

EUROPEAN UNION:

RISING TO THE
CHALLENGE OF
PROTECTING HUMAN
RIGHTS DEFENDERS

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The European Union - Rising to the Challenge of Protecting Human Rights Defenders

INTRODUCTION

The European Union (EU) adopted “Ensuring Protection – European Union Guidelines on Human Rights Defenders” (the Guidelines) in June 2004.ⁱ The purpose of the Guidelines “is to provide practical suggestions for enhancing EU action” in relation to human rights defenders (HRDs). The Guidelines represent a unique commitment by EU institutions and individual EU member states to promote the principles in the UN Declaration on Human Rights Defenders in its relations with countries outside the EU. If fully implemented, the potential for bringing about change is significant. The fact that all member states have agreed to the Guidelines provides a strong basis for the EU to develop an effective human rights policy.

EU Guidelines on Human Rights Defenders

The Guidelines establish a number of ways in which the EU should support and protect HRDs, including:

EU missions

Missions have an important role to play in putting into practice the EU’s policy towards HRDs. According to the Guidelines, in many third countries, EU missions are the primary interface between EU member states and HRDs on the ground and should therefore adopt a proactive policy. Actions to be taken by EU missions include the co-ordination and sharing of information on HRDs, maintaining contact with HRDs, giving HRDs visible recognition, and observing trials.

EU missions should monitor and periodically report on the institutional framework within which HRDs operate, and report any threats or attacks against individual HRDs. They should make recommendations for action to the Council of the EU’s Working Group on Human Rights (COHOM), which could include, condemning threats and attacks against HRDs, making public statements when HRDs are at immediate or serious risk and the issuing of *démarches*. COHOM and other relevant working groups are to identify situations where EU action is called for, and decide on the action to be taken or, where appropriate, make recommendations for action to the Council’s Political and Security Committee.

EU officials

The Guidelines state, where appropriate, EU officials visiting third countries should meet HRDs and raise individual cases with the local authorities. The situation of HRDs should be included in political dialogues, in which the EU will emphasize its support for HRDs and again, raise individual cases of concern.

Practical support

Finally, the Guidelines provide practical support to HRDs through social and economic development programmes provided by the EU and individual member states. These could include financial support for capacity-building and public awareness campaigns of HRDs,

assisting in the establishment of international networks of HRDs, and seeking to ensure that HRDs can access financial resources from abroad.

In June 2006, under the Austrian EU Presidency, the EU published its first review of the implementation of the Guidelines (Austrian Review).ⁱⁱ The Austrian Review took stock of the progress made and recommended further action towards the full and effective implementation of the Guidelines. All relevant actors of the EU were requested to implement the total of sixty-four steps recommended by the review.

Since the Guidelines were adopted, Amnesty International has also monitored their implementation in order to contribute to their full and effective use. In May 2007, Amnesty International published a report which presented an assessment of the implementation of the Guidelines based on research on eight countries in 2006. Amnesty International's main conclusion was that, in spite of numerous positive initiatives by successive EU Presidencies to promote the Guidelines, they had yet to be sufficiently employed on the ground for the purpose of enhancing EU efforts to support and protect HRDs. The overall picture was patchy and the implementation of the Guidelines had yet to be prioritized and systematized. There was a dire need for a focus on implementation at country level, for which the efforts of not only EU institutions (Presidency and European Commission), but also EU member states, were needed.

The conclusions and recommendations of Amnesty International's May 2007 report remain fully relevant. The present document aims to reinforce those recommendations and to trigger increased, effective, systematic and consistent action to support and protect HRDs by

- describing in detail good initiatives in the implementation of the Guidelines – examples that should be widely emulated
- discussing “lessons learned” about impact which can be applied successfully anywhere
- identifying and responding to the most common reasons given by EU diplomats for not taking action on HRDs
- highlighting key challenges for the EU in the implementation of the Guidelines in the future.

The booklet has been developed for professionals who are directly involved in the implementation of the Guidelines: staff at EU missions, at Ministries of Foreign Affairs in the capitals, at permanent representations of member states and at the EU institutions in Brussels. It could however also be of use to HRDs and other NGOs.

The United Nations Declaration on Human Rights Defenders

HRDs are on the frontline of defending and promoting human rights and as such, are at particular risk of attack and intimidation. Recognizing the need to better protect HRDs, the United Nations (UN) set up a working group in 1985 to draft a relevant international instrument. After 13 years of negotiation, the UN General Assembly adopted what is commonly known as the Declaration on Human Rights Defendersⁱⁱⁱ on 9 December 1998. This year marks the 10th anniversary of the Declaration's adoption.

The UN defines a human rights defender as anyone who, either alone or in association with others, works peacefully for the promotion and protection of human rights. “What is most important in characterizing a person as a human rights defender is not the person’s title or the name of the organization he or she works for, but rather the human rights character of the work undertaken.” According to the UN, therefore, HRDs “are not only those whose daily work specifically involves the promotion and protection of human rights,”^{iv} but also lawyers, trade unionists, journalists, teachers, doctors, judges, police, politicians and anyone else, who acts to promote or protect human rights.

The rights of Human Rights Defenders:

“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”^v HRDs have the right to peaceful assembly; form, join and participate in non-governmental organizations, associations or groups; disseminate information on human rights; draw public attention to human rights violations; benefit from an effective remedy if rights are violated; offer legal assistance; have unhindered access to and communication with international bodies; solicit receive and utilize resources.

The responsibility of states to protect Human Rights Defenders:

States should protect, promote and implement all human rights and fundamental freedoms; adopt legislative, administrative and other measures to ensure the rights in the Declaration are guaranteed; conduct prompt and impartial investigations into alleged human rights violations; protect HRDs against violence, threats, retaliation, discrimination, pressure or any other arbitrary action as a result of their work.

