



## PROTECTION MECHANISMS FOR HUMAN RIGHTS DEFENDERS IN THE CONTEXT OF EUROPEAN INVESTMENTS

Peace Brigades International (PBI) was founded in 1981 and is an international NGO that aims to open space for the promotion of human rights and peaceful change by offering protective accompaniment to human rights defenders (HRDs) at risk. The presence of our volunteers alongside HRDs at risk deters attacks against them. Currently we have teams of volunteers working in Colombia, Guatemala, Honduras, Mexico, Kenya, Indonesia and Nepal.

In the last few years, an increasing number of petitions for protective accompaniment received by PBI come from HRDs who work within the context of major investment projects (mining, hydroelectric dams, wind farms, large-scale single-crop farming and infrastructure projects).

This briefing intends to highlight four issues of special concern and then share the lessons learned by PBI to protect HRDs, avoid violent conflicts and respect human rights in these specific contexts. PBI hopes that these recommendations will provide useful insights for the implementation of the new Human Rights Action Plan and the National Action Plans on Business and Human Rights at member states level. We also hope these ideas will fuel any proposal coming from COHOM in the field of Business and Human Rights.

### Issues of Concern

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- **Failure to ensure the right to prior and informed consent and non-effective participation of HRDs in the decision making process.** In only one of more than 20 cases observed or accompanied by PBI, a state lead prior consultation was organized (in the case of a wind farm in Oaxaca, Mexico where a European company is involved, the process is ongoing). Even in this case, PBI as an official observer of the process has noted that several of the criteria provided by the national law and the 169 ILO Convention ratified by Mexico were not fulfilled. It is also important to highlight that 32 security incidents against the participants of the consultation have been reported. In several other cases, as in Guatemala, the communities themselves have organized consultations but the results have never been considered by the parties involved. The Office of the UNHCHR in Colombia has pointed out that “the rights to prior consultation related to economic projects implemented in territories are being widely ignored. In spite of the acknowledgment of international law by Colombia, high representatives of the Government have made public statements that present the rights to prior consultation as an obstacle for development.”

As a result – and although local civil society organisations and HRDs have an unique vantage point when it comes to asserting the protection and respect of human rights in the context of huge investments – we can say that in none of the cases accompanied or monitored by PBI the proper

information, participation and consultation of HRDs and local communities has been effectively ensured by the states nor have they been monitored by the companies. Therefore the initiation of projects by state or private owned companies is characterized from the very beginning by human rights violations and has created local opposition or resistance to the projects, biased dialogues and violent processes.

- **Failure to ensure the right to life and the security of HRDs working in these contexts.** According to Global Witness, in 2014, 116 Land and Environmental Rights Defenders were killed around the world. As already mentioned, during the last few years, PBI has also received an increased number of petitions from HRDs monitoring and questioning how major investment projects are planned and implemented. The entry of these projects (mining, hydroelectric, wind farms, large-scale single-crop farming and infrastructure projects) goes often with an increase of harassment and attacks against HRDs and a deterioration of their work environment since the projects' implementation come often with social tensions and violence. Many of the perpetrators identified by the defenders accompanied by PBI are non-state actors like organized criminal groups, neo-paramilitary groups or private security forces which have been used to pressure communities often using violence. In the majority of the cases, the attacks are not investigated and remain in impunity. Successive Human Rights Council resolutions and reports by the UN Special Rapporteur on HRDs have argued that widespread impunity for attacks against HRDs contributes to a climate of insecurity.
- **Stigmatization and criminalization of HRDs.** Referring to the threats suffered in the context of large scale investments, defenders interviewed by PBI report particularly the use of defamatory public discourses by authorities, companies or the media which tend to present HRDs working in these contexts as criminals, terrorists or agitators opposed to development. According to the IACHR (2011) this contributes to a climate of de-legitimation of the defence human rights and therefore creates a heightened risk for HRDs. Often, this discourse comes with unfounded legal accusations and unfair judicial processes coupled with excessive restrictive measures against protests and manifestations that hinder freedoms to expression and to peaceful assembly. In some cases the military has been sent to protect the investments, control the protests or apply local states of prevention.
- **Misuse of peaceful conflict transformation mechanisms invalidating them for future use.** In some of the cases accompanied by PBI, dialogue mechanisms have been installed, in one case with the support of an European mission, in order to resolve the problems. However, these mechanisms are losing their credibility and their potential positive impact since they are often implemented while the projects in debate continue to be implemented. In addition, human rights defenders have reported to have received legal accusations and threats after participating in these spaces. The extreme dis-balance in power, the impunity and the vulnerability of human rights defenders is not an issue addressed before or during the dialogues.

## Recommendations

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In order for the EU and its members States to implement seriously their commitment to human rights (reaffirmed in the just updated HR EU Action Plan) and the EU Guidelines for Human Rights Defenders (re-endorsed by the Council of the EU conclusions of the 23 June 2014), strong preventive measures must be in place in order to prevent the above mentioned situations:

- Monitor European companies' projects in foreign countries and ensure they don't initiate

projects without prior consultations being held that guarantee free, prior and informed consent of the affected communities.

- Require companies to engage in human rights impact assessments prior to investments in foreign countries and make these accessible to public scrutiny. Assessments should be robust, independent, and involve participation of local organisations and HRDs.
- Establish a monitoring system for the activities of companies and European investors. This mechanism should be transparent and count with the participation of civil society. It should define criteria in order to identify which companies are participating or benefiting themselves, directly or indirectly from human rights violations in developing countries.
- Inform corporations to the concept of HRDs and encourage them to not interfere with the exercise of their rights and freedoms. States missions should also brief companies on the human rights situation of the country where they plan to invest.
- Openly support and recognize the important role played by HRDs through public statements, awards, visits to their work place, and meetings with them etc. Pay special attention in reaching out to HRDs working in rural areas where the investments are taking place.
- Encourage third countries to take positive measures to support and enable HRDs to exercise their fundamental rights and freedoms (including the rights to freedom of expression and association, to form and join trade unions, and to peaceful protest). States must also protect civil society organizations and human rights defenders from harassment, persecution and reprisals linked to their corporate accountability work and ensure that any such interference is investigated and remedied. Encourage also these states to guarantee the meaningful participation of HRDs in the development of proposals and in any procedures undertaken by states and companies before and during investment, and in national and international campaigns and initiatives to address business-related human rights problems.
- Include in your Business and Human Rights National Action Plans, as well as in any other policy in the field of Business and Human Rights, a clear and comprehensive outline on how to support and protect HRDs working on this matter.
- Seek greater consistency and coherence between the EU Missions' and Delegation's diverse work areas, particularly commercial interests and the obligation to respect human rights.