

## PEACE BRIGADES INTERNATIONAL

### Response to Special Rapporteur on Human Rights Defenders: Questionnaire on Large-Scale Development Projects and a Safe and Enabling Environment for HRDs

1. a) Please indicate what you see as the main challenges and opportunities of a human rights-based approach to development, with particular attention to large-scale development projects and the role, protection and effective participation of human rights defenders.

#### OPPORTUNITIES

HRDs have a unique vantage point when it comes to asserting the protection and respect of human rights in the context of the advancement of large scale investment and development projects. Often, they will have intimate knowledge of the local situation and context, and a strong understanding of the needs of groups and communities. Through networks at national or international level, HRDs are also able to forewarn of imminent violent conflict or human rights violations, and to document, denounce, and disseminate information when violations have already occurred. Thus, HRDs are placed in a unique position of, on one hand being able to **promote and defend the rights of affected communities**, whilst on the other **ensuring a flow of credible and in depth information regarding the human rights situation that can be used to inform the actions of states and business**. Ruggie himself refers to HRDs as a “credible, independent, expert resource” that businesses and states should refer to. For all of these reasons it is essential that **meaningful participation of HRDs is guaranteed in the development of proposals and in any procedures undertaken by states and companies before and during investment**.

#### CHALLENGES

Increasingly, PBI has identified that HRDs and grassroots organisations who work to defend human rights in the context of large scale investment and development projects, are among those most threatened. PBI has been able to observe at close range the growth and severity of human rights violations connected with the increasing investment and presence of transnational companies in resource-rich countries. Communities continue to be the victims of land grabs, illegal evictions, forced displacement; we have seen that indigenous communities’ right to free, prior, and informed consent is consistently ignored or inadequately implemented. While development models are implemented that ignore the will of local communities, alternative models imagined by communities themselves receive little traction. Often the arrival of companies divides communities and produces local conflicts.

HRDs continue to be the victims of extrajudicial killings, abductions, surveillance, and intimidation due to their efforts in trying to put an end to human rights abuses linked to business activities. Also concerning is the high level of impunity that perpetrators and those responsible for violations, be they agents of the state, illegal groups, or business and other non-state actors, continue to enjoy at both national and international level. The criminalisation of human rights defenders and community leaders also presents an increasing challenge in the context of major investment projects, as often it arises due to complicity between local state and business actors. Criminalisation of HRDs is particularly worrying because it is used as a strategy to infringe on individuals rights to freedom of association, assembly, and peaceful protest. Those who defend the rights of communities are of fundamental importance in helping to raise the standards of responsible business practice, yet at present far from being included in dialogue they are being attacked, displaced, and murdered.

In addition to weak governance from host states, home states of companies often take a ‘light touch’ approach which increases the possibility of companies committing or benefitting from human rights violations. A lack of due diligence from companies, including a lack of prior and ongoing engagement with HRDs, perpetuates high risk situations for communities and the HRDs who represent them.

The current situation suggests that stronger and more effective mechanisms for protection and participation need to be put in place for HRDs working in this area. In our experience, not only is there still a lack of awareness among HRDs and communities regarding mechanisms for the protection of their rights such as the Ruggie Principles, but there is also a wide amount of scepticism regarding the propensity and capacity of the such Principles to seriously address business and development-related human rights violations.

- b) What do you think are the best measures to mitigate the challenges? Kindly provide examples of good practices in this respect.

There is a pressing need for judicial and legislative mechanisms to ensure a stricter accountability of the actions of domiciled or registered/listed companies; promoting minimal standards for CSR; requiring companies to report on human rights impact at all stages of project activities; passing laws that criminalise the actions of companies implicated in human rights violations; more stringent oversight mechanisms to ensure that host states comply with obligations regarding economic, cultural, and social rights of communities, the right to defend human rights, and in advancing investigations and prosecutions to end impunity. Here are some suggested measures:

