their ethical or deontological code.

ARTICLE 22: Human rights defenders shall not participate, by act or by failure to act, in violating human rights and fundamental freedoms, and shall not be punished or harassed for refusing to do so.

ARTICLE 23: In exercising their rights and freedoms and their mission, human rights defenders, individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society.

Section VI:

The duties and obligations of the State

ARTICLE 24: The Congolese State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, particularly by adopting such steps as may be necessary to create all the conditions necessary, as well as the legal guarantees required to ensure that all people under its jurisdiction, including human rights defenders, may, whether individually or in association with others, enjoy all those rights and freedoms in practice.

The Congolese State must adopt the legislative, administrative and other measures necessary to ensure that the rights and freedoms of its citizens are guaranteed.

ARTICLE 25: In the event of a complaint or finding that the rights of a human rights defender have been violated, the state shall conduct a prompt and impartial investigation and ensure that an inquiry takes place whenever there are reasonable grounds to believe that any such violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

ARTICLE 26: The state shall take all the necessary measures to ensure that the competent authorities protect human rights defenders, whether acting individually or in association with others, against any violence, threats, retaliation, de facto or de jure discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights and freedoms guaranteed by national and international legal instruments.

ARTICLE 27: Deportation of human rights defenders who have fled from persecution when their lives are in danger shall be prevented.

ARTICLE 28: The need to address the issue of impunity by conducting in-depth, independent investigations and putting an end to the violence perpetrated against human rights defenders shall be highlighted.

ARTICLE 29: This law shall go into effect on the date of its enactment.

Annex 11: United Nations: Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (1998)



Fifty-third session, agenda item 110 (b)

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the Third Committee (A/53/625/Add.2)]

General Assembly resolution 53/144. Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms

THE GENERAL ASSEMBLY,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Taking note of Commission on Human Rights resolution 1998/7 of 3 April 1998,¹ See *Official Records of the Economic and Social Council, 1998, Supplement No. 3 (E/1998/23)*, chap. II, sect. A. in which the Commission approved the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms,

Taking note also of Economic and Social Council resolution 1998/33 of 30 July 1998, in which the Council recommended the draft declaration to the General Assembly for adoption,

Conscious of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights, Resolution 217 A (III),²

1. *Adopts* the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annexed to the present resolution;
2. *Invites* Governments, agencies and organizations of the United Nations system and intergovernmental and non-governmental organizations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof, and requests the Secretary-General to include the text of the Declaration in the next edition of Human Rights: *A Compilation of International Instruments*.

1 See *Official Records of the Economic and Social Council, 1998, Supplement No. 3 (E/1998/23)*, chapter II, section A.

2 Resolution 217 A (III).

85th plenary meeting, 9 December 1998

ANNEX

Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms

THE GENERAL ASSEMBLY,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights² and the International Covenants on Human Rights Resolution 2200 A (XXI),³ annex. as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

DECLARES:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.
2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

3 Resolution 2200 A (XXI), annex.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights,² the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- a) To meet or assemble peacefully;
- b) To form, join and participate in non-governmental organizations, associations or groups;
- c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

- a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:
 - a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;
 - b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
 - c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.
5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.
2. Such measures shall include, *inter alia*:
 - a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;
 - b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

Annex 12: United Nations: Additional resolution to the Human Rights Defenders Declaration – see previous annex – (2009)



Sixty-fourth session

THIRD COMMITTEE: AGENDA ITEM 69 (B)

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms.

Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Benin, Bosnia and Herzegovina, Bulgaria, Canada, Cape Verde, Chile, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Iraq, Ireland, Italy, Japan, Jordan, Latvia, Lithuania, Luxembourg, Mexico, Micronesia (Federated States of), Monaco, Montenegro, Morocco, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Vanuatu: revised draft resolution,

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

THE GENERAL ASSEMBLY,

Recalling its resolution 53/144 of 9 December 1998, by which it adopted by consensus the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms annexed to that resolution, and reiterating the importance of the Declaration and its promotion and implementation,

Recalling also all previous resolutions on this subject, in particular its resolution 62/152 of 18 December 2007 and Human Rights Council resolution 7/8 of 27 March 2008,¹

Noting with deep concern that in many countries persons and organizations engaged in promoting and defending human rights and fundamental freedoms frequently face threats, harassment and suffer insecurity as a result of those activities, including through restrictions on freedom of association, expression or the right to peaceful assembly, or abuse of civil or criminal proceedings,

Gravely concerned that, in some instances, national security and counterterrorism legislation and other measures have been misused to target human rights defenders or have hindered their work and safety in a manner contrary to international law,

Gravely concerned also by the continuing high level of human rights violations committed against persons engaged in promoting and defending human rights and fundamental freedoms around the world and by the fact that in many countries impunity for threats, attacks and acts of intimidation against human rights defenders persists and that this has a negative impact on their work and safety,

Gravely concerned further by the considerable number of communications received by the Special Rapporteur on the situation of human rights defenders that, together with the reports submitted by some of the special procedure mechanisms, indicates the serious nature of the risks faced by human rights defenders, in particular women human rights defenders,

¹ See Official Records of the General Assembly, Sixty-third Session, Supplement No. 53 (A/63/53), chap. II, sect. A.

Stressing the important role that individuals, civil society organizations, non-governmental organizations, groups, organs of society and independent national institutions play in the promotion and protection of all human rights and fundamental freedoms for all, including in addressing all forms of human rights violations, combating impunity, fighting poverty and discrimination, and promoting access to justice, democracy, tolerance, human dignity and the right to development, and recalling that all have rights as well as responsibilities and duties within and towards the community,

Recognizing the substantial role that human rights defenders can play in supporting efforts to strengthen peace and development, through dialogue, openness, participation and justice, including by monitoring, reporting on and contributing to the promotion and protection of human rights,

Recalling that, in accordance with article 4 of the International Covenant on Civil and Political Rights,² certain rights are recognized as non-derogable in any circumstances and that any measures derogating from other provisions of the Covenant must be in accordance with that article in all cases, and underlining the exceptional and temporary nature of any such derogations, as stated in General Comment No. 29 on states of emergency adopted by the Human Rights Committee on 24 July 2001,

Welcoming the cooperation between the Special Rapporteur and other special procedures of the Human Rights Council, as well as other relevant United Nations bodies, offices, departments, specialized agencies and personnel, both at Headquarters and at the country level, within their mandates,

Welcoming also regional initiatives for the promotion and protection of human rights and the strengthened cooperation between international and regional mechanisms for the protection of human rights defenders, and encouraging further development in this regard,

Welcoming further the steps taken by some States towards adopting national policies or legislation for the protection of individuals, groups and organs of society engaged in promoting and defending human rights, including as follow-up to the universal periodic review mechanism of the Human Rights Council,

Recalling that the primary responsibility for promoting and protecting human rights rests with the State, reaffirming that national legislation consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights defenders conduct their activities, and noting with deep concern that the activities of some non-State actors pose a major threat to the security of human rights defenders,

Emphasizing the need for strong and effective measures for the protection of human rights defenders,

1. *Calls upon* all States to promote and give full effect to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,³ including by taking, as appropriate, practical steps to that end;
2. *Welcomes* the reports of the Special Rapporteur on the situation of human rights defenders⁴ and her contribution to the effective promotion of the Declaration and the improvement of the protection of human rights defenders worldwide;
3. *Condemns* all human rights violations committed against persons engaged in promoting and defending human rights and fundamental freedoms around the world, and urges States to take all appropriate action, consistent with the Declaration and all other relevant human rights instruments, to prevent and eliminate such human rights violations;
4. *Calls upon* all States to take all necessary measures to ensure the protection of human rights defenders, at both local and national levels, including in times of armed conflict and peacebuilding;
5. *Also calls upon* States to respect, protect and ensure the rights to freedom of expression and association of human rights defenders and, in this regard, to ensure, where procedures governing registration of civil society organizations exist, that these are transparent, non-discriminatory, expeditious, inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law;
6. *Urges States* to ensure that any measures to combat terrorism and preserve national security are in compliance with their obligations under international law, in particular under international human rights law, and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights;

