

Protecting Human Rights Defenders  
*Eva Rieter*

# The Angel's Share

Essays for Anne Looijestijn-Clearie



## **The Angel's Share**

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# PROTECTING HUMAN RIGHTS DEFENDERS

*Eva Rieter*

## 1. Introduction

When studying the situation of human rights defenders, it is clear that they regularly become a defender by simply doing their work. Imagine facing reprisals for doing your job very well. For your teaching and writing, for instance, and your adherence to ethical principles. In the spirit of Anne Looijestijn-Clearie, never retiring from her interests, imagine facing reprisals for teaching EU law too effectively. For expressing the view that it is really law. Or for expressing the view that EU citizenship is a good thing, as are the free movement of persons, goods and services. For encouraging students to study and think, with a clarity of explanation that lures them into (EU) law, and an enthusiasm that is catching. For encouraging students to explore and express different views as well, for instance that the four freedoms, those of expression and religion and from want and fear, are even more important than the EU's freedom of movement.

Having to face reprisals for that sort of thing? Like having one's nationality taken away? Such reprisals are a nasty thing to imagine, but a reality for many people worldwide. People who have often become what is now referred to as human rights defenders without a conscious decision to that effect. Their conscious decision was just to do their job well, or do what they consider right, independent of their job, basically to follow their conscience.

This contribution discusses protection of human rights defenders at United Nations (UN) as well as regional level. While doing so it also addresses the questions what are human rights defenders, what kinds of violations they can face, and how European citizens factor in.<sup>1</sup>

## 2. Protection of human rights defenders at UN level

Like everyone, human rights defenders have the right to life and to decent treatment and all other human rights. What they do, is acting to protect the rights of others, explicitly, or implicitly through their actions. A Dutch poet once

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<sup>1</sup> This contribution is partly based upon a speech delivered in 2016 on the importance of the Shelter City programme, see <<https://sheltercity.nl/3-jaar-shelter-city-nijmegen/>>. On the shelter city programme, see footnote 37.

wrote: asking yourself a question, that is how resistance starts. And then asking someone else that question.<sup>2</sup> Bullies and repressive regimes prefer that you do not ask yourself a question, let alone others. Searching for answers about the past and the present is perceived as a threat. This is one reason why human rights defenders are being threatened and harassed. It is in particular in repressive regimes that the right to life and the prohibition of torture and cruel treatment are disrespected, and of course freedom of expression and assembly. Human rights defenders are especially at risk of such violations, exactly because they defend the rights of others and thereby undermine regimes that violate those rights. Human rights defenders are people who uncover human rights violations, discuss them, take action against them and do so in a non-violent manner, whether as part of their job, or next to their job. Although in their activities they may focus on a specific human rights situation, or a specific group at risk, they commit to human rights for all.

Within the United Nations, the Declaration on Human Rights Defenders<sup>3</sup> has been adopted, which states that human rights defenders deserve additional protection. This is also evident from a range of human rights treaties and the ways they have been interpreted by the authorities appointed to monitor these treaties. The Declaration was adopted by the General Assembly by consensus and does not create new rights but presents principles and rights, which are based on human rights standards found in treaties such as the International Covenant on Civil and Political Rights (ICCPR). The UN Committee supervising the ICCPR has on several occasions pointed out to states that effective measures must be taken to protect the personal security and life of a petitioner against threats of any kind.<sup>4</sup>

The UN Human Rights Council has appointed a special rapporteur on human rights defenders. This is an independent expert appointed by the states with the mandate to be concerned with all members of the United Nations, even if they are not a party to relevant human rights treaties. All UN member states must show respect for human rights defenders and their activities. Pointing out this

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<sup>2</sup> R. Campert, 'Iemand stelt de vraag', in: *Betere tijden*, De Bezige Bij: Amsterdam 1970.

<sup>3</sup> The official name is: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted in 1998 by the UN General Assembly Resolution.

<sup>4</sup> Thus, it discussed not only Article 6 on the right to life, but also Article 9 ICCPR on the right to liberty and personal security. See e.g. HRCtee 20 March 2000, CCPR/C/68/D/711/1996 (*Dias v. Angola*) and HRCtee 25 March 2002, CCPR/C/74/D/859/1999 (*Jiménez Vaca v. Colombia*).

obligation in specific cases is not an interference in domestic affairs. The UN Declaration provides in Article 1:

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.