- It is essential to develop a clear, legally enforceable protocol regulating the consultation and operational phases of large scale economic projects applicable both to home and to host countries, as well as businesses themselves. The protocol should be inclusive of existing rights for indigenous and tribal peoples, and should make provisions for non-tribal peoples who may also be affected. The protocol should at all stages take into account the potential impact of inequalities existing that exist between different stakeholders in terms of economic and administrative resources. The protocol should also recognise the key role played by HRDs and the need to guarantee their protection and an enabling environment for their work. In addition, states should be more proactive and comprehensive in providing robust and systematic human rights guidance to business looking to operate in conflict areas. In especially problematic areas where there is a high risk of companies benefitting from violations states should issues country specific guidelines.
- The UN Guiding Principles on Business and Human Rights provide a relevant framework for the participation of HRDs and CSOs as key stakeholders, and for accountability mechanisms. Although the Guiding Principles are voluntary, states should endeavour to enshrine such principles in law to ensure real accountability. Some states such as those in the EU are required to publish implementation strategies for the GPs: this provides an opportunity for states to spell out exactly what is required of companies' vis-à-vis HRD protection and consultation. Another key issue is the need for companies to bring their CSR into line with international human rights standards, especially on the issue of HRD protection.
- Development of a toolkit of protection mechanisms for HRDs to be implemented by states and missions of origin countries of companies:
  - Drawing on general protection mechanisms such as the EU Guidelines for HRDs, and measures offered by other regional bodies like the Inter-American Human Rights System, this toolkit would have a universal reach and be applicable to the specific context of economic projects especially in conflict areas. It should be used not only in the pre-deployment training of mission staff, but also in training and job specification of officials from trade, business, foreign aid, and international justice departments of governments as well as by company staff and host government officials. The toolkit should draw attention to the following elements we have observed in the context of major economic investment projects and which should be addressed with specific measures:
    1. - *Monitoring the impact of legislative changes and emergency decrees* on the activities of HRDs and communities particularly regarding the rights to free assembly and free protest.
    2. - *Impunity*. Analyze and monitor how ineffective systems of identifying, investigating, and prosecuting violations against HRDs relate to wider business and human rights issues in any given country.
    3. - *Use of private security forces*. Investigate and monitor patterns of human rights violations committed by private security details and public forces contracted by companies.
    4. - *Corruption/organized crime*: investigate and monitor the use of political and economic mafias and illegal armed groups to advance economic interests.
- Through their foreign embassies Governments have developed relationships with HRDs in countries of concern. Establishing and maintaining links with HRDs working on land and environmental issues – those who are most affected by violations linked to business operations - presents specific challenges due to the fact that they often work in remote, rural areas, with poor communications and reduced access to national advocacy networks. It is in this context that Governments foreign embassies engage with HRDs, using frameworks such as the *EU Guidelines* and other similar national instruments as a way to increase their safety and to gather information regarding the human rights situation. Missions should build upon existing work by outlining a clear strategy to bring promote greater protection, as well as and participation of HRDs in initiatives designed to prevent, mitigate, and remedy human rights violations linked to business operations. Some initiatives outlined in this submission would require minimal use of capacity and resources yet could have a significant impact in terms of promoting coherence in foreign policy, and better security and protection for HRDs and affected communities, and would in consequence help states promote responsible business.
- Given their importance in this process, we also recommend that as **a central thematic issue the UN Working Group on the Issue of TNCs and Human Rights should explore monitoring to ensure that HRDs are able to work effectively and without threat of attack by state or non-state actors**. The Working Group should look at ways to ensure HRDs can carry out their activities with greater freedom, taking into account analyses of patterns of persecution, as well as legislative and judicial attempts to restrict their activities, and patterns of structural impunity.
- Capacity building of HRDs is another important area to help mitigate the challenges, ensuring HRDs and communities receive relevant training in international human rights standards on development, business and human rights, ECS rights etc. If requested, home states should allocate funding for separate training and capacity building workshops with communities and HRDs, taking into account the significant imbalance in access to resources faced by these groups in comparison to other stakeholders.

2. Please explain how, in your view, large-scale development projects can best be elaborated in order to the effective participation of human rights defenders. Please describe participation/ consultation mechanisms in place and provide examples of good practices.

As mentioned, in much of our experience participation and consultation mechanisms are often ignored or poorly implemented. A significant problem is that even where there is binding law such as around Free, Prior and Informed Consent with indigenous groups, such laws lack regulatory frameworks to assist implementation. Legislation is needed to regulate consultation procedures in order to ensure that they are carried out in full respect of the community's particular culture. Companies should adopt international standards around FPIC within their CSR policies, considering meaningful consultation under international law as a requirement for the advancement of a project.