The Guidelines - protection in practice

European member states and institutions have taken a number of excellent initiatives to support and protect HRDs in third countries. This section outlines 10 commendable steps taken since the adoption of the Guidelines. The practices have been divided into “structural measures,” which concern policies and processes, and “practical action,” relating to more concrete or tangible actions “on the ground.”

Structural measures

1. The Netherlands - HRDs and foreign policy.

In 2001, The Netherlands identified HRDs as a priority group in its foreign policy on human rights. Support For HRDs – ‘people who have the courage to make their voices heard’ – was reiterated in their November 2007 policy, when concrete implementation of the EU Guidelines on HRDs was identified as a priority.^{vi} Actions outlined in the policy include:

Promoting action to protect HRDs within the EU - raising individual cases during political dialogue; raising the situation of HRDs and their organizations during bilateral contacts and visits, regardless of the country; meetings between HRDs and the Minister of Foreign Affairs during country visits; and targeted funding.

On the 10th December every year, Dutch Embassies, in co-operation with other EU missions, will organise meetings with local HRDs.

The establishment of the “Human Rights Defenders Tulip,” an annual award for “exceptional moral courage.”

Specific and public commitments at the central policy level will help ensure that The Netherlands takes concrete action to support and protect HRDs, not only by promoting and providing a justification for action on HRDs, but also through accountability to the Dutch parliament and civil society.

2. Nepal - Launching local implementation strategies.

In consultation with local HRDs and human rights NGOs,^{vii} EU missions in Nepal drew up a local strategy for implementing the Guidelines. The strategy was publicly launched on 10 October 2007.^{viii} The strategy includes:

Translating the Guidelines and strategy into Nepali. The English and Nepali versions of the strategy have been posted on the UK Embassy's website.^{ix}

Informing HRDs about the Guidelines during district visits.

Widening contacts with HRDs.

Issuing EU demarches and statements.

Contributing to a “safe house” mechanism for HRDs in great danger.

Establishing an EU working group to co-ordinate the implementation of the Guidelines.

(The working group has already met)

The publication of a local strategy helps develop consensus and awareness among EU missions regarding the importance of supporting HRDs and the actions that should be taken. It also raises awareness among local HRDs of the EU's commitments, which will help ensure HRDs contact the EU when necessary. Finally, it communicates the EU's support for HRDs to local government and society.

3. Guatemala - Contact and monitoring at country level.

EU missions in Guatemala appointed a “filter group” made up of the Deputy Heads of Mission from the UK and The Netherlands embassies and the General Consul of Finland. In January 2008, the group was expanded to include representatives of the Delegation of the European Commission and the Swedish Embassy. The “filter group”:

Receive and assess allegations of violations against HRDs, gathering further information from the authorities when necessary.

Forward cases, with recommendations for action, to the regular Deputy Heads of Mission (HoMs). In turn, the Deputy HoMs refer the cases to the HoMs for discussion and decision-making.

In February 2007, the group compiled six cases which the EU HoMs later presented to the Guatemalan Minister for the Interior.

The EU, by appointing a filter group made up of EU missions who have the necessary capacity and commitment, has created a mechanism to ensure the regular monitoring and assessment of the situation of HRDs. The group provides HRDs with a clear and consistent point of contact, facilitating communication between HRDs and EU missions .

Practical action

4. Israel - Integrating HRD issues and cases into political dialogue.

In November 2006, the EU “troika”^x in Tel Aviv heard presentations from European and local

NGOs in regard to the Israeli practice of administrative detention^{xi} and the cases of Palestinian staff members from local organizations who had been in detained. Subsequently, in February 2007, the EU increased international pressure by raising the issue, and the cases of two HRDs who had been detained since May 2005, with the Israeli Government during the EU-Israel informal human rights working group. Both HRDs were released within three months. In October 2007, after receiving information from European and local NGOs, the EU raised cases of administrative detention and restrictions on the freedom of movement of HRDs during the EU-Israel Sub-Committee on Political Dialogue. The cases included that of the General Director of the Palestinian human rights organization *Al Haq*, who has been subjected to a travel ban since March 2006. Contacts with human rights organizations and defenders have provided the EU with detailed and relevant information on violations against HRDs. By raising issues and cases consistently in political dialogue, the EU can ensure that its concerns regarding HRDs are addressed.

5. Tunisia - Raising individual cases at the highest level.

Newly elected French President Nicolas Sarkozy added to international pressure in relation to the case of Mohammed Abbou, when he raised the case with the Tunisian President during a visit to Tunisia on 10/11 July 2007. Mohammed Abbou had been jailed in April 2005 in part for articles critical of the authorities and condemning torture in Tunisia.. Later, when asked by journalists whether he had raised human rights issues, President Sarkozy said: "President Ben Ali is the first to recognize that there are plenty of things that can be improved. We discussed them, we discussed individual cases,"^{xii} citing the case of Mr. Abbou. The case was also raised by another member of President Sarkozy's delegation, the State Secretary in charge of foreign affairs and human rights with a Tunisian counterpart. Less than two weeks later, on 24 July, the 50th anniversary of the Republic of Tunisia, Mr. Abbou was released by presidential pardon along with 21 others, more than a year before the end of his 3½ year sentence. Asked what he thought helped bring about his release, Abbou said, "the visit of [French] President Sarkozy who directly referred to my situation was not insignificant."^{xiii}

Raising individual cases at the highest (Presidential) level gives a clear indication of the extent of member states' concern for HRDs and ensures that these concerns are raised on a par with other issues. It is effective to target Presidents of third countries since it is they who usually have the power to ensure improvement in the situation of local HRDs.

6. China - Consistent and varied action

Hu Jia and his wife Zeng Jinyan are both Chinese AIDS activists who have been under house arrest, first from March 2006 to February 2007 and most recently since May 2007.