As mentioned by the UN Special Rapporteur on Human Rights Defenders, people involved in human rights education and training may face repercussions. This education includes “teaching about human rights in schools and universities or disseminating information on human rights standards to the general public or to vulnerable populations”.<sup>5</sup> Other activities that trigger risks include “collecting and disseminating information on violations”.<sup>6</sup> This explains why journalists and other persons involved in the media can sometimes be regarded as human rights defenders, as can owners of media outlets.

As explained by the Rapporteur, a human rights defender can be

[...] any person or group of persons working to promote human rights, ranging from intergovernmental organizations based in the world’s largest cities to individuals working within their local communities. Defenders can be of any gender, of varying ages, from any part of the world and from all sorts of professional or other backgrounds. In particular, it is important to note that human rights defenders are not only found within NGOs and intergovernmental organizations but might also, in some instances, be government officials, civil servants or members of the private sector.<sup>7</sup>

International adjudication can only come about after certain conditions are met. If so, international case law *can* trigger the international community into action. At best the human rights defenders in question may thereby gain immediate or eventual protection, but courts and intergovernmental organisations are not action figures who can singlehandedly put a stop to violations. This is illustrated by the case of *Askarov v. Kyrgyzstan*. Human rights defender Askarov had been sentenced to life in prison. There were allegations of torture and an unfair trial. To investigate this and monitor the hearings, the International Commission of Jurists (ICJ) was invited by a local organisation and sent a

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<sup>5</sup> Official webpage of the UN Special Rapporteur on Human Rights Defenders, <<https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx#ftn1>>.

<sup>6</sup> *Idem*.

<sup>7</sup> *Idem*.

mission<sup>8</sup> to observe the supreme court hearings in his final appeal and speak with several people.<sup>9</sup> The earlier proceedings had been in a different region, where a conflict had taken place, which included pogroms. Many people from ethnic Uzbek background had been killed, houses burned and people raped. A group then tried to protect a community and block a bridge. The police had sent a very small group of police officers and one of them was left there by his colleagues and brutally murdered by unidentified members of the violent mob.

Azimjan Askarov was an artist who turned human rights defender. He was not liked by the police because he had uncovered human rights violations in the past and was now documenting what was happening during the pogrom. After the killing of the police officer, he was accused of having been on that bridge and having ordered the killing. He has always denied that he was even near the bridge. Of course, the fact that someone is a human rights defender does not mean that he cannot have committed a crime. Yet there was much evidence of threats and intimidation of witnesses and lawyers, even inside the court buildings and in this trial he was sentenced to life in prison. Moreover, there was considerable evidence of torture, which had also been ignored.

The supreme court hearings were chilling in many respects. The lawyers were cut off when they tried to bring up the evidence of torture. The court confirmed the life sentence. The day after that, the mission was able to speak with Askarov for many hours. He came in with a pile of folders. His face drawn, but very calm and precise he testified of his experiences. The ICJ report<sup>10</sup> was later used by the lawyers when they brought the case to the UN Human Rights Committee. After several years the Committee published its decision in this case.<sup>11</sup> It found a range of violations of the prohibition of torture and cruel treatment and of the right to a fair trial.<sup>12</sup> It noted that the most appropriate remedy would be

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<sup>8</sup> The Mission took place 19-23 December 2011 and consisted of three international legal experts: Róisín Pillay, Senior Legal Advisor of the ICJ Europe Regional Programme; Daniyar Kanafin, lawyer; Eva Rieter, Radboud University Nijmegen.

<sup>9</sup> International Commission of Jurists, 'The Kyrgyz Republic: ICJ Concludes Mission on the case of human rights defender Azimjan Askarov', <<https://www.icj.org/the-kyrgyz-republic-icj-concludes-mission-on-the-case-of-human-rights-defender-azimjan-askarov/>>.

<sup>10</sup> International Commission of Jurists, *Report on the arrest, detention and trial of Azimzhan Askarov*, September 2012, <<https://www.icj.org/wp-content/uploads/2012/09/Askarov-Report-2012-Eng-004.pdf>>.