2 See resolution 2200 A (XXI), annex.

3 Resolution 53/144, annex.

4 See A/63/288 and A/64/226.

7. *Also urges* States to take appropriate measures to address the question of impunity for attacks, threats and acts of intimidation, including cases of genderbased violence, against human rights defenders and their relatives, including by ensuring that complaints from human rights defenders are promptly investigated and addressed in a transparent, independent and accountable manner;
8. *Further urges* all States to cooperate with and assist the Special Rapporteur in the performance of her/his mandate and to provide all information in a timely manner, as well as to respond without undue delay to communications transmitted to them by the Special Rapporteur;
9. *Calls upon* States to give serious consideration to responding favourably to the requests of the Special Rapporteur to visit their countries, and urges them to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to and implementation of her/his recommendations;
10. *Strongly encourages* States to translate the Declaration and to take measures to ensure its widest possible dissemination at national and local levels;
11. *Encourages* States to promote awareness and training in regard to the Declaration in order to enable officials, agencies, authorities, and members of the judiciary to observe the provisions of the Declaration and thus to promote better understanding and respect for individuals, groups and organs of society engaged in promoting and defending human rights, as well as for their work;
12. *Encourages* relevant United Nations bodies, including at the country level, within their respective mandates and working in cooperation with States, to give due consideration to the Declaration and to the reports of the Special Rapporteur, and, in this context, requests the Office of the United Nations High Commissioner for Human Rights to draw the attention of all relevant United Nations bodies, including at the country level, to the reports of the Special Rapporteur;
13. *Requests* that the Office of the High Commissioner, as well as other relevant United Nations bodies, offices, departments and specialized agencies, within their respective mandates, consider ways in which they can assist States in strengthening the role and security of human rights defenders, including in situations of armed conflict and peacebuilding;
14. *Requests* all concerned United Nations agencies and organizations, within their mandates, to provide all possible assistance and support to the Special Rapporteur for the effective fulfilment of her/his mandate, including through country visits;
15. *Further requests* the Special Rapporteur to continue to report annually on her/his activities to the General Assembly and to the Human Rights Council in accordance with her/his mandate;
16. *Decides* to consider the question at its sixty-sixth session under the item entitled "Promotion and protection of human rights".

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- José Juan Alonso Ramírez (*Programme on attacks against journalists and civil defenders of human rights of the National Human Rights Commission, Mexico – Programa de Agravios a Periodistas y Defensores Civiles de Derechos Humanos de la Comisión Nacional de los Derechos Humanos -CNDH-*)
- Albertine Amazani (*Association for the fight to promote and protect the rights of women and children -ALUDROFE-, Fizi and Baraka, RDC – Association de Lutte pour la promotion et la protection des droits de la femme et de l'enfant -ALUDROFE-*)
- Coronel Efraín Oswaldo Aragón (*Human Rights Programme of the National Police, Colombia – Programa Derechos Humanos de la Policía Nacional*)
- Ignacio Arango (*Penca de Sábila, Medellín, Colombia*)
- Luis Arriaga (*HRD Centre Miguel Agustín Pro Juárez, México – Centro de DDHH Miguel Agustín Pro Juárez*)
- Miriam Awad (*Santa Marta Land of Hope Association, Colombia – Asociación Tierra de Esperanza Santa Marta*)
- Patrick Bakula Impempe (*Dynamic movement of human rights activists -DADH-, Matadi, RDC – Dynamique des activistes des droits de l'homme -DADH-*)
- Franck Banza Ngoy (*Friends of Nelson Mandela for the defence of human rights, ANMDH, Kinshasa, RDC – Les amis de Nelson Mandela pour la défense des droits humains, ANMDH*)
- Paola Barruti (*Office of the United Nations High Commissioner for Human Rights in Colombia – Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en Colombia*)
- Dieudonné Basedeke Mongane (*Walungu, RDC*)
- Léonard Basilwango Mutumoyi (*ACPD, Bukavu, RDC*)
- Cyprien Birhingingwa (*National Centre for the support of development and people's participation -CENADEP-, Kivu, RDC – Centre national d'appui au développement et à la participation populaire -CENADEP-*)
- Diana Paola Botero Morales (*Governmental Human Rights Programme, Colombia – Programa Gubernamental de derechos humanos*)
- Cécile Bwabuy (*Consultation and Thoughts on Action for Basic Development -CRADEB-, Kitwit, RDC – Concertation et réflexion sur les actions pour le développement de base -CRADEB-*)
- Laurent Bwenia-Muhenia (*ASADHO, Kikwit, RDC*)
- Owen Campbell (*Peace Brigades International - Guatemala Project – Brigadas Internacionales de Paz -Proyecto Guatemala*)
- Jean Carlos (*REPRDODHOC and RENADHOC, RDC*)