In June 2007 the German EU Presidency carried out a demarche in relation to their treatment.

In July and August, a UK diplomat visited Hu and Zeng at their residence and made a media statement on the situation of Chinese HRDs.

In October, the EU raised the case during the EU-China human rights dialogue, asking the Chinese Government "to immediately release both or in any case, not subject them to ill-treatment in detention."

In November, the Human Rights Ambassador of The Netherlands raised their detention with Chinese authorities again.

The European Parliament nominated Hu for the 2007 Sakharov Prize

When Hu Jia was taken from his residence by police on 27 December, the President of the European Parliament issued a public statement,^{xiv} and the European Parliament adopted a resolution,^{xv} condemning his detention and demanding his release.

In early 2008, the EU raised Hu's case again with the authorities.

On 17 January 2008, the Dutch Foreign Minister publicly highlighted violations against Hu in a speech.

On 17 March 2008, the EU Presidency issued a declaration in which it expressed deep concern about Hu Jia's detention, calling on the Chinese authorities to release him and others detained for reporting on or demonstrating against human rights abuses and to refrain from further such detentions.^{xvi}

When Hu was sentenced in April 2008, representatives from eight EU missions attempted to attend the hearing.

These actions illustrate how EU institutions and member states have acted with a level of consistency and with growing intensity in relation to the case of an individual HRD at risk.

7. Iran - Public statements by the EU Presidency.

The EU has consistently issued public statements concerning HRDs in Iran. Five statements were issued in 2006, four in 2007, and to date, one in 2008. The statements related to journalists, women HRDs, trade unionists, students and teachers. The EU has expressed concern about the arrest and imprisonment of HRDs, unfair trials, ill-treatment of HRDs while in detention, and the closure of HRDs' organizations. It has also called for the release of HRDs, their access to medical treatment, cessation of proceedings against HRDs, investigations into violations against HRDs, and even the amendment of relevant laws. It has made reference to international human rights agreements, including the UN Declaration on HRDs.

The EU has consulted HRDs when drafting these statements, which have been translated into Persian and covered in the local media. On occasion, the Iranian authorities have protested to the EU in relation to these statements. HRDs believe that these statements make a difference. "It seems that the Islamic Republic would take harsher action to violate the human rights and to tackle the dissidents if it were not for considerations of foreign and international relations," said one HRD.^{xvii}

Public statements provide moral support for local HRDs at risk, raise the visibility of violations against HRDs and promote accountability for such violations.

8. Guatemala - Public event and statements by EU missions.

On 28 June 2007, EU missions, in co-operation with local HRDs and the Office of the UNHCHR, organized a public meeting to highlight concerns about attacks on HRDs. Ambassadors from the UK and The Netherlands spoke at the event. The meeting was attended by other EU Ambassadors, the US Ambassador, Ambassadors from a number of Latin American countries and members of the press. Guatemalan officials were also present, including the Minister of Interior who condemned the attacks. On 12 July 2007, EU missions issued a declaration expressing concern about the attacks, stressing the need for the relevant Guatemalan institutions to improve protection for HRDs and end impunity. The declaration was published in the local press the next day. Though no one has been brought to justice for

the violations, HRDs believe these actions contributed to a drop in attacks over the following months. Raising the visibility of concerns about attacks on HRDs helps ensure the message reaches actual and potential violators of HRDs' rights and, acts as a deterrent by raising the political costs if such attacks continue.

9. Zimbabwe - Attending demonstrations and observing court hearings.

In Zimbabwe, as in other EU missions, the Delegation of the European Commission has appointed a "focal point" on HRDs. This staff member maintains contact with a "strategic network" of Zimbabwean HRDs. This "focal point" plays an active role in developing the EU's local implementation strategy as set-out in the Guidelines. In collaboration with other EU missions, the focal point attends public demonstrations and meetings organized by HRDs and, observes court hearings and other events when necessary. For example, in 2007, their presence was requested at the airport to monitor the departure of two lawyers who feared violence prior to attending a meeting of the African Commission on Human and People's Rights.

On 7 May 2007, the focal point attended the court hearing of two lawyers who had been arbitrarily arrested on 4 May. According to one Zimbabwean HRD,^{xviii} the magistrate, despite having received instructions not to do so, granted the two lawyers bail due to the presence of diplomatic observers. He reportedly feared being refused entry into European countries in the future. The focal point also observed a lawyers' demonstration on 8 May 2007 at which participants were beaten. Their report on these two cases was circulated to EU Heads of Mission and used by the EC's Head of Delegation to raise concern with the Zimbabwean authorities.

This presence has given moral support to activists and acted as a deterrent against further human rights abuses.

10. Russia - Action on NGO legal framework.

Successive EU Presidencies have exerted pressure in relation to NGO Law in Russia. The law, which came into force in April 2006, imposes unduly burdensome reporting requirements on NGOs and gives state officials excessive powers in supervising their work. In October 2006, on the basis of the law, a Russian court ordered the closure of the Russian Chechen Friendship Society (RCFS), which has been outspoken on behalf of victims of human rights violations in Chechnya. In February 2007, the EU made a statement to the Permanent Council of the Organization for Security and Co-operation in Europe (OSCE) stating that the closure of the RCFS showed that the Law "can be implemented in an arbitrary manner."^{xix} The EU raised concerns about the law during human rights consultations in May and October. At the October meeting, the Russians reportedly admitted that the law was "not ideal."^{xx} According to one diplomat, "The EU has insisted on having the NGO Law amended and its implementation clearly regulated to prevent abuses."^{xxi}

MAKING AN IMPACT: LESSONS LEARNT

Following an assessment of the actions taken by the EU and member states to protect HRDs, Amnesty International believes the following eight lessons can be drawn.