<sup>11</sup> HRCtee 31 March 2016, CCPR/C/116/D/2231/2012, views adopted by the Committee (*Askarov v. Kyrgyzstan*). This Committee can only convene for several weeks each year. Dealing with individual complaints is just one of the tasks of the Committee.

<sup>12</sup> It found violations of Article 7 (prohibition of torture & cruel treatment), Article 2.3



Askarov's immediate release. Instead, in response to this decision, the supreme court looked again at the case and rather than ordering his release, it sent the case back for a retrial by the original court. It was reported that this trial was once more conducted without respect for the principles of fair trial and without discussing the torture, and again upheld by the supreme court.<sup>13</sup>

International adjudication supported by UN authorities and third states often increases the likelihood that human rights defenders receive actual protection. But in this case the local authorities were swayed by certain domestic forces, rather than by the authoritative voices of human rights defenders within the state and beyond.<sup>14</sup> In the summer of 2020 human rights defender Azimjan Askarov died in prison, of COVID-19.<sup>15</sup> The UN Committee's findings, and the statements of the UN Special Rapporteurs, as well as of many NGOs did serve as further validation of human rights defender Askarov and as an expression of concern by the international community regarding the violations he experienced at the hands of local authorities.

As this example shows human rights defenders may face violations of freedom of expression and association, but also threats to their very lives and dignity. In a recent report, the UN Special Rapporteur on the situation of human rights defenders focused on killings of human rights defenders, and the death threats that often precede such killings. Among others, she examined the role of social

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(failure to carry out a prompt and effective investigation into torture), Article 9.1 (prohibition of arbitrary detention); Article 10.1 (prohibition of inhumane conditions of detention) and Article 14.3 (b) and (e) (right to properly prepare the defence and to communicate with counsel of own choosing).

<sup>13</sup> See International Federation of Human Rights, 'Kyrgyzstan: Supreme Court Upheld Human Rights Defender Azimjan Askarov's Life Sentence in an Appalling Decision', <<https://www.fidh.org/en/issues/human-rights-defenders/kyrgyzstan-supreme-court-upheld-human-rights-defender-azimjan-askarov>>.

<sup>14</sup> See e.g. UN Special Rapporteur on Human Rights Defenders, 'Kyrgyzstan must uphold its human rights obligations and release human rights defender Azimjan Askarov, says UN expert'. She stated: "The UN's many communications to have Mr Askarov's case quashed have been ignored by the Kyrgyzstani authorities", <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25872&LangID=E>>. Her statement was endorsed by the Special Rapporteur on minority issues; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

<sup>15</sup> Human Rights Watch, 'Kyrgyzstan: Human Rights Defender Dies in Prison; Hold Authorities Accountable for Azimjon Askarov's Needless Death', <<https://www.hrw.org/news/2020/07/25/kyrgyzstan-human-rights-defender-dies-prison>>.

media in spreading hate and propagation of violence. The report considers that

[s]ocial media companies, in consultation with human rights defenders, should: (a) Establish and publicize easy to access, public, rapid response mechanisms to remove threatening context; (b) Close down accounts of those making the threats'.<sup>16</sup> Social media companies should '(a) Publicly recognize human rights defenders, condemn attacks against them and conduct substantial consultations with them; (b) Provide all necessary data to assist legal investigations into online threats; (c) Quickly and efficiently respond to requests to remove online threats; (d) Nominate points of contact for human rights defenders to easily access when they have requests to remove content.'<sup>17</sup>

Moreover,

States, businesses, NGOs and donors should support: (a) Local protection funds that allow for relocation both within and outside the country; (b) Programmes for self-protection and psychosocial support; (c) Projects on local protection and self-protection designed by defenders themselves and their local organizations.'<sup>18</sup> States should also, among others, strengthen data collection and 'consider using Sustainable Development Goal indicator 16.10.1 as part of national monitoring and reporting on the situation of human rights defenders; and ensure that monitoring and reporting efforts include the digital, physical and psychological safety of human rights defenders, and incorporate gender-sensitive analysis.'<sup>19</sup>

In addition to presenting reports like this, with recommendations, the Special Rapporteur also intervenes in urgent situations involving human rights defenders. She does so regularly together with other Rapporteurs, such as the one against summary executions. Sometimes, the UN Rapporteurs also act together with their colleagues from the African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights. Their joint actions indicate a worldwide concern and they help to exert pressure on states.

