

The Case for the Right to Defend Human Rights in Colombia

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The work of environmental and human rights defenders (EHRD) is pivotal in promoting human rights protection and strengthening democracies. It has been particularly important during the Covid-19 pandemic. Yet, EHRD often face threats to their life and security. In this article, taking Colombia as an example, I examine the emerging right to defend human rights (RDHR), discussing international, regional, and national evolutions. I argue that the recognition of an autonomous right to defend human rights (RDHR) could be a valuable addition to the existing human rights canon and that this recognition could be spurred by the current Covid-19 pandemic.

Environmental and Human Rights Defenders in Times of Covid-19: A Crucial, Yet Difficult and Sometimes Deadly Role

EHRD help [make sure](#) that governments provide accessible and reliable information, and raise the alarm when measures are inadequate or damaging to human rights. They also demand action when marginalized people are disproportionately affected or neglected by new measures and keep track of any misuse of power by state and non-state actors. Therefore, the work of EHRD became even more critical in [ensuring](#) that human rights were not being infringed upon by governmental and societal responses to Covid#19.

EHRD often [face threats](#) against their lives and work, especially if the latter concerns vulnerable populations that work with land, Indigenous, and environmental issues, which has become [more alarming](#) during the [pandemic](#). Most governments decided to adopt measures [restricting](#) public gatherings, as well as freedom of movement claiming public health concerns. However, these measures sometimes seemed to be more directed towards [cracking down](#) on oppositional figures than towards protecting health. Isolation measures made EHRD an [easy target](#), especially in conflict-ridden countries. They lost protective accompaniment and media coverage, and it is now harder for them to safely [relocate](#). From obstacles in realizing their work due to mobility restrictions to increased [criminalization](#), [smearing](#), and [defamation](#), EHRD experience an additional threat due to the health crisis. This happens against the backdrop that Latin America has already previous to the pandemic been regarded as the [deadliest region](#) for EHRD. United Nations (UN) human rights [specialists](#) and the [Inter#American Commission of Human Rights](#) (IACHR) have underscored governments' need to refrain from adopting measures that may weaken the protection of civil and political rights and called on States to protect and preserve the work of EHRD during the pandemic. Thus, the pandemic exacerbated the particularly dire situation of EHRDs, uncovering the need for better protection and raising with particular acuity the question of an emerging right to defend human rights.

The Emerging Right to Defend Human Rights (RDHR)

The RDHR has recently [gained recognition](#) as a way to promote and protect the work of EHRD. At the international level, 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 (the [Declaration](#)) articulates minimum standards to human rights defenders. Despite its [non-binding nature](#), the Declaration compiles and concretizes rights and duties recognized in other binding instruments, such as the International Covenant on Civil and Political Rights. While the Declaration attempted to [make visible](#) historical struggles of individuals and groups to defend human rights, it has failed to reach its goal. The [Special Rapporteurs](#) on the situation of human rights defenders have continuously fought to bring attention to the challenges they face. In 2019, the HRC unanimously adopted a [landmark resolution](#), calling on States to create a safe and enabling environment for EHRDs and ensure effective remedies for human rights violations.

The work of EHRD promotes human rights and democracy. While their personal rights are protected within the traditional human rights framework, their work as such is not. Although existing rights such as the rights to freedom of expression and movement cover part of their work, EHRDs still face challenges when denouncing human rights violations that remain unprotected. Developing a particular mechanism that provides content to the RDHR and promotes its autonomy will not only help EHRD's individual rights but allow them to continue performing their crucial role, especially during the pandemic. Activities such as monitoring, denouncing, and making claims in human rights violations would be protected and guaranteed, preventing states from incurring practices such as the [criminalization](#) of EHRD. One of EHRD's opponents' main goals is to silence them and their fights; a universal recognition of a RDHR would prevent this from happening while encouraging further battles against human rights violations.