1. Close contact and consultation with HRDs

Close contact with local HRDs facilitates effective action. It allows the EU to identify when “preventive action”, such as the EU’s physical presence, might make a difference. It is essential for enabling the EU to learn about violations in a timely manner, consult with the HRD on what actions should be taken and provide feedback. It also allows the EU to collect detailed, first hand information regarding violations, which is essential to effectively confront local authorities.

2. Public action and feedback to HRDs

Public action gives HRDs moral support and can increase their legitimacy and the legitimacy of their work. Action can include public statements, declarations and press releases translated into the local language; encouraging media coverage; trial observation; attending public demonstrations; and visits to HRDs in detention or at their places of work. As one HRD stated: “I think public statements work especially if it sends out a public signal and support to HRDs... EU action may help HRDs realize that they are not alone.”^{xxii} Confidential action, although less visible, still serves to give HRDs moral support when they are consulted about measures being taken on their behalf.

3. Action by individual member states

While concerted EU action will always carry more weight, unilateral action by one or two countries – even when in addition to EU action - can make a big difference. What is important is that a signal be sent to the government concerned from outside. Individual EU member states may also have a special role to play when they have a particular influence on governments of specific third countries.

4. Targeting the right authorities

The EU can boost its effectiveness if it is able to target the right authorities, not just counterparts in Ministries of Foreign Affairs. Counterparts in other areas, such as trade and investment, should also be targeted. Officials at lower levels may also be in a position to respond in timely and practical ways to the EU’s concerns. Key local officials may also be keen to address any violations at the local level before word of such violations gets back to central government. Effectiveness can be questioned when, for example, the key meetings in the political dialogue on human rights issues are held with low-level officials who, as one diplomat put it, “at the end of the day are not competent to decide on most issues.”^{xxiii}

5. Being specific about desired changes

The EU should clearly define the changes it seeks. This assists counterparts in third countries to actually take the kind of action the EU desires. As one EU diplomat in Iran observed, “the more concrete we are in the statements, the more effective they are.”^{xxiv} In addition, without defining what “improvement” looks like, there is no way for the EU to assess progress.

6. Avoiding negative impacts

In some cases, the EU's public support for repressive governments can weaken the position of HRDs. Particularly in the absence of public action in support of HRDs and their work, the EU's visible co-operation with a government that violates human rights could undermine the legitimacy and position of HRDs trying to hold this same government accountable. The EU needs to take into consideration how repressive governments may make use of international relations to boost their image and undermine the legitimate work of their critics. Government-controlled media, which are usually the dominant media, report on audiences the President holds with EU Ambassadors, speeches or visits by EU officials or government representatives, and official aid or co-operation agreements, in such a way as to convey the idea of unqualified international support for the regime. In such cases, the EU should ensure that this idea is sufficiently counter-balanced though publicly stating its human rights concerns.

7. Escalating or diverse responses

The EU can make a difference by escalating and diversifying its responses. HRDs consistently advocate for firmer responses when existing diplomacy fails to curb violations. Measures include progressing from informal to formal responses, and from confidential to public actions. Favouring confidential over public action should not be standard policy, and should only continue as long as confidential action is in fact producing concrete results. A diversified response accomplishes a number of things at the same time: ensures moral and even material support to HRDs; promotes indirect pressure on the authorities from national civil society, parliament and other national bodies; and exerts direct pressure on the authorities.

8. Continuity, persistence and follow-up

Continuity, persistence and follow-up can help ensure impact. When there is no follow-up, EU concerns will usually be taken less seriously by local authorities. Follow-up also allows the EU to develop more detailed knowledge of HRDs issues and cases and present more effective arguments to third country counterparts. The European Commission can play a key role in ensuring continuity because of its relatively large and stable human resource base, unlike the rotating EU Presidency.

MOST COMMON REASONS FOR NOT TAKING ACTION

So why does the EU not take effective action to promote and protect the human rights of those who defend human rights? This section addresses 11 common reasons given by diplomats for not taking action. While in some contexts and circumstances, concerns may be legitimate – but AI holds that these reasons do not offer sufficient justification for failing to take concrete action to support and protect HRDs.

1. “That action wouldn’t be effective.”

EU diplomats have stated that the action they are being requested to take on behalf of HRDs would not be effective. They argue, for example, that public statements or demarches “would do more harm than good” or wouldn’t be “useful.” When giving this reason, diplomats usually mean that EU action will not lead to immediate improvement in the situation of HRDs.

Amnesty International's response: While it may be true that EU action will often not lead to immediate improvement in the situation of HRDs, when it has been requested by the HRDs themselves, such action nevertheless has positive effects. Many HRDs believe that action should be taken because it helps prevent a situation from getting worse, has important long-term effects, and provides moral support. At least one EU member state would seem to agree: "...it should be emphasized," states the new Dutch human rights policy, "that an improvement in the human rights situation can't be brought about from one day to the next. Efforts on human rights are necessary, even when results are not immediately visible."

2. "We have many other interests to consider."

EU diplomats have stated that as an intergovernmental organization, they cannot focus solely on human rights. Other concerns include trade, investment, security, development and migration. This for example, was the reason given for a lack of action by EU missions in Tunisia and Angola. As the Head of the European Commission's Democratization and Human Rights Unit recently said, "We are not a human rights organization."^{xxv} It is a reason often applied not by countries who are balancing human rights with other interests, but by those who are almost exclusively focused on other concerns.

Amnesty International's response: EU policy clearly identifies supporting HRDs as a priority.^{xxvi} Furthermore, the conflict between human rights advocacy and the pursuit of other interests is questionable, certainly in the long term. Where HRDs are able to work effectively it not only reduces human rights violations but also confirms the potential for peaceful social change. These can both reduce migratory pressure, for example. In regard to sustainable investment, respect for the rights of HRDs such as trade unionists and community activists is key. There is a growing understanding that undermining human rights principles in the so called war on terror is not a route to security, while failure to respect, protect and fulfil economic, social and cultural rights constitutes a denial of human development. As the UN Secretary-General recently summed it up: "we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights."^{xxvii}

3. "The situation is not so bad."