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<sup>16</sup> UN Special Rapporteur on Human Rights Defenders, *Final Warning: Death Threats and Killings of Human Rights Defenders* (A/HRC/46/3), 24 December 2020, para. 110.

<sup>17</sup> *Idem*, para. 114.

<sup>18</sup> *Idem*, para. 115.

<sup>19</sup> *Idem*, para. 112.

### 3. The role of regional organisations in the protection of human rights defenders

Several countries in different parts of the world have copied each other's tricks to undermine human rights defenders, including their organisations. They do so, for instance, by making it difficult, or even impossible, for these organisations to register, knowing that they can often only operate effectively once they are registered. Some countries go even further by calling human rights organisations dangerous 'foreign agents' when they receive money from abroad. Even if there is no legislation against such 'foreign agents', states can abuse other rules in order to silence human rights defenders and, by doing so, also intimidate others: the chilling effect and the 'shrinking space' for human rights defenders.<sup>20</sup>

This also happens in states that are members of the Council of Europe. The Committee of Ministers of the Council of Europe has recognised and valued the work of all human rights defenders and has expressed 'deep concern at the shrinking space for civil society resulting, *inter alia* from restrictive laws, policies and austerity measures taken recently by member States'.<sup>21</sup> The Commissioner for Human Rights supports the work of human rights defenders and calls for their protection.<sup>22</sup>

The European Court of Human Rights (ECtHR) has also increasingly been faced with situations hindering the activities of human rights NGOs and civil society organisations and even situations where human rights defenders have been prosecuted based on trumped up charges with the purpose of silencing them. The Court has confronted this situation, among others, by finding not only that their detention was arbitrary, but in conjunction, also that Article 18 ECHR was violated, which states:

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<sup>20</sup> See e.g. Council of Europe Committee on Legal Affairs and Human Rights, *Restrictions on NGO Activities in Council of Europe Member States*, Report of 6 January 2021; Amnesty International, *Human Rights Defenders under Threat; A Shrinking Space for Civil Society*, 16 May 2017, Index number: ACT 30/6011/2017. See also Human Rights Comment by Nils Muižnieks, 'The Shrinking Space for Human Rights Organisations', <<https://www.coe.int/en/web/commissioner/-/the-shrinking-space-for-human-rights-organisations?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner%2Fhuman-rights-defenders>>.

<sup>21</sup> See e.g. Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe (Adopted by the Committee of Ministers on 28 November 2018, at the 1330<sup>th</sup> meeting of the Ministers' Deputies).

<sup>22</sup> See <<https://www.coe.int/en/web/commissioner/human-rights-defenders>>.

The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

An important example is the case of human rights defender Jafarov.<sup>23</sup> Not only did the Court find arbitrary detention and a lack of judicial review, but in addition to these violations of Article 5 ECHR, it also found a violation of Article 18 in conjunction with Article 5. The Court found that

the totality of the above circumstances indicates that the actual purpose of the impugned measures was to silence and punish the applicant for his activities in the area of human rights. In the light of these considerations, the Court finds that the restriction of the applicant's liberty was imposed for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence, as prescribed by Article 5 §1 (c) of the Convention.<sup>24</sup>

Moreover, it also found a violation of Article 34 for improper acts or communications having a "chilling effect" on the exercise of the right of individual petition.

When it comes to the protection of human rights defenders, the Inter-American human rights system is the most important.<sup>25</sup> The Inter-American Commission on Human Rights has a Rapporteurship on Human Rights Defenders and Justice Operators, which takes various forms of action, including in urgent cases.<sup>26</sup> The Inter-American Court of Human Rights (IACtHR) has also been very active in cases involving human rights defenders. The involvement of the Commission and Court was evident in a case where someone's nationality was taken away: the case of Baruch Ivcher Bronstein, the owner of a television station in Peru under Fujimori's reign. Deprivation of nationality constitutes a serious violation in itself, often involving racism and sometimes resulting in

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<sup>23</sup> See ECtHR 17 March 2016, App. No. 69981/14 (*Rasul Jafarov/Azerbaijan*).