- Sandra Carvalho (*Justicia Global, Brazil*)
- Francisco Cerezo Contreras (*Cerezo Committee, Mexico – Comité Cerezo*)
- Marcellin Chamwa Murho (*RDC*)
- Olimpia Chatá (*Organisation of Ixquic Women of Petén, Guatemala – Organización de Mujeres Ixquic de Petén*)
- Kizito Cimbembe (*Collective for organisations of young supporters of the Congo, Université Kinshasa-Institut supérieur études médicales -COJESKI UNIKIN-ISTM-, Kinshasa, RDC – Collectif des organisations des jeunes solidaires du Congo, Université Kinshasa-Institut supérieur études médicales -COJESKI UNIKIN-ISTM-*)
- Patricia Colchero (*Human Rights Commission of the Federal District -CDHDF-, México – Comisión de Derechos Humanos del Distrito Federal -CDHDF-*)
- Vanessa Coria (*Centre for Justice and International Law -CEJIL- Central America, Costa Rica – Centro por la Justicia y el Derecho Internacional -CEJIL- Mesoamérica*)
- Rosita Corrales (*Organisation of Ixquic Women of Petén, Guatemala – Organización de Mujeres Ixquic de Petén*)
- Edgar Cortés (*All rights For All Network, Mexico – Red de Todos los Derechos para Todos*)
- Eréndira Cruzvillegas Fuentes (*Human Rights Commission of the Federal District -CDHDF-, Mexico – Comisión de Derechos Humanos del Distrito Federal -CDHDF-*)
- Jorge Cubides (*Protection Programme, Government of Colombia – Programa de Protección, Gobierno de Colombia*)
- Defender (*Kontras Aceh, Indonesia*)
- Defenders - 13 individuals (*Kenya*)
- Defender (*Jagaran Media Centre, Nepal*)
- Defender (*INSEC, Nepal*)
- Defender (*Human Rights House, Nepal*)
- Defender (*NEFIN, Nepal*)
- Defender (*CVICT, Nepal*)
- Defender (*Blue Diamond Society, Nepal*)
- Defender (*HUDEP, Nepal*)
- Defender (*LANCA, Nepal*)
- Defender (*NDC, Nepal*)
- Defender (*WHR, Nepal*)
- Defender (*People's and Human Rights Watch, Kenya*)
- Defender (*WOREC, Nepal*)
- Defender (*Amnesty International, Nepal*)
- Defender (*National Human Rights Commission, Nepal*)
- Defender (*NWC, Nepal*)
- Defenders (*Democratic Republic of Congo: some 100 participants in various workshops in Kinshasa, Kikwit, Mbandaka, Kinshasa, Matadi, North Kivu and South Kivu*)
- Defender (*Mandera, Kenya*)
- Defender (*Centre for Advocacy and Research Against Torture, Kenya*)
- Defender (*The voice of those with no voice or freedom, South Kivu, RDC – Voix de sans Voix ni Liberte*)
- Rafael Dias (*Justicia Global, Brazil*)
- Mireya Duque (*Corporación Avre - Support to Victims of Socio-Political Violence - emotional recovery programme, Colombia – Corporación Avre - Apoyo a Víctima de Violencia Socio Política Pro - Recuperación Emocional*)