EU diplomats have insisted that violations against HRDs are isolated incidents or, that the situation is improving or, they look at a country in comparison with other countries in the same region. As one Tunisian HRD stated, "we have the misfortune of being situated between Algeria and Libya."^{xxviii} In Angola, harassment of HRDs is compared to the violations that took place during the civil war (1975-2002).^{xxix} Referring to Angola, one Head of Mission stated that although there are some problems "here and there", the general trend is positive,^{xxx} while another referred to threats and accusations against HRDs a "storm in a teacup."^{xxxi}

Amnesty International's response: Each individual, no matter where they live, is entitled to full and complete enjoyment of their human rights. If the treatment of HRDs falls short of full respect for their rights as enumerated in the UN Declaration on HRDs, then action should be taken, regardless of whether violations are decreasing in scale or scope, and irregardless of whether there are more violations in other countries. The EU Guidelines on HRDs are based on the rights enumerated in the UN Declaration on Human Rights Defenders. Amnesty

International maintains that at any given time, in any country, the EU should ensure that its assessment of the situation of HRDs is an objective one, based on the standards elaborated in UN Declaration on HRDs.

4. “We don’t have any leverage.”

EU diplomats have argued that it is useless for the EU to try to do anything, since the government doesn’t care what the EU says.

Amnesty International’s response: Repressive governments may intend to give the impression they are not listening, to discourage the EU from taking action, and to save face. However, leverage comes from different angles and there are always pressure points which the EU should identify and make strategic use of. Public image is clearly important, especially since it can influence areas like investment and co-operation. In virtually all cases, HRDs believe that their governments do care about the EU’s position, and point to the great lengths governments will go to to block HRDs’ international contacts as evidence that this is the case.

5. “There are so many cases, we can’t react to all of them.”

EU diplomats have at times stated that they don’t have the capacity to respond to all cases, or that if they took measures every time there was a violation, then their actions would lose meaning. “If we issued statements every time a violation occurred, there would have to be a whole list of public statements,” one diplomat explained.

Amnesty International’s response: When there is a multitude of cases, it indicates breadth and scope of violations that deserve serious responses from the EU. The EU can react to all cases through the use of lists, as it currently does with China and Russia. However even this is not sufficient on its own as it does not allow for an immediate response to individual violations. Furthermore, by keeping track of all violations, the EU can identify patterns of violations, and patterns of targeting HRDs which can be raised with local authorities. When it comes to individual cases, EU representatives could work with local HRDs to develop criteria for prioritizing cases. In any event, serious or emblematic cases should always be taken up.

6. “If we have (visible) contact with HRDs, we will just put them in greater danger.”

EU diplomats have claimed that associating with HRDs puts HRDs at greater risk. This reason is given by some EU missions in China to explain their lack of direct contact with HRDs at risk. In Iran, this reason was given to explain the lack of visits to HRDs under house arrest and the lack of meetings with women HRDs.

Amnesty International’s response: Even in countries like China and Iran, HRDs consistently insist they need more visible contact with the EU, such as invitations to receptions at missions and visits to HRDs under house arrest. Chinese HRDs want more contact with EU missions because, while it may raise immediate risk, in the longer term it will contribute to their protection. In Zimbabwe, one activist insisted that HRDs are going to be targeted anyway, whether they have contact with EU missions or not. What is essential is to be guided by HRDs themselves as to when, how, and what kind of contact would offer the most protection. Consultation with the HRDs concerned, their lawyer, family or colleagues can help determine the right level and kind of contact.

7. “The government will stop listening entirely.”

EU diplomats have justified not increasing pressure for the protection of HRDs by claiming that if they do so, the local authorities will cut off all discussions on human rights issues entirely. This applies especially to measures such as public statements and demarches. This justification is often used for the sake of preserving political dialogues even though these dialogues may not be producing visible results. As one diplomat in Tunisia, referring to the human rights dialogue just started with that country, stated, “Public statements are used in situations of confrontation. We have co-operation.” In China, one EU diplomat rejected the idea of making trial observation reports public, “We don’t want them [the Chinese authorities] to close their doors entirely,” he said.

Amnesty International’s response: To limit one’s actions to support HRDs because of a fear that it will be more difficult to do so in the future is to limit the operationalization of the EU Guidelines in a manner that AI considers to be unacceptable. While there can be a risk that an ill-advised or poorly prepared intervention will lead to a government to cut off human rights discussions with the EU entirely, the opportunities for engagement on substantial issues outweighs the risks in the vast majority of cases. . Amnesty International encourages the EU to use the full range of tools at its disposal. There should be a balanced consideration of risks and benefits concerning actions to support and protect HRDs – and in AI’s view the risks and benefits must be those which affect the HRDs themselves, not the EU as an institution.

8. “If we act on our own it won’t make any difference.”

EU member states commonly state that acting alone will not get results – and that a collective approach is much more effective. They also express a fear that if their country acts individually, it may suffer negative consequences in its relationship with the local authorities as a result.

Amnesty International’s response: Action by individual member states can and does make a difference, and AI encourages this individual and collective engagement on human rights as complimentary, the than mutually exclusive. AI also notes that individual member states often do take action when relevant for other foreign policy concerns, and thus questions why the same standards would not be applied for human rights protection for HRDs. It is important to recognize that there is a potentially large impact that individual states can make, especially in respect to the speed and creativity in which a single state can act, in comparison to the EU as a whole.

9. “HRDs haven’t asked for anything to be done.”

EU diplomats sometimes say they have not taken measures to support or protect HRDs because HRDs themselves have not asked them to.