<sup>24</sup> *Idem*, para. 162. The Court has since connected a violation of Article 5 jo. Article 18 even more to the rule of law. In ECtHR 22 December 2020, App. No. 14305/17 (*Selahattin Demirtaş v. Turkey (no. 2)*), paras. 440-442, after finding violations of Article 5 jo. Article 18, under Article 46 of the Convention it ordered the immediate release of the politician concerned.

<sup>25</sup> The Organisation of American States is the relevant regional organisation here, the counterpart of the Council of Europe.

<sup>26</sup> See <<http://oas.org/en/iachr/defenders/default.asp>>.

exposure to statelessness.<sup>27</sup> In Baruch Ivcher's case, deprivation of nationality was a method to intimidate and a way to effectively hinder freedom of expression and block access to information about human rights violations. Mr. Ivcher had allowed the broadcasting of reports on structural crimes such as the involvement of authorities in torture and corruption. Following earlier failed attempts to bribe and intimidate him into broadcasting friendlier news, on July 13<sup>th</sup>, 1997, the authorities took away his Peruvian citizenship. Following this, his position as president of the TV station could be revoked and his shareholder rights suspended. Alerted initially by a lawyers' organisation and a concerned politician, the Inter-American human rights system was activated. Subsequently, the Inter-American Commission and Court of Human Rights played an important role, among others through the use of provisional measures,<sup>28</sup> in the developments that helped restore the rights of Mr. Ivcher and others.<sup>29</sup> The

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<sup>27</sup> Deprivation of nationality is still used as a political tool, and in a much wider range of cases than in the ensuing example involving a human rights defender. It has been done, for instance on the basis of racism, excluding certain groups, and also by way of punishment. It has also resulted in statelessness. See e.g. Amnesty International, *Arbitrary Deprivation of Citizenship*, 2017 and Institute on Statelessness and Inclusion, *The World's Stateless. Deprivation of Nationality*, March 2020. International adjudicators have stressed the importance of the right to a nationality, as an inherent right, and for the exercise of political rights and for legal capacity. See e.g. IACtHR already in 1984, in an Advisory Opinion OC-4/84 on Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica (19 January 1984), paras. 32-33. The African Court of Human and Peoples' Rights (ACtHPR) has confirmed it as an important dignity right, ACtHPR 18 November 2019, App. No 013/2015 (*Robert John Penness v. Tanzania*), para. 87. The importance of the right of a minor to acquire a nationality was underlined by the recent finding of a violation of Article 24(3) ICCPR by the UN Human Rights Committee, HRCtee 28 December 2020, CCPR/C/130/D/2918/2016 (*Denny Zhao v. the Netherlands*).

<sup>28</sup> After having dealt with the case itself, since 1997, in March 1999 the Inter-American Commission on Human Rights submitted the case to the IACtHR, whereupon the state attempted to withdraw its recognition of the Court's contentious jurisdiction. On 24 September 1999 the Court issued its judgment on competence, declaring it was competent to take up the case; and finding "Peru's purported withdrawal, with immediate effect, of the declaration recognizing the contentious jurisdiction of the Inter-American Court of Human Rights is inadmissible". Two months later the Court ordered provisional measures on behalf of Mr. Ivcher, his wife and daughters and several others, requiring the state to "adopt, forthwith, whatever measures are necessary" to protect their "physical, psychological and moral integrity, and the right to the legal guarantees". IACtHR Order of 23 November 2000, first and 2<sup>nd</sup> decisional clause and 6<sup>th</sup> considering clause (*Ivcher-Bronstein* case).

<sup>29</sup> There was a dramatic turn of events when Fujimori fled to Tokyo in November 2000 and resigned. Following this, the state revoked the domestic order that took away Baruch Ivcher Bronstein's nationality and announced that the contentious jurisdiction

involvement of the Inter-American Commission and Court of Human Rights is seen in both merits decisions and in urgent intervention pending the case.