- Oscar Gómez (*Avre Corporation - Support to Victims of Socio-Political Violence - emotional recovery programme, Colombia – Corporación Avre - Apoyo a Víctima de Violencia Socio Política Pro - Recuperación Emocional*)
- Alejandra González (*“Tlachinollan” Mountain A.C, Mexico Human Rights Centre –Centro de Derechos Humanos de la Montaña “Tlachinollan”*)
- Diana Gutiérrez (*Medellín Proxy, Colombia*)
- Marta Falqueto (*PPDDH-ES, CADH, Brazil*)
- Gloria Flórez (*Minga Association, Colombia – Asociación Minga*)
- Marina Gallego (*Women’s Peace Road, Colombia – Ruta Pacífica de las Mujeres*)
- Lourdes Gutiérrez Ortiz (*Unit for the Promotion and Defence of Human Rights of the Secretariat of the Interior Ministry, Mexico – Unidad para la Promoción y Defensa de los Derechos Humanos de la Secretaría de Gobernación*)
- Kentaro Harriet (*Human Rights Concern, Kampala, Uganda*)
- Iduvina Hernández (*Security and Democracy -SEDEM-, Guatemala – Seguridad en Democracia -SEDEM-*)
- Miguel Huerta (*CNDH, Peru*)
- Françoise Ikwapa (*Women’s League for the development of and education in democracy -LIFDED-Kitwit, RDC – Lignes des femmes pour le développement et l’éducation à la démocratie -LIFDED-*)
- Olona Imbungu (*Comprehensive Project for Human Rights in National Entities -PIDEN-, Kitwit, RDC – Projet intégré pour les droits de la personne dans les entités nationales -PIDEN-*)
- Judith (*Gay and Lesbian Coalition of Kenya*)
- Miguel Jugo (*Pro-Human Rights Association -APRODEH- Peru – Asociación Pro Derechos Humanos -APRODEH-*)
- Etienne Kabala (*Association APDP*)
- Justine Kakesa (*Dynamic Movement for Congolese Youth -DJFC-, Kitwit, RDC – Dynamique de la jeunesse congolaise -DJFC-*)
- BKamau (*Social Refund Center, Kenya*)
- Georges Kapiamba (*ASADHO, African Association for the Defence of Human Rights, Kinshasa, RDC – ASADHO, Association africaine de défense des droits de l’homme*)
- Albert Kawumbu (*League for raising elector awareness, LICE, Kinshasa, RDC – Ligue de conscientisation des électeurs, LICE*)
- Blanchard Kepiasila Keke (*Debout moeurs, Matadi, RDC*)
- Abjata Khalif (*Wagalla Centre for Peace and Human Rights, Kenya*)
- Jeremie Kibukila (*RADHF, RDC*)
- Rosalie Kilunya Ndedi (*Pax Christi, Kitwit, RDC*)
- Célestin Kingenzi (*AJPR, Kikwit, RDC*)
- David Kisule (*Integrity, Kampala, Uganda*)
- Marie-Pierre Kitambala (*Missionary Information and Action Centre, Kitwit, RDC – Centre d’information et d’animation missionnaire*)
- Joseph Kitungano (*REPRODHOC, South Kivu, RDC*)
- Angèle Kombe (*Association of Congolese Women Lawyers -AFEJUCO- South Kivu, RDC – Association des Femmes Juristes Congolaises -AFEJUCO-*)
- David Koros (*Centre Against Torture -CAT-, Kenya*)
- Cintia Lavandera (*Amnesty International, UK*)
- Célestin Limbeya Omoho (*The friends of Nelson Mandela for the defence of human rights, ANMDH, Kinshasa, RDC – Les amis de Nelson Mandela pour la défense des droits humains, ANMDH*)

