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Call for Proposals ahead of the first session of the UN Working Group on Human Rights and Transnational Corporations

Submission by Peace Brigades International

Introduction

Peace Brigades International (PBI) is a non-governmental organisation that provides protective accompaniment to Human Rights Defenders (HRDs) working in areas of conflict. Our aim is to protect and promote the work of civil society activists who suffer repression for their nonviolent activities in favour of human rights, peace, and social justice.

With over 30 year's first-hand experience of the issues facing HRDs, PBI has been able to play a pioneering role in the creation and development of international protection mechanisms. During our history we have operated field projects in a wide variety of conflict situations including in Sri Lanka, Haiti, Nicaragua, El Salvador, Indonesia, the US and Canada and the Balkan States. PBI currently has teams of volunteers working in Nepal, Mexico, Guatemala and Colombia and is exploring the possibility of opening new projects in Honduras and Kenya.

In response to changing contexts, we have always adapted our approach to meet the needs of those most at risk, whether victims' associations speaking out against state crimes, women defenders denouncing gender-based violence, or marginalised ethnic groups resisting displacement. Increasingly, PBI has identified that HRDs and grassroots organisations who work to defend human rights in the context of large scale extractive, agribusiness, and infrastructure 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. 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 considering our recommendations, the Working Group may wish to bear in mind the UN and EU definitions of HRDs¹. PBI considers that many 'community leaders', who are often those

¹Definition from EU Guidelines on HRDs (drawn from the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms) "*Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.*"

who bear the brunt of risks faced by their communities, are by definition also HRDs.

Given this context, we would like to suggest three key priorities for the Working Group:

1. Greater inclusion of HRDs in decision making processes

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 economic projects. Often, they will have intimate knowledge of the local situation and context, and a strong understanding of the needs of groups and communities. HRDs play a key role in raising awareness and building capacity at international and at community level. 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. For all of these reasons it is essential that the Working Group should seek to **identify ways 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.**

Given their importance in this process, we also recommend that as **a central thematic issue the Working Group should explore monitoring to ensure that HRDs are able to work effectively and without threat of attack by state or non-state actors.** When HRDs are targeted by strategies of repression, the potential of communities to defend and further their own rights is weakened, and the likelihood of human rights violations being committed increases. 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.

2. Development of a legally enforceable protocol regulating the consultation and operational phases of large scale economic projects

It has been our experience that uncertainty regarding the exact requirements of prior consultation with local communities concerning the execution of large scale economic projects impacting on their land has led a) to a disregard for such processes and b) to human rights violations. We believe that it is essential to work towards the creation of a clear and enforceable regulatory protocol 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. Here are some important steps to consider both in the context of creating a protocol as well as independently:²

2.1 Prior to any major investment, 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.

2.2 Another step should be 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

²Many of the suggestions are clearly compatible with existing mechanisms such as the EU Guidelines on Human Rights Defenders

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.

- 2.3 **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.
- 2.4 **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. **Criteria for publication should be agreed with all stakeholders and should be made public.**
- 2.5 **Home countries should introduce strong and coherent legal provisions requiring companies to carry out and publish full human rights impact assessments.**
- 2.6 **Training Workshops:** organised by states and missions with representatives of companies that are registered, traded or operated from their countries. To be held annually, workshops would include the participation of HRDs and community leaders, thus adding to their own capacity to engage on business and human rights issues. 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.
- 2.7 **Host countries and companies should be obliged to declare information regarding royalty payments and the contracting of private security companies.** This step would help to ensure transparency and to discourage bribery, corruption, and human rights violations.

3. 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:

- *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.* In situations where domestic lawmaking contravenes

international norms, what are the responsibilities for businesses, home and host countries?

- *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.
- *Use of private security forces.* Investigate and monitor patterns of human rights violations committed by private security details and public forces contracted by companies.
- *Corruption/organized crime:* investigate and monitor the use of political and economic mafias and illegal armed groups to advanced economic interests.

It should be highlighted that the steps outlined in recommendation 2 also serve as protection mechanisms.