The Inter-American Commission and Court have faced many situations involving human rights defenders. While a case was pending before the Commission or Court, under Article 63(2) of the American Convention on Human Rights, the Court started using its power to order provisional measures also on behalf of human rights defenders receiving threats. In the beginning, states responded by saying: "we sent a patrol". This was not particularly helpful when it was this patrol that was feared by the human rights defenders. This type of state responses triggered the Court to specify its measures, for instance by ordering the authorities to meet with the representatives of the victims to discuss protective measures and report back to the Court on the measures agreed upon.

Another trick by state authorities or paramilitaries was to start targeting family members of persons protected by provisional measures orders. For the Inter-American Court this meant it had to widen the protective circle of the provisional measures by adding new names of people to be protected. It also became necessary to order the protection of the premises of a human rights organisation. And to extend this to include in the protection Order everyone visiting these premises. Only by ordering the state to do that, could the Court help ensure that human rights defenders could continue their activities.

One of the most striking situations of death threats and harassment is that of the *Matter of the Peace Community of San José de Apartadó v. Colombia*.<sup>30</sup> The peace community was created in 1997 by five hundred displaced villagers from seventeen different towns in the wider region, following a wave of massacres perpetrated mostly by paramilitary groups.<sup>31</sup> While forced out of their homes,

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of the Inter-American Court was fully restored. In February 2001, Peru informed the Court that it had accepted the recommendations proposed by the Commission and had indeed restored Mr. Ivcher's Peruvian nationality and his position as shareholder. Following this, in March 2001 the Court lifted its provisional measures order. Eventually, in its 2001 judgment on the merits and reparation the Inter-American Court of Human Rights found, among others, that Mr. Ivcher's right to nationality, property and freedom of expression had been violated. IACTHR 6 February 2001 (judgement on the Merits, Reparations and Costs) (*Ivcher Bronstein v. Peru*).

<sup>30</sup> IACTHR, Order of 24 November 2000 (*Matter of the Peace Community of San José de Apartadó (Colombia)*), and subsequent orders.

<sup>31</sup> A great part of political killings in Colombia was done by the FARC (more than 30 percent); a smaller but still considerable part *directly* by the military and the great

these farmers were determined that they would not give up their lands. They decided to keep using their lands through self-organisation and by refusing to take part in the conflict in any way. In its Order for provisional measures the Court decided that it was sufficiently clear to the government who belonged to the Community, even if it did not have a list with their names; the state was ordered to protect everyone in the community; later this was expanded because then people delivering food and services to the community were being targeted. The community and observers have expressed a conviction that the Court's provisional measures have saved lives, even for this Peace Community that lost hundreds of its members, including children, since its start in 1997. Some massacres took place while the Court had already ordered provisional measures for their protection. Nevertheless, it is believed it helped prevent more killings and it helped legitimizing the community.<sup>32</sup>

Often the involvement of international judicial authority, especially when performed in a very concrete way, can be a good handle for affected communities and civil society organisations trying to support them, to draw attention. The case law, including provisional measures, can serve to legitimise the work of human rights defenders. Another important tool to protect human rights defenders is that of international peaceful civilian presence/ accompaniment,<sup>33</sup> as well as the involvement of international consumers.<sup>34</sup> Not only the Organisation of American States, the Council of Europe, and the

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majority by the paramilitaries, such as the *Autodefensas Unidas de Colombia*. The paramilitaries and certain divisions of the military are closely linked. Paramilitary groups declared members of Peace Communities to be 'military targets'.

<sup>32</sup> Sadly, people in this Community still do not feel safe. The peace process in Colombia has not managed to put a stop to threats by paramilitaries and the linkages between (new) paramilitary groups and local police. See e.g. The Community Factor in Colombia's Search for Peace, *International Crisis Group* 7 September 2016, <<https://www.youtube.com/watch?v=Dfwy5Ee2ayU>> a documentary where senior Colombia analyst Kyle Johnson travelled to rural areas to speak to local communities affected by the peace accord and Erika Guevara-Rosas (Americas Director at Amnesty International), 'Still No Peace in San José de Apartadó', <<https://www.amnesty.org/en/latest/news/2017/07/la-paz-que-no-llega-a-san-jose-de-apartado/>>.