- Jorge López (*Organisation for supporting the sexuality of people with AIDS -OASIS-, Guatemala – Organización de Apoyo a una Sexualidad Integral frente al Sida -OASIS-*)
- Benjamin Lukamba (*ASADHO, African Association for the Defence of Human Rights, Kinshasa, RDC – ASADHO, Association africaine de défense des droits de l’homme*)
- Vanesa Marcos (*Peace Brigades International - Guatemala Project – Brigadas Internacionales de Paz -Proyecto Guatemala*)
- Javier Márquez Valderrama (*Penca de Sábila, Medellín, Colombia*)
- Hugo Martínez (*Defenders’ Unit, COPREDEH, Guatemala – Unidad de Defensores, COPREDEH*)
- Espérance Mayoka (*Trade Union Confederation of the Congo, Kitwit, RDC – Confédération syndicale du Congo*)
- Olivier Mbala Matadi (*Alternative Youth Foundation for the promotion of human rights -FAJHR-, Matadi, RDC – Fondation alternative jeunesse pour la promotion des droits humains -FAJHR-*)
- Pamphile Mbuangi Mayimbi (*Socio-cultural Promotion Office -BUPOSC- and Collective for organisations of young supporters of the Congo Kinshasa -COJESKI-, Matadi, RDC – Bureau de promotion socio-culturelle -BUPOSC- et Collectif des organisations des jeunes solidaires du Congo Kinshasa -COJESKI-*)
- Jane Meriwas (*Kenya*)
- Hassan Mopembe (*CONADHI -Mbandaka, RDC*)
- Luis Mosquero (*Living Together, Medellín, Colombia – Convivamos*)
- Julien Muanda Lusala (*League for the promotion of women and human rights -LIPFEDH-, Boma, RDC – Ligue pour la promotion de la femme et des droits humains -LIPFEDH-*)
- Philomène Mukendi (*Angels from Heaven, Kinshasa, RDC – Les Anges du Ciel*)
- Alain Mullenex (*Peace Brigades International – Brigadas Internacionales de Paz*)
- Norbert Musanga Amissi (*REPRODHOC, RDC*)
- Gabriel Muyui (*Indigenous Ombudsman’s Office, Colombia – Defensoría Indígena*)
- Loochi Muzaliwa (*Justice for All - member of REPRODHOC- RDC – Justice pour Tous -membre de REPRODHOC- RDC*)
- Faith Mwende (*Center for Rights, Education and Awareness -CREAW-, Kenya*)
- Otsieno Namwaya (*Media Center Of Africa, Nairobi, Kenya*)
- Remy Ngabo (*SEDI, South-Kivu, RDC*)
- Nöelly Nkubukulu Bulumonano (*Women as a pattern for peace -WOPPA-, Matadi, RDC*)
- Elise Nyandinda (*Women’s Network of associations for development -RFDA-, Uvira and Fizi, RDC – Réseau des Femmes pour un développement associatif -RFDA-*)
- Diana Nyawanda (*defender, Kenya*)
- Caleb Ochanda Twenya (*Bware Youth Action Network, Nyanza, Kenya*)
- Dr. Godfrey Odongo (*Amnesty International, Kenya*)
- Elena Openshaw (*Amnesty International, UK*)
- Argentina Osorio (*Organisation of Ixquic Women of Petén, Guatemala – Organización de Mujeres Ixquic de Petén*)
- Philippe Pagé (*Peace Brigades International - Colombia Project PBI – Brigadas Internacionales de Paz - Proyecto Colombia PBI*)
- Mario Patrón (*“Tlachinollan” Mountain A.C, México Human Rights Centre – Centro de Derechos Humanos de la Montaña “Tlachinollan” A.C, México*)
- Marie Pemba (*Women’s league for the development of and education in democracy -LIFDED- Kitwit, RDC – Ligues des femmes pour le développement et l’éducation à la démocratie LIFDED*)
- Julien Pepe (*Sexual Minorities Uganda -SMUG-, Kampala, Uganda*)
- Mar Pérez (*CNDH, Peru*)

