

Analysis of the situation of Human Rights Defenders 20 years after the approval of the United Nations Declaration on Human Rights Defenders

“Through the work of human rights defenders hundreds or thousands of lives have been saved”

On the occasion of the 20th anniversary of the United Nations Declaration on Human Rights Defenders (henceforth, the Declaration), Peace Brigades International (PBI) invited 13 human rights defenders who are accompanied by the 7 PBI projects on a tour that would take them through 10 European countries.

This tour began on 20th September 2018 in Brussels, with 4 full-on days of meetings that brought together advocates from America, Africa and Asia and PBI members. These meetings sought to encourage the exchange of experiences and knowledge in terms of integral protection. And, they enabled the analysis of global and regional trends affecting the risks, as well as the identification of common needs among the group of human rights defenders who require immediate attention from the international community. Moreover, these work sessions made it possible to construct a common narrative with key messages and recommendations directed towards the political stakeholders of the European Union and Member States that we address through this publication.

What has the Declaration on Human Rights Defenders meant?

The Declaration is not a legally binding instrument. However, it contains a series of principles and rights that **are based on the human rights standards enshrined in other international instruments that are legally binding**, for example, the International Covenant on Civil and Political Rights. Moreover, **the General Assembly approved the Declaration by consensus**, which therefore represents a very strong commitment on the part of the States in terms of its application. Increasing numbers of States are considering the possibility of adopting the Declaration as mandatory national law.

Directly, the Declaration has promoted and contributed to the adoption of measures by the States. For example:

- It has contributed to strengthening the Rule of Law and the anchoring of democratic principles: In some countries, progressive Magna Cartas and legal texts have been approved that expressly recognize human rights, such as the 2010 Constitution of Kenya.
- It has promoted the creation of governmental protection mechanisms. Notably, in Latin America, more of these types of mechanisms have been implemented, with different levels of consultation and the active participation of human rights defenders.
- Various countries of the European Union have adopted Guidelines for the protection of human rights defenders which guide diplomatic missions in the implementation of their policies to protect human rights defenders in developing countries.
- The figure of the human rights defender is recognized in its broadest definition, which is inclusive, regardless of the right that is being claimed and of the profile. Likewise, people identify and recognize themselves as human rights defenders.
- Approval of the mandate of the United Nations Special Rapporteur on the Situation of Human Rights Defenders has given visibility to the main challenges faced by human rights defenders, which has meant that many States include the importance of protecting them in their political agendas and foreign actions.

In history, individuals have existed, such as Martin Luther King, Nelson Mandela, Mahatma Ghandi and the suffragists in Great Britain, who have managed to bring down unjust systems, change mentalities and inspire many generations. These people are recognised globally, however, there are a multitude of anonymous human rights defenders who, every day, with bravery and determination, achieve success and structural change.

“Sometimes I feel like I can make a big change but small things can make a big change.”

As follows, we can highlight some of the advances that have been made over the last 20 years in which the community of human rights defenders has played a key and fundamental role.

- The empowerment of women human rights defenders has taken strength; women are more present in political and social spaces and the fight to reclaim their rights is gaining ground and is visible globally.
- The fight of women and the LGBTI collective has resulted in acknowledgement of their right to have rights. For example, thanks to women’s organisations, key international instruments have been approved, such as Resolution 1325, adopted by the United Nations Security Council in 2000, which recognizes the distinct impact that conflict has on women and girls and the need for women to fully participate, with decision-making capacities, in the prevention of conflict and the negotiation and consolidation of peace.
- Progress in the recognition of labour rights as human rights that can be exercised before States.
- The movement for the defence of human rights has become stronger, partly due to resilience, new technologies, the reach of network communication, and the internationalisation and connection of struggles.
- Historic sentences dictated by national tribunals have been achieved, such as the case of genocide in Guatemala.

The human rights defenders who participated in the activities recognised the importance of the existence of the Declaration and its potential as an advocacy tool, however, it was evident that the majority were not familiar with it.