<sup>33</sup> See international accompaniment programs such as that of Peace Brigades International <<https://pbicolombia.org/accompanied-organisations/peace-community/>> or <<https://peacebrigades.org.uk/where-we-work/colombia/peace-community-san-jose-apartado>> and ForPeacePresence <<https://peacepresence.org/what-we-do/peace-community/>>.

<sup>34</sup> As can be seen in the case of the cooperation between Peace Brigades International and the cosmetics company Lush.

OSCE,<sup>35</sup> but also the EU has dealt with situations where measures taken by certain states undermined the work of organisations and universities, with a potentially chilling effect. Here the Court of Justice of the European Union (CJEU) also plays a protective role. In several cases the CJEU has found violations of fundamental rights in the EU Charter, such as academic freedom, freedom of association, private life and protection of personal data, as well as of core EU law such as the freedom of establishment and the free movement of capital and services.<sup>36</sup>

The EU also supports the UN Declaration for human rights defenders. The *EU Guidelines on Human Rights Defenders* contain suggestions for practical measures by EU member states, and other states willing to implement such measures, to support and protect human rights defenders. The Guidelines refer to human rights defenders as

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.

As is set out in para. 7, the operational part of the Guidelines is

meant to identify ways and means to effectively work towards the promotion and protection of human rights defenders in third countries, within the context of the Common Foreign and Security Policy.

In other words, these Guidelines were not intended to assist human rights defenders within the EU.

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<sup>35</sup> The Organization for Security and Co-operation in Europe (OSCE) has also made a focal point of the protection of human rights defenders. See Organization for Security and Co-operation in Europe, *Human Rights Defenders in the OSCE Region: Our Collective Conscience 2007*, <[www.osce.org/odihr/29714](http://www.osce.org/odihr/29714)>; OSCE, 'Guidelines on the Protection of Human Rights Defenders', <[www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders](http://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders)>.

<sup>36</sup> See e.g. CJEU 18 June 2020, C-78/18, ECLI:EU:C:2020:476 (*Commission/Hungary (Transparency of associations)*); CJEU 6 October 2020, C-66/18, ECLI:EU:C:2020:792 (*Commission/Hungary (Higher education)*) (in this case also of WTO law: the General Agreement on Trade in Services).



The European Parliament shows interest in the protection of human rights defenders through its subcommittee on human rights and it also pays tribute to human rights defenders through awarding the Sakharov Prize. The Secretariat of ProtectDefenders.eu, in which several NGOs cooperate, is based in Brussels and facilitates and coordinates the implementation of the EU Human Rights Defenders mechanism, with an emergency grants programme allowing human rights defenders to access and implement urgent security measures. The EU encourages member states to enable cities to allow human rights defenders the opportunity for rest and respite in a European city, on the basis of temporary visa. During this period, they should be able to continue their important work in a safe context, take part in human rights education in the host city and state and have the opportunity to meet new people. This way, local communities in European cities offer temporary shelter to human rights defenders, showing their support and helping to strengthen the international network of human rights defenders faced with threats and intimidation.<sup>37</sup>

#### 4. Conclusion

This chapter discussed how anyone who defends the rights of others, explicitly or through activities, can be qualified a human rights defender, as long as they do not propagate violence or discrimination. It discussed how certain contexts can expose human rights defenders to heightened risks and it highlighted certain protective mechanisms: international adjudication, with merits decisions and provisional measures in cases of urgency; international diplomacy, for instance by UN experts, and activities by civil society organisations as well as intergovernmental cooperation, including political initiatives such as the shelter city program.

Some people believe that “if you believe you’re a citizen of the world, you’re a citizen of nowhere”.<sup>38</sup> As part of that conviction they may argue in favour of exiting and retreating into their own island. Others take a different perspective. Seamus Heaney once wrote a poem on the occasion of International Human Rights Day. It is called *The Republic of Conscience*.<sup>39</sup> Of course it should be read in full. But in my take, once you have been there you have dual citizenship. To me, it is about our common citizenship, lived with mouth, eye, ear and pen, to testify and listen. To connect and stay connected, wherever we are in this

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<sup>37</sup> For the shelter city programme in the Netherlands, see <<https://sheltercity.nl/en/>>.