In cases where investment and development projects are implemented by business, it is also important to look at the UN Guiding Principles on Business and Human Rights as a relevant framework for the participation of HRDs and CSOs as key stakeholders. There are two explicit references to HRDs in the Guiding Principles, and various references to 'affected stakeholders' and 'civil society', which are equally inferable. For example, the GPs recommend consultation with or referral to HRDs in undertaking due diligence in the following areas: impact assessments (GP18), measuring ongoing impact (20), communication of impact (21), working in conflict-affected areas (23), design and performance of grievance mechanisms (31). As mentioned, in order to genuinely assess the human rights impact and resolve disputes at all stages of a project, it is essential that HRDs are consulted with.

However, in practice such processes are unregulated and do not offer sufficient guarantees for the participation of HRDs; dialogue between companies and communities/HRDs tend to be very unequal allowing the company to exploit power imbalances and lack of knowledge and capacity of the other side. There is a tendency for consultations only to address operational issues and not to address the more fundamental question of whether the project should go ahead or not. Dialogues also often take place in a background context of ongoing human rights violations with no real security guarantees for HRDs involved. Consultations such as those outlined in the Guiding Principles need to be regulated by formal frameworks that recognise the security risks and power imbalance, and provide mechanisms for effective and safe participation of HRDs.

3. How do you think that human rights defenders can effectively monitor the impact of large-scale development projects? Please provide examples of successful experiences/ mechanisms in this regard and kindly address the issues below.

a. Kindly indicate how relevant information about large-scale development projects is made available and accessible to the public. Provide concrete examples if applicable.

Frameworks governing information and consultation with communities are poorly implemented if at all. In our experience, states do not comply with their obligations to consult with communities; information is withheld and it has proved extremely difficult to obtain.

Best practice tends to come from the Judiciary such as the Colombian Constitutional Courts rulings on the Mande Norte Project, in which Court ruled that the mining project could not go ahead until a process of FPIC had been adequately carried out. Where consultations do take place, procedures are in the main inadequate, failing to respect key cultural concerns, being rushed through without all relevant information being available, and carried out in situations of duress. No single state currently has a detailed regulatory law for FPIC.

Most business do not subscribe to FPIC (or any other international human rights norms) as a necessary condition within their CSR policy. Company engagement is selective, there is often no consultation or consultation comes at a post exploration stage giving the community little time to organise a response. Often information is disseminated selectively; the company offering partial information, too technical information, only engaging with those in the community in favour of the project, tricking or misleading community members and leaders. Rarely is any prior information based on a full and independent human rights impact assessment.

In order to address the current unsatisfactory situation, prior to any major investment, international stakeholders need to play a more responsible role. Home country missions and companies should verify that local state authorities have fully and freely informed the local population. The local population should have **access to additional information if required, and there should be adequate time for them to debate existing plans and all subsequent alterations**; they should be guaranteed the opportunity to verify information and any doubts they may have.

**Prior to the commencement of large scale investment or development activities of a company (or its subsidiary) based or registered company in home country: the Embassy of this country should instigate and host a roundtable comprising representatives from: the company in question; relevant local authorities; relevant host state ministry; the human rights focal point of the EU Delegation / other regional mechanisms where appropriate; relevant HRDs / social organisations representing the affected communities.** Potential outcomes would include:

- guarantee host state and company provide accurate and relevant information about project
- key stage in prior human rights impact assessment carried out by the company
- opportunity for civil society / communities to share concerns and information

- helps home state ensure coherence between human rights and trade policy
- establishment of framework for ongoing monitoring
- establishment of grievance process to respond to issues at exploration and operational phases
- greater awareness of issues among stakeholders in order to prevent further violations, and promote respect for human rights and responsible business.<sup>1</sup>

b. How can defenders complain if they feel that human rights are unduly restricted or violated in the context of the implementation of large-scale development projects? Kindly provide concrete examples of mechanisms in place to seek redress at every stage of the process, that is, assessment, design, implementation, monitoring and evaluation.

HRDs often cite international grievance mechanisms to be too technical, bureaucratic, hard to access, with too much detail required in situations where it is not always easy or obvious to prove direct links between companies and human rights violations. Equally, lack of protection guarantees for claimants increases the potential for reprisal. At a national level, impunity is often the norm, with violations committed by security forces and illegal armed groups going unpunished. In this situation, where there is an absence of realistic access to justice, HRDs rely on advocacy and communications to denounce situations, naming and shaming perpetrators.

Again, home states should be more active in challenging this status quo; and holding domiciled or registered companies more accountable, while also providing support and means of access to justice for HRDs. **There should be regular consultation during the operational phase of a project between HRDs, local organisations and home country missions, to monitor and evaluate compliance with human rights standards by the company in question and the host country.** Where appropriate, evidence of good and bad practice should be shared in public reports.