At the regional level, the Inter-American Court of Human Rights (IACtHR) [highlighted](#) the role of EHRD in strengthening democracy and the rule of law (§128). The IACtHR reminded States of their duties to create legal, formal, and factual conditions to ensure that EHRD can defend human rights (§141-§142). However, the IACtHR fell short of recognizing a direct or specific violation to the RDHR, instead declaring the violation of correlated rights (right to personal integrity §150-§160, right to mobility and have a domicile §165-§180, political rights §185-§193, judicial rights §199-§242). The new [Escazú Agreement](#), set to [enter into force](#) soon, recognizes the vital work of EHRD and the duty of States to guarantee a safe and enabling environment for them. It urges states to recognize, protect and promote all rights of EHRD, as well as their ability to exercise them. This international recognition supports the work of EHRD and advances their protection while enabling guarantees for their work. Colombia, however, has not ratified this Agreement.

Covid-19 and the Exacerbation of Vulnerabilities in Colombia

Colombia is considered the most dangerous country in Latin America for EHRD. Decades of internal armed conflict and unresolved inequalities have fueled killings and other [additional](#) human rights violations against EHRD, even before the

Covid-19 pandemic. In 2016 the country ended 50 years of armed conflict with FARC-EP while being considered the second deadliest country for EHRD by [Global Witness](#) and [Front Line Defenders](#). A recent report from [Indepaz](#) showed that at least 71.08% of victims were peasants, Indigenous, Afro-descendants, or from environmental and/or local organizations. This origin is explained by the fact that land and environmental rights are among the structural causes of the armed conflict. Actions against EHRD have been growing as a result of both the armed conflict and Covid-19. With an [increasing number](#) of EHRD killings in the first months of 2020, Colombia reached [287 killings](#) by December 2020. Lockdown measures [increased](#) vulnerability to EHRD. Lack of [monitoring activities](#) allowed illegal armed groups to seize public lands through violent means, exacerbating inequalities that fueled the armed conflict in the first place. The pandemic also worsened [gender-based violence](#) against female activists. Covid-19 and the armed conflict are thus profoundly intertwined as causes of EHRD's killings in Colombia.

In 2019, a group of Colombian EHRD and human rights organizations filed a *tutela*, a special writ for fundamental and human rights, seeking the [protection](#) of their RDHR. Petitioners [argued](#) that the Colombian context is particularly relevant since it reflects a systemic violence against EHRD. Even though the *tutela* was filed before Covid-19's worldwide spread, it acquires a new relevance during the pandemic. The first two decisions of lower courts ([here](#) and [here](#)) were favorable to the petitioners' claims. Nonetheless, the lack of compliance with the rulings' orders [prompted](#) petitioners to file a petition before the Colombian Constitutional Court (CCC), the country's highest constitutional tribunal. The petition is still pending. This situation begs the question: does the Colombian Constitution recognize an autonomous RDHR?

The Colombian Constitution does not explicitly incorporate a RDHR, which is why most decisions issued so far concerning the RDHR protect other rights (such as the right to life, personal integrity, and freedom of association). However, the Constitution implicitly [recognizes](#) that every fundamental right entails the right to defend its realization. Furthermore, the [Colombian Constitutional Court](#) recognized the [Declaration](#) as a highly relevant interpretative tool for protecting fundamental human rights.

Even though the government has issued decrees that aim to protect EHRD ([Decree 1066 of 2015](#) and [Decree 2137 of 2018](#)), recognizing the RDHR as an autonomous human right would strengthen protection while acknowledging their pivotal role in protecting democracy and the rule of law. It would also oblige the State to address structural violence in Colombia. Exercising the RDHR entails promoting other interrelated rights, thus providing better tools for tackling the pandemic and its related economic and social consequences.

The Way Forward: Strengthening Human Rights by Recognizing an Autonomous RDHR

An autonomous RDHR could be the answer to EHRD's struggles. It could ensure the protection of their human rights and promote better and more human rights conscious response measures to Covid-19. More importantly, it would prompt

a universal recognition of the importance of EHRD's work, providing a clear understanding of the needed circumstances for defenders to continue fighting for other people's rights. It would stimulate international support and make it harder for EHRD's opponents to ignore their claims and obscure their work.

The Colombian Constitutional Court now has the opportunity to help develop the content of said right. By recognizing this right in and of itself, the Court can clearly define the nature and extent of the RDHR and place specific obligations on the Colombian government, prompting a regional and maybe international discussion. EHRD have proven crucial in denouncing human rights violations during the pandemic and will most definitely continue to have a pivotal role in building back better. Protecting EHRD's work, in addition to their human rights, will allow them to continue strengthening democracies throughout the world.