What is the global context that the community of human rights defenders works in?

Looking at the situation of human rights defenders 20 years after the approval of the Declaration on Human Rights Defenders, we reiterate that human rights defenders are working in every-more hostile contexts, in which strategies of criminalisation, stigmatisation and repression of social protest have intensified globally. It is estimated that, in this period, 3,500 human rights defenders have been assassinated around the world, and there has been a greater increase over the last few years. This is together with the closure of spaces for action due to the approval of laws that restrict the right to defend rights, the lack of economic resources and obstacles in obtaining funding and a lack of effective inclusion of human rights defenders in spaces for political decision making. Moreover, we note that there is an increase in social and environmental conflicts caused by the imposition of economic projects and religious fundamentalism. In many communities that defend the right to the land, territory and environment, state and non-state actors apply the strategy of “divide and rule” which has a negative impact on the social fabric. As a global phenomenon, mass migration caused by violent conflict, violence against women, poverty and climate change occur in situations of extreme insecurity and with the added risk of people trafficking. On the ground, human rights defenders are making alliances, also with missions by the international community, however, it is noted that these relationships greatly depend upon the awareness and willingness of those in charge of issues concerning human rights and human rights defenders, instead of prioritising obligatory public policies.

What are the common patterns in the different countries analysed?

Despite the different contexts in which the invited human rights defenders live and carry out their activities (Guatemala, Colombia, Honduras, Mexico, Kenya, Indonesia and Nepal), we could identify transversal trends that, together with the individual characteristics of each country, affect, limit and undermine the right to defend human rights.

Although advanced mechanisms exist in this area, unfortunately, we note the failure to implement national laws and grave breaches of international human rights standards, recommendations issued by international bodies and agreements reached between human rights organisations and government authorities on the different issues. The community of human rights defenders is essential in the construction of democracy and social justice, however, state actions in terms of the protection of these people are insufficient and, when they do exist, do not fully meet integral protection needs. In countries such as Nepal and Indonesia, there are still no protection mechanisms in place. In Colombia, which is one of the leading countries in the creation of these programmes, the shocking statistics on the killing of human rights defenders is evidence of the inefficiency of the aforementioned programmes.

“Who is a human rights defender? For how many hours of the day are we human rights defenders? The answer is that being a human rights defender affects your professional and personal life. So, we cannot have security measures that only function during the day because we never stop being human rights defenders”.

In all of the countries represented, serious discrimination persists on the grounds of gender, ethnicity, religion, socio-economic status and, in some cases, caste systems. The hetero-patriarchal system imposes patterns of gender violence in economic, social, political and cultural dimensions.

Likewise, we highlight the concentration of wealth, land and territory as one of the structural causes of inequality in all the countries and the resulting struggle on the part of human rights defenders and victims to build countries with peace and social justice. This assertion of rights is severely compromised by high levels of impunity, a lack of access to justice and an absence of guarantees for victims in their demands for the truth, justice, reparation and guarantees of non-repetition. In the countries analysed, we highlight scarce or null results in terms of the judicial sanctions imposed upon material and intellectual perpetrators. Furthermore, no political and economic sanctions are imposed by the international community.

Additionally, high levels of corruption are recorded in different levels of governments and institutions, and there are no genuine and transparent accountability mechanisms in place. Nor are there clear accountability mechanisms on international cooperation cashflows received by the countries where flagrant violations of human rights are being committed.

The human rights defenders mentioned that the risks they face increase exponentially in contexts where legal and illegal economies operate, such as people trafficking and narcotrafficking or contexts in which development models based on extractive projects, monoculture plantations and other models that lead to land grabbing are imposed. It was confirmed that these kinds of projects also impact food sovereignty and threaten the existence of indigenous populations, afro communities and peasants. Moreover, the imposition of these models is often accompanied by the militarization of land and widespread violence, including sexual violence. Another common pattern in these contexts is the repression of social protest, serious brutality and an excessive use of force by security forces such as the army, the police and special and elite security forces, etc.