**Companies should be obliged to commission prior and on-going human rights impact assessments. These should be carried out by independent experts, recruited publicly. The participation of local organisations and HRDs should be mandatory.** This would be an important step in helping to prevent a company becoming embroiled in conflict situations and human rights violations. Participation of HRDs also helps to raise their profile and respect for their work, strengthening their protection and avoiding human rights violations.

c. How do you ensure that human rights defenders can peacefully voice their opposition to development projects without fear of intimidation or violence of any sort?

Freedoms connected with defending human rights in the context of large scale investment and development project are subverted by judicial and legislative means, and by emergency decrees; these often relate to freedom of expression, rightful assembly, and association. The defence of human rights is increasingly criminalised on trumped up charges including trespassing, obstruction of by-ways, inciting violence, political violence, illegal possession of arms (machetes in the case of campesinos), aggravated usurpation of land, and terrorism. Criminalised defenders often lack a fair trial or procedural guarantees; evidence is false, fabricated, or insubstantial; witness testimonies are unreliable or paid off; pre-trial detention or incarceration periods are excessive. HRDs and NGOs also suffer defamation campaigns in the media and stigmatizing remarks attacking their integrity from public officials. Facing accusations of terrorism or being enemies of development, HRDs find their legitimate right to defend the rights of communities is undermined. Another aspect of criminalisation is that arrest warrants go unenforced as a strategy to impede the public movements and actions of HRDs.

There is a growing body of policy to tackle the issue of criminalisation, including reports by the IACHR, UNDP, and by Special Procedures on Indigenous Peoples, HRDs, and on the Right to Food. In 2013, the human rights council passed a resolution where states agreed to confront the issue. It is essential to urge all stakeholders to respond to this significant problem. Host states must be encouraged to ensure higher judicial standards, and to conduct regular reviews of cases where due process or international standards have been violated. Home states of companies should push host states to avoid enacting disproportionately severe emergency decrees and legislation, and to insist in any case that non-derogable rights are respected. Home states should legislate to avoid domiciled or registered companies colluding with or benefitting from human rights violations resulting from such states of emergency and other violations of due process and international standards. When HRDs are at risk of criminalisation and other violations, home state missions should continue the best practice of visiting HRDs in prison, and attending trials to demonstrate support for the upholding of the rule of law.

4. How, in your view, can business and corporations involved in large-scale development and investment projects be best monitored regarding corporate social responsibility principles and their engagement with human rights defenders? What is, in your view, the role of defenders in this process and how could their capacity to engage be strengthened?

<sup>1</sup> This is our suggested 'Action Point 1.' See annex for an explanation of how this activity can be effective in meeting specific requirements set out in the UN Guiding Principles on Business and Human Rights.

At a local level, home states of companies need to take a more proactive role to ensure that companies are not violating the rights of HRDs, that there is accountability and fair play. We recommend the **establishment of a consultation forum that could be hosted by the mission of the company’s home country. The forum would include local and national human rights organisations, and where appropriate, local and national authorities, and company representatives.** One objective of these meetings should be to share information and analysis about patterns of persecution; to explore common strategies of repression; motives; material and intellectual authorship; structural links to local political and economic actors; patterns of gender-based persecution. Such analyses would encourage greater awareness among stakeholders in order to prevent further violations, and promote respect for human rights and responsible business.<sup>2</sup>

Home states of companies should seek to use existing mechanisms to protect HRDs to develop specific protection strategies for HRDs under risk in the context of investment and development projects. This should include the monitoring and tracking of cases of concern and referral to other international and national mechanisms where appropriate. Home states should also promote greater participation of HRDs in decision making processes at national and international levels.

Home states should implement national laws outlining requirements of CSR. Corporate policy should be squarely based in relevant International Law particularly around consultation procedures, protection of human rights defenders, and standards outlining the right to free assembly, expression, and peaceful protest. Legislation should also include strict vetting and oversight requirements of the use of private security companies.

The international community, home states, and even businesses should consider measures to build the capacity of affected communities and HRDs regarding international human rights law so that they are able to enter negotiation and consultation processes on a more equal footing. Likewise, international forums on development and business and human rights need to reflect more adequately the views of communities and HRDs.

5. How, in your view, should development cooperation programmes integrate the role of human rights defenders and the notion of a safe and enabling environment in recipient countries? How do you think can the expertise of human rights defenders on the ground be best used to design, implement, monitor and evaluate development cooperation programmes? How should security/ protection concerns be addressed when necessary?