Amnesty International’s response: It is vital to connect with and engage with HRDs when determining the best possible course of action. It is equally important that EU missions do all they can to ensure that HRDs understand what the EU can do for them, and what the EU Guidelines contain. Many HRDs are not aware of the Guidelines on HRDs or the commitments made by the EU, mainly because the EU has failed to effectively publicize the Guidelines at

the country level. It may not always be easy for HRDs to approach embassies, due to a variety of factors: physical distance, surveillance or repression by their government security services; difficulty in getting through embassies' security gates without an appointment with an identified diplomat. Even when consulted, it is important for diplomats to have a full and complete understand of how the specific culture in the country concerned views the asking for help: for example, HRDs may be too "polite" in some circumstances to request concrete action from foreign diplomats. Moreover, it is the responsibility of the EU to implement its own policy, albeit in consultation with HRDs. HRDs need to see that if they request support from the EU, they will receive it. The EU needs to build the confidence among HRDs to ensure effective two-way communication.

10. "We are only a small embassy and don't have the capacity."

EU diplomats have claimed they do not have the human resources to be active on HRDs issues or cases. This, of course, can be an important limitation for smaller embassies.

Amnesty International's response: The adoption of the EU Guidelines on HRDs reflects the increasing importance of human rights for EU institutions and member states. While it is obvious that some activities such as trial observation require significant staff time which smaller missions may not be able to commit to on a regular basis, it is still possible to act for example, by co-ordinating and sharing of information with other EU embassies; supporting concerted action; "tagging along" on initiatives of other missions; dividing tasks and specialization. A good example is the Finnish Consul in Guatemala, who plays an active role in assessing violations against HRDs as a member of the EU's "filter group." The prevalence of this claim indicates that the possibilities of co-ordination and "burden-sharing" are not being fully exploited.

11. "We don't have enough information about the case."

EU diplomats often say it is not always clear that a violation has taken place or that information is conflicting.

Amnesty International's response: Incomplete or conflicting information on a case may offer to the EU an opportunity for engagement with the government concerned – often by asking the authorities about the case in itself sends a signal of concern, and indicates to the government that the world is watching..

RECOMMENDATIONS - CHALLENGES FOR THE FUTURE

While much has been achieved at the policy level, challenges relating to the implementation of the Guidelines remain. Amnesty International proposes some immediate steps the EU should consider in order to address these challenges. Where relevant, reference is made to steps that EU member states and institutions were requested to take as an outcome of the Austrian Review carried out in 2006.

1. Increase level and consistency of action

Four years after the adoption of the Guidelines, the main challenge facing the EU is to increase the level and consistency of action to support and protect HRDs. Firstly, there needs to be consistency across EU countries. The member states that are most active in implementing the Guidelines are the ones who have traditionally placed an emphasis on increasing public and concrete action to support HRDs. The member states who have been least effective in implementing the Guidelines have, perhaps not surprisingly, been those who have not prioritized action to support HRDs. For these states, the adoption of the Guidelines has made limited difference. The implementation of the Guidelines remains too dependent on the individual commitment and interest of particular diplomats.

Secondly, there needs to be consistency in the implementation of the Guidelines in relation to all third countries. For example, the EU should publicly denounce violations against HRDs in “friendly” countries like Tunisia in the same way it does in “unfriendly” ones like Syria. Selective implementation undermines the credibility of the EU’s efforts everywhere. It also allows measures to be easily countered by repressive governments as being politically motivated, thereby also leaving the HRDs concerned vulnerable to criticism.

Immediate steps: Identify third countries where implementation of the Guidelines has been particularly weak, and prioritize these countries for increased action.

2. Change attitudes

Another challenge for the EU is to change the attitudes of staff in EU institutions and member states that block support for HRDs. These attitudes include paternalism, parochialism, complacency, and risk avoidance. This sometimes results in a glaring gap between policy and practice. In Tunisia, one EU diplomat insisted that respect for human rights would only come about through “cultural transformation” that could take “hundreds of years,” implying that there was little the EU could do to influence the situation. In Ethiopia, the European Commission refused to authenticate copies of correspondence required for the legal defence of a human rights defender who was a partner of the Commission. A sea change in the attitude of many diplomats is required if the EU is to live up in practice to its policy principles. To fully and effectively implement the Guidelines, a goal to which the EU says it is committed, there needs to be a new and more active kind of diplomacy.

Immediate steps: The Austrian Review requested that foreign ministries make clear to staff the actions that are expected of them to support and protect local HRDs.^{xxxii} These actions should now be assessed as part of staff performance appraisal.

3. Mainstream support and protection for HRDs

The EU Guidelines on HRDs remain largely the concern of human rights departments and specialists within EU institutions and member states foreign ministries and at EU missions. The EU needs to mainstream support for HRDs. In Brussels, while COHOM members are aware of, and work with, the Guidelines, it is often not the case with the Council’s geographic working groups. HRDs may be a prominent component of the human rights policies of some member states, but integration into regional, country and development co-operation policies is

generally lacking. Human rights are not promoted on a par with other goals. The picture that emerges is one where human rights violations are often not taken up with local authorities if it is feared that, by so doing, harm may be done to other foreign policy interests. EU diplomats need to better recognize how improvements in human rights contribute to tackling the root causes of other concerns such as insecurity, instability, migration and economic development. This is often recognized at the policy level, but is yet to be translated into daily practice. If this mainstreaming does not happen, then implementation will continue to be uneven.

Immediate steps: The European Commission should revise country strategies and action plans, and EU member states should revise country and regional policies, to ensure that these explicitly and consistently further the implementation of the EU Guidelines on HRDs.