It must be mentioned that, far from recognizing the role of this community, many media sources in these countries promote its stigmatization and seek to tarnish its reputation. They undermine its work and contributions to society as a whole, making its struggles invisible and forgetting that the rights we currently enjoy would not exist without the tireless efforts of human rights defenders.

What is the cost to human rights defenders?

"I pointed out that you, human rights defenders, accomplish so much without the recognition you deserve. I am fully aware of the very high price that many activists pay for their efforts, and I commit to do my best to make their struggle worth the effort."

Michelle Bachelet - UN High Commissioner for Human Rights

These global and transversal trends have a serious impact on human rights defenders and their rights:

Risks related to the right to life and physical integrity: Assassination, femicide, hate crime, gender violence, extrajudicial execution, forced disappearance, torture and sexual torture, re-victimisation, forced displacement.

Risks related to the right to defend rights: Threats, smear campaigns, psychological pressure and torture, illegal espionage, economic stability of the organisations due to a lack of funding, stability of grassroots organisations due to the difficulty of combining unpaid work as human rights defenders and economic and professional activities, illness.

Risks related to the right to protest: Violent eviction, arbitrary detention, prosecution, legal harassment, intimidation.

What can the European Union and its Member States do?

“To truly protect the rights of everyone, we need a transformation from the roots, and that includes transforming ourselves. For this reason, self-care is a model, a practice that we want to see out there, and therefore a political act”

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Provide recognition and political, social and economic support to the work carried out by human rights defenders in different parts of the world, contributing to building a narrative that endorses their vital role in societies, in order to counter growing criminalisation and stigmatisation. Take measures to combat the closure of their spaces for action.

Specific actions:

- ▶ EU public declaration through its High Representative on the 20th Anniversary of the Declaration on Human Rights Defenders, urging EU Member States to implement the Declaration in their actions within and outside of Europe (through their Delegations) and to guarantee full respect for the rights mentioned within it, especially the right to defend human rights. In particular, highlight the work and risks faced by the most vulnerable populations, which include indigenous and Afro communities, peasants, women and the LGBTI community.
- ▶ Strengthen the diffusion of the Declaration and the EU Guidelines on prevention and the protection of human rights defenders. To ensure that the Guidelines continue to be an effective tool, it is essential for them to be recognised in third countries, both in capital cities and in rural areas. It is important to implement an ongoing awareness-raising plan to strengthen the impact and effectiveness of the Guidelines, both within diplomatic missions and aimed at human rights defenders.
- ▶ Ensure that the Embassies of the Member States have a focal point for human rights defenders and that defenders have knowledge of and access to that person.
- ▶ To reinforce the coordination between the EU delegation and the diplomatic missions of the Member States on the protection of defenders, the exchange on and follow-up to specific cases, etc.
- ▶ Ensure that EU cooperation funds, particularly instruments dedicated to the promotion and

defence of human rights, are known and accessible by the beneficiary population. For this, it is important to guarantee accessible formats for all populations, duly taking into account grassroots organisations and communities and, in particular, their collective need for protection.

- ▶ Condemn attacks against human rights defenders and, especially, publicly denounce declarations by public officials that stigmatise, defame or undermine the work of human rights defenders.

Support the fight against impunity, impunity being one of the main factors that enables the repetition of events. Ensure access to justice for the victims of human rights violations and combat the global increase in laws that limit or deny the right to defend human rights.