Development cooperation programmes where possible should be drawn up, implemented, and monitored with the full participation of HRDs. The security and protection of HRDs should be prerequisite component of any project which provides potential risk, and should be built into all monitor and evaluation procedures. Such an element should be informed by the international HRD framework, and could be facilitated by the creation of common indicators to measure enabling environment and HRD protection. There is also a greater role that development donors and states to play in fostering and mediating dialogue between HRDs and local states. Likewise, donors running cooperation programmes should take advantage of their position to coordinate with other stakeholders working on HRD protection. Currently, we perceive that mechanisms such as the EU Guidelines are almost the exclusive domain of foreign affairs ministries and not part of development department activities.

At a policy level, the creation of Theory of Change models should incorporate the essential participation of HRDs and the need to fully safeguard and protect their work in a safe and enabling environment, with funds being allocated correspondingly for programme work. Development programmes addressing protection of HRDs should take into account integrated protection models that seek to tackle wider causes of insecurity such as impunity, lack of access to justice, and the impact on HRDs family and community life. As well as capacitating HRDs in tools needed to participate and advocate fully in development and business and human rights dialogues, funds should also be set aside to encourage locally inspired alternative development projects with human rights at their heart.

## Annex 1:

### How action points 1 & 2 address specific Guiding Principles

	<b>State duty to Protect Human Rights</b>	<b>Comments</b>
GP 3	(c) <b>“Provide effective guidance to business enterprises on how to respect human rights throughout their operations;</b>	Fostering closer contact with HRDs would equip states with greater understanding of human rights risks in order to do this.
	(d) <b>“Encourage, and where appropriate require,</b>	Action point 1 provides an assigned space

<sup>2</sup> This is our suggested ‘Action Point 2.’ See annex for an explanation of how this activity can be effective in meeting specific requirements set out in the UN Guiding Principles on Business and Human Rights.

	<b>business enterprises to communicate how they address their human rights impacts.”</b>	for businesses to transparently communicate this directly to affected parties.
GP 7	<b>(a) Conflict affected areas: “Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships.”</b>	Action point 1 helps states and business to identify risks. In conflict affected areas, HRDs may often give more accurate and dependable information that host states, and can raise early warning alarms.
	<b>(b) “Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence.”</b>	Action points 1 & 2 would equip states with the contextual knowledge in order to give effective assistance to business.
	<b>Corporate Responsibility to Respect</b>	
GP.17	<b>In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:</b> <b>(a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.</b>	Action point 1 & 2 could form a key component of prior and ongoing human rights impact assessments.
	<b>(c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve.</b>	Action point 2 provides for ongoing engagement between affected stakeholders and business to address this.
GP 18	<b>In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:</b> <b>(a) Draw on internal and/or independent external human rights expertise;</b> <b>(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.</b>	Action point 1 provides an important neutral space in which consultation and independent guidance can be carried out.
GP 20	<b>In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:</b> <b>(b) Draw on feedback from both internal and external sources, including affected stakeholders.</b>	Action point 2 provides an important neutral space where affected stakeholders can give feedback.
GP 21	<b>In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders.</b>	Both action points provide an adequate space for business enterprises to do this.
	<b>Access to Remedy</b>	
GP27	<b>State Based non-judicial grievance mechanisms</b> <b>States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.</b>	Action point 2 would provide a unique opportunity for the home state of the company to have a grievance mechanism in the host country, thus giving easier access to remedy for affected parties. The Embassy would be able to play a mediating role.
GP29	<b>To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely</b>	Action point 1 directly establishes an important contact and familiarity between stakeholders should there later be need for remediation or grievance.

impacted.	
-----------	--

Annex 2: Example of cases of HRD defending human rights before large scale investment projects accompanied by PBI in Latin America

- [Case of the Community of San Juan Sacatepequez in Guatemala](#) *accompanied by PBI Guatemala*
- [PBI Guatemala Alert on attacks against ECS Rights Defenders in the context of major economic investment](#)
- [Interview to the the Gobixha Committee for the Comprehensive Defence of Human Rights \(Codigo-DH\) in Oaxaca,](#) *accompanied by PBI México and who defends legally the [Case of the community of San Dionisio del Mar](#) struggling against a wind farm project*
- [Testimonies of several Human Rights Defenders defending their rights and the rights of communities affected by mining projects in Mexico](#)