4. Ensure comprehensive local implementation strategies

Under the German Presidency in the first half of 2007, impetus was given to the creation of local implementation strategies for the EU Guidelines. This was a positive step. However, the challenge for the EU is to ensure that local implementation strategies effectively contribute to greater and more effective action on behalf of HRDs. While the EU keeps these strategies largely confidential, it appears that some of them are not comprehensive and focus on the “softer” provisions of the Guidelines, such as maintaining contact with HRDs. The strategy for Tunisia, which does not include public statements or trial observation, is an illustration of this. Having been developed through negotiation at the local level, these strategies may reflect the “lowest common denominator” among EU missions. In addition, the strategies must not lead to a situation whereby action to support and protect HRDs can only be taken through the EU Presidency. Committed individual EU member states can sometimes take bold and effective action to support and protect HRDs and these initiatives should not be prevented or discouraged.

Immediate steps: Review local implementation strategies and revise accordingly to ensure they include all the provisions of the EU Guidelines on HRDs. A “results-based approach,” as recommended by the Austrian Review, should be used.

5. Make human rights dialogues effective

There are a growing number of dialogues taking place on human rights. However, it does not appear that the EU makes public assessments of these dialogues. Similarly, benchmarks for progress on human rights in partner countries seem to be lacking. Documentation related to the meetings is usually confidential.^{xxxiii} The EU is often unable to obtain precise and complete answers from counterparts, and exchanges become perfunctory. While the EU states that it “will as far as possible give the human rights dialogues a degree of transparency vis-à-vis civil society,”^{xxxiv} in practice, the dialogues are anything but transparent. A challenge for the EU is to make human rights dialogues effective. This requires systematically including HRD issues and cases, getting timely and satisfactory answers from counterparts, setting benchmarks for progress, taking measures if there is no improvement, and ensuring that counterparts bring the right people (decision-makers) to the table. To increase overall effectiveness, the human rights dialogue must go hand-in-hand with other measures – including public statements and urgent action - rather than deter them.

Immediate steps: Action should be taken on the basis of the outcomes of the Austrian Review which requested that “the situation of HRDs and the environment in which they work...be systematically integrated in the EU’s political dialogues with third countries” and specified numerous steps that should be taken to achieve this. More generally, the EU should fully implement the EU Guidelines on Human Rights Dialogues^{xxxv} and the recent resolution of the European Parliament on the “functioning of the human rights dialogues and consultations on human rights with third countries.”^{xxxvi}

6. Ensure rapid response to violations

The effectiveness of some measures to support and protect HRDs depends on their timeliness. A challenge for the EU is to recognize the importance of urgent action and develop the capacity or mechanisms to ensure quick action when it is required. This may include public statements, visits to HRDs, or demarches. While political dialogue may be developing into the EU’s main instrument for conducting its human rights foreign policy, it is not a suitable tool for responding to urgent situations. Because of the importance of timeliness, institutionalized and regular processes such as political dialogue need to be balanced by swift *ad hoc* interventions.

Immediate steps: The Austrian Review requested that member states “consider developing protection tools for situations where the life or physical and mental integrity of HRDs may be at immediate risk,” and to “consider issuing of emergency visas for HRDs in grave danger.” EU missions should develop these tools and other “urgent response mechanisms” in consultation with local HRDs. Identifying key HRDs at risk and monitoring their situation should be part of such a mechanism. The work of EU missions in Zimbabwe in this regard is worth emulating.

7. Escalate and diversify responses

The EU needs to continuously assess the effectiveness of its measures to support and protect HRDs. When existing methods are not working, new ways have to be developed. A challenge for the EU is to escalate and diversify responses in order to achieve protection for HRDs. For example, when confidential action does not work, public statements should typically be used. The EU must identify and make use of whatever leverage it has. In this context, it is worrying that the existence of a dialogue on human rights sometimes appears to result in a reluctance to apply other measures such as public statements, as the cases of China and Tunisia seem to illustrate. It is also a concern that the EU seems to be entering agreements with third country governments that preclude it from going public.

Immediate steps: EU missions should identify key HRDs issues and cases, monitor the effectiveness of EU action in relation to these, and take or recommend stronger action as required. The recommendation of the Austrian Review that local Presidencies and EU missions “reflect concrete results and effectiveness of interventions in reports on EU action” should be implemented and serve as a starting point for devising escalated and diverse action.

8. Improve institutional memory

A key challenge for the EU is to achieve continuity by improving institutional memory. This is crucial in light of the rotating Presidency (although this will change with the advent of the Reform Treaty) and rapid staff turnover within EU institutions and member states, both at

central and mission levels. Political dialogue meetings should build systematically on the results of previous meetings. Issues and cases raised with the authorities through demarches or otherwise should receive follow-up. Impact should be assessed and an escalated response be considered when necessary.

Immediate steps: EU Institutions at central (Brussels) and mission level develop and systematically utilize databases documenting key HRD issues and cases, EU actions in relation to these and their effectiveness. The Austrian Review recommended that Council Secretariat “facilitate adequate follow-up to demarches and the evaluation of the impact of action taken on behalf of individual cases by creating a central database on EU demarches.” At the third country level, EU missions were requested to “consider creation of a common local database of HRDs that could facilitate outreach for the purpose of capacity building, training and other activities and could serve as an institutional memory tool that tracks contacts with HRDs, developments such as arrests, court cases, demarches, etc.” The implementation of these recommendations should be prioritized.

9. Ensure greater transparency and accountability

A final challenge for the EU is to ensure greater transparency and accountability in the implementation of the Guidelines. A basic element of this is to publicize the Guidelines among HRDs at local level, something that EU missions have generally neglected to do. Furthermore, there remains significant resistance, at all levels, to being accountable for the implementation of the Guidelines. By prioritizing “discrete action” with the justification that it is “more effective,” diplomats shield themselves from public scrutiny. Even during this research, some diplomats avoided meetings, while in other cases, written answers to questionnaires were minimal and elusive. All the Presidencies since the beginning of 2007 have been poor on sharing information on actions carried out under the Guidelines. There is a clear need for critical examination of the EU’s efforts. In the case of trial observation in Ethiopia, it appears the EU gained access to the proceedings only by agreeing with the authorities that it would not make the observer’s assessment public. The apparent willingness of the EU to enter into agreements with government authorities that reduce transparency is of great concern to Amnesty International.