Specific actions:

- ▶ Publicly and privately urge third countries to carry out quick and impartial investigations into cases of attacks against human rights defenders. It is of vital importance that, in the investigation phase, exhaustive and objective analyses of the context are carried out. These should seek to clarify not only material responsibilities but, more importantly, intellectual responsibilities, including possible links to political and economic elites, on a local, national and international level. These investigations must also include differentiated perspectives that take into account factors such as gender, ethnicity, religion, etc.
- ▶ Ensure that justice mechanisms, including those that form part of transitional justice and indigenous justice systems, have sufficient resources and that these resources effectively contribute to the fight against impunity. Likewise, ensure the independence and autonomy of the judiciary in third countries.
- ▶ Make sure that, in the case of violations against human rights defenders, the first investigation hypothesis for the crime is that it was due to their work to defend human rights.
- ▶ In the case of imprisonment of a human rights defender, ensure that he/she has the means and resources necessary to ensure due process and that protocols are defined to protect his/her psychological integrity in prison, paying particular attention to gender identity.
- ▶ Ensure the non-proliferation of laws that limit the exercise of the right to promote, protect and defend human rights.

Promote the safety and protection of those who defend human rights with a differentiated and holistic approach.

Specific actions:

- ▶ Ensure that high-level dialogues on human rights between the EU and third countries take place every year with the effective participation of civil society. Open bilateral dialogue to observation by civil society, carry out evaluations every two years and monitor progress in the agreements and commitments achieved through a follow-up mechanism between the EU, the country in question and civil society.
- ▶ Ensure that governmental protection measures have the necessary economic and human resources, meet the requirements and needs of beneficiary people, include a differentiated and collective approach and agree on the protection methods together with the beneficiaries themselves. Similarly, promote preventative protection measures such as public statements of recognition, risk maps and proposals regarding public policy on protection.
- ▶ Ensure EU rapid response mechanisms in the case of extraordinary risk to human rights defenders; include self-care measures that respond to the psycho-social impact suffered by victims of violations. Likewise, ensure that the issuance of visas does not represent an impediment to apply to these programmes and that the personal and family situation of the human rights defender is included. Guarantee safety funds with a holistic approach (individual and collective physical safety, digital safety, psycho-social safety).

Ensure that the presence of European investments and companies does not promote further abuses and violations of human rights.

Specific actions:

- ▶ Ensure the creation of mechanisms for consultation and free, prior and informed consent with the affected communities and groups. These consultations should fulfill the highest international standards and be culturally appropriate. Additionally, the affected communities and groups must have the necessary resources for their participation to be complete, genuine and fair.
- ▶ Ensure that European companies do not directly or indirectly benefit from land that is appropriated in a violent way.
- ▶ Promote land restitution and redistribution programmes as a necessary measure to address the serious inequality of the world.
- ▶ Make sure that the human rights clauses contained within free trade agreements act as effective monitoring mechanisms for the respect of human rights.
- ▶ Guarantee that the rights to social protest and peaceful assembly are respected in the context of opposition to large-scale economic projects. Condemn any form of restriction and ensure that, in countries with which trade relations are maintained, serious police abuses are not repeated or continued, and laws that restrict or eliminate these rights are not approved or implemented.
- ▶ Urge the European Commission and the European External Action Service to begin, as soon as possible, the process of developing an action plan on Business and Human Rights, with the objective of fully applying the UN Guiding Principles.

Guarantee collaboration, cooperation and complementarity with different mechanisms of the United Nations and, in particular, with mechanisms that promote and monitor respect for human rights.

Specific actions:

- ▶ Urge the States to invite and collaborate with United Nations Special Rapporteurs.
- ▶ Ensure the implementation, monitoring and follow-up of the recommendations made in the different UPR (Universal Periodic Review) sessions.
- ▶ Ensure that mechanisms such as the OHCHR (Office of the High Commissioner for Human Rights) have sufficient economic resources and strong political support to carry out their work in countries.
- ▶ Urge the EU to become actively and constructively involved in the United Nations process to create a legally binding instrument on business and human rights.

Some articles from the Declaration that we highlight in the publication:

Art 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.

Art 5.a Everyone has the right, individually and in association with others, at the national and international levels to meet or assemble peacefully.

Art 8.2 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.

Art 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.

Art 9.5 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.

Art 12.2 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.

Art 12.3 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.