- José Pilar (*Zacapa Lutheran Church of Guatemala, ILUGUA – Iglesia Luterana de Guatemala de Zacapa, ILUGUA*)
- Jaime Prieto (*expert, Colombia*)
- Adrián Ramírez (*Mexican League for Human Rights, Mexico – Liga Mexicana por los Derechos Humanos*)
- Luis Ramírez (*Institute for Comparative Studies in Criminal Science -ICCPG-, Guatemala – Instituto de Estudios Comparados en Ciencias Penales -ICCPG-*)
- Enrique Riestra (*Peace Brigades International - Guatemala Project – Brigadas Internacionales de Paz -Proyecto Guatemala*)
- Luis Rocca (*Risk Assessment Commission - CNDH Peru – Comisión de Evaluación de Riesgos, CNDH Perú*)
- Carlos Rodríguez (*Colombian Lawyers' Commission, Colombia – Comisión Colombiana de Juristas*)
- Pablo Saavedra (*Inter-American Court of Human Rights, Costa Rica – Corte Interamericana de Derechos Humanos*)
- Fabien Safari (*ACAT South-Kivu, RDC*)
- Diana Sánchez (*Asociación Minga, Colombia*)
- Javier San Juan (*Office of the United Nations High Commissioner for Human Rights in Guatemala OACNUDH – Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en Guatemala OACNUDH*)
- Aura Selmis (*Living Together, Medellín, Colombia – Convivamos*)
- Agnès Shagayo (*Association for Solidarity and Peace for Comprehensive Development -SODAPI-, Uvira, RDC – Association Solidarité et Paix pour le Développement Intégré*)
- Robert Shemamba (*Mitumba Community Radio, Uvira, RDC – Radio communautaire Mitumba*)
- Alejandro Silva (*Labour Consultancy Centre -CEDAL-, Peru – Centro de Asesoría Laboral -CEDAL-*)
- Titi (*Justice and Solidarity, RDC – Justice et Solidarité*)
- Patrick Tumwine (*Human Rights Network -HURINET-, Uganda*)
- Iliana Tzin (*Organisation of Ixquic Women of Petén, Guatemala – Organización de Mujeres Ixquic de Petén*)
- Germán Vargas (*Association for Peace and Hope, Peru – Asociación Paz y Esperanza*)
- Mónica Valencia Giraldo (*Women's Peace Road, Colombia – Ruta Pacífica de las Mujeres*)
- Ruth del Valle (*COPREDEH, Guatemala*)
- Eduardo Vega (*Peruvian Ombudsman – Defensoría Pública de Perú*)
- Juan Antonio Vega (*independent expert, Mexico*)
- Passy Walumbuka (*ELIMU Association, Uvira, RDC – Association ELIMU*)
- Juliet Were Oguttu (*Isis-Women's International Cross Cultural Exchange Isis-WICCE-, Kampala, Uganda*)
- Roxana Yzusqui Rios (*expert, Peru*)
- Julie Zenga (*League of Electors, RDC – Ligue des électeurs*)

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The authors - biographies

Luis Enrique Eguren



(*Spain, 1962*) Medical doctor and expert in protection, co-director of the Research and Training Unit of Protection International. He has worked with various international organisations on projects in El Salvador, Sri Lanka, Colombia and Guatemala and on short missions to other countries. He is a trainer, researcher and consultant and has published various articles and books on the subject of protection.

María Martín Quintana



(*Santander, Spain, 1979*) Lawyer, member of the Research and Training Unit of Protection International. She has worked as a consultant, researcher and legal advisor in various human rights institutions in Latin America, mainly on matters relating to the protection of defenders and the prevention and eradication of torture. She has run courses in universities, public institutions and civil society organisations and has published various works on human rights.

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for human rights defenders

Protection International

11 rue de la Linière - 1060 Brussels – Belgium

Tel: +32 (0) 2 609 44 07 or 05

Fax: +32 (0) 2 609 44 06

pi@protectioninternational.org

www.protectioninternational.org