<sup>38</sup> From UK’s then prime minister Theresa May’s speech to the Conservative Party conference on 5 October 2016.

<sup>39</sup> S. Heaney, ‘The Republic of Conscience’, in: *New Selected Poems, 1966-1987*, London: Faber and Faber 1990, p. 118-19.

republic of conscience.

It seems fitting to conclude with parts of two poems from Scotland.<sup>40</sup> First one by Robert Burns:

[...]  
 A prince can mak a belted knight,  
 A marquis, duke, an' a' that;  
 But an honest man's abon his might,  
 Gude faith, he maunna fa' that!  
 For a' that, an' a' that,  
 Their dignities an' a' that;  
 The pith o' sense, an' pride o' worth,  
 Are higher rank than a' that.

Then let us pray that come it may,  
 (As come it will for a' that,)
 That Sense and Worth, o'er a' the earth,  
 Shall bear the gree, an' a' that.  
 For a' that, an' a' that,  
 It's coming yet for a' that,  
 That Man to Man, the world o'er,  
 Shall brothers be for a' that.<sup>41</sup>

The other lines are quoted from Joan Ure, commenting on John Knox and more:

I owe that man my education  
 I can't help whiles being glad of it  
 I know he meant the books for the boys  
 but now they have got to me.

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<sup>40</sup> With the same advice as above: to read them in full.

<sup>41</sup> Robert Burns, last three verses of 'A Man's a Man for A' That', 1795. Alistair Braidwood writes that this song was "published anonymously in *The Glasgow Magazine* for fear of recriminations or even arrest" and that "it is thought the song is proof of Burns' support for the Revolution in France, and is often used as evidence of Burns holding 'socialist' ideals". "What seems beyond doubt is that Burns was influenced by Thomas Paine's 'The Rights of Man', both of them dealing with idea of liberty, equality and universal human rights. With these themes to the fore it is interesting, and hopefully prophetic, that this was the song chosen to be sung at the opening of the devolved Scottish Parliament in 1999.", see <[http://www.bbc.co.uk/arts/robertburns/works/a\\_mans\\_a\\_man\\_for\\_a\\_that/](http://www.bbc.co.uk/arts/robertburns/works/a_mans_a_man_for_a_that/)>.

The truth is, once you open as a question  
the authority, for a start, of the weemin –  
although thon weemin were bonny queens  
they could burn you then like a tree –  
you get the hale notion of equality started!

[...]

He can't blast me doon noo wi his blethers  
I ken fine he's no God for me.  
But it's no just his mistakes that hiv scarred us  
– except as we continue to make them,  
we'd be better finding oor ain mistakes,  
if mistakes there must always be.

No, if Knox lived among us in the Sixties  
he'd be worth his vote, his meat and potatoes  
with the rest of us, for he earned it.  
We could grant him our equality.<sup>42</sup>

Within and outside of Europe, human rights defenders need additional protection. Within Europe too, people are attacked for things they write or for the non-violent and non-discriminatory choices that they make, for instance to assist people without papers. For the EU, practicing what it preaches in terms of the rights of human rights defenders means ensuring protection within, in vicinity of and beyond its borders.

To return to the citizenship this contribution started out with: for those with only a UK passport, losing their EU citizenship against their will is a reality, although not by way of reprisal. In any case, allegorically speaking, as long as they are committed to the idea, they may (temporarily) lose their legal status as an EU citizen, but they cannot lose their European citizenship.

Beyond the EU context, people doing their jobs and following their conscience, are not only losing their citizenship, as Ivcher Bronstein did, temporarily, but even their lives. This rightly is a concern for the EU, and for all who live in Europe, formally citizen or not.

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<sup>42</sup> Joan Ure, from her 1963 poem, 'Answer on the Side Drum in 1963 to the Blast of the Trumpet in 1557, with less than respect', reproduced in <[https:// dangerouswomen project.org/2016/06/24/joan-ure/](https://dangerouswomenproject.org/2016/06/24/joan-ure/)>.