Immediate steps: Intensify promotion of the Guidelines among HRDs in third countries in line with the recommendations of the Austrian Review. This should include giving HRDs a copy of the Guidelines on first contact, handing out the Guidelines at human rights events and, linking to the Guidelines from all foreign ministry, embassy and delegation websites. In addition, introduce an annual public report on the implementation of the Guidelines on HRDs (covering demarches, political dialogues and all other initiatives taken to support/protect HRDs). Only where it endangers a HRD, or the continuity of effective EU action, should information remain confidential.

^{xxxiii} For example, the Council of the EU decision setting up the EU-Tunisia specifies that “the meetings of the Subcommittee shall not be public and the minutes of those meetings shall be confidential.” See <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2007:305:SOM:EN:HTML>.

^{xxxiv} EU Guidelines on Human Rights Dialogues, Section 7, available at http://www.consilium.europa.eu/uedocs/cmsUpload/14469EN_HR.pdf.

^{xxxv} See http://www.consilium.europa.eu/uedocs/cmsUpload/14469EN_HR.pdf.

^{xxxvi} See <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0381+0+DOC+XML+V0//EN&language=EN>.

- ⁱⁱ *Ensuring Protection – European Union Guidelines on Human Rights Defenders*, <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf>
- ⁱⁱⁱ Austrian Review: <http://www.protectionline.org/Council-Conclusions-on-EU.html> and http://www.protectionline.org/IMG/pdf/AnnexII_EU_Guidelines_evaluation.en06.pdf
- ⁱⁱⁱ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, commonly known as the Declaration on Human Rights Defenders, adopted by the UN General Assembly on 9 December 1998. It outlines the rights of individuals and organizations essential for the defence of human rights and the obligations of states to provide support and protection for such activity. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>
- ^{iv} United Nations Office of the High Commissioner on Human Rights, Fact Sheet 29, p.6, available at <http://www.unhchr.ch/html/menu6/2/fs29.pdf>
- ^v Article 1, UN Declaration on Human Rights Defenders
- ^{vi} <http://bestel.postbus51.nl/content/pdf/05BR2008G004-200843-81912.pdf>
- ^{vii} A review of the implementation of the Guidelines on HRDs carried out under the Austrian Presidency in 2006 (Austrian Review) recommended, among other measures, that EU missions “devise local implementation strategies for the Guidelines, in consultation with local HRDs....” Subsequently, in 2007, the German Presidency instructed EU missions to create such strategies. Austrian Review: http://www.protectionline.org/IMG/pdf/AnnexII_EU_Guidelines_evaluation.en06.pdf
- ^{viii} See <http://www.nepalnews.com/archive/2007/oct/oct10/news14.php>
- ^{ix} See <http://www.fco.gov.uk/Files/kfile/EU%20HRD%20Guidelines%20-%20English.doc> and <http://www.fco.gov.uk/Files/kfile/FINAL%20EU%20HRD%20strategy%20-%20Nepali%20Version.pdf>.
- ^x The “troika” is made up of representatives of the current EU Presidency, the next EU Presidency, and the European Commission.
- ^{xi} Detention without charge or trial based on secret evidence.
- ^{xii} <http://tf1.lci.fr/infos/monde/afrique/0..3490197.00-mediterranee-vue-par-sarkozy-.html>
- ^{xiii} http://www.amnestyusa.org/Urgent_Action_Network/Amnesty_International_Talks_with_Mohammed_Abbou/page.do?id=1011357&n1=3&n2=34&n3=66
- ^{xiv} <http://www.europarl.europa.eu/president/defaulten.htm>
- ^{xv} <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0021+0+DOC+XML+V0//EN&language=EN>
- ^{xvi} http://www.eu2008.si/en/News_and_Documents/CFSP_Statements/March/0317MZZ_Hu_Jia1.html
- ^{xvii} Written response to questionnaire, (name withheld on request), 25 January 2008
- ^{xviii} Interview with Zimbabwean HRD on 23/11/07 in Dublin
- ^{xix} See http://www.osce.org/documents/pc/2007/02/23170_en.pdf
- ^{xx} Statement of EU diplomat at debriefing session held for NGOs in Moscow, attended by Amnesty International, on 10 October 2007
- ^{xxi} Email correspondence with European diplomat. Name withheld on request.
- ^{xxii} Email correspondence with a Chinese HRD.
- ^{xxiii} Name withheld on request.
- ^{xxiv} Response to written questionnaire, 9 January 2008
- ^{xxv} Statement made at the conference “Human Rights Defenders and Development Agencies” held in Brussels on 15-16 October 2007.
- ^{xxvi} In the introduction to its Annual Report on Human Rights 2006, for example, it states that “the rights of human rights defenders remain a clear priority for the EU.”
- ^{xxvii} *In larger freedom: towards development, security and human rights for all*, 21 March 2005, p.6, available at <http://www.un.org/largerfreedom/contents.htm>.
- ^{xxviii} Interview with a Tunisian HRD in November 2007.
- ^{xxix} Interview in September 2005.
- ^{xxx} EU head of mission in an email on 3 December 2007
- ^{xxxi} Email correspondence, July 2007
- ^{xxxii} EU foreign ministries and <https://login.postini.com/exec/login> the European Commission in Brussels were requested to “regularly instruct missions to proactively establish and deepen contacts with human rights defenders in a manner which best serves their security and protection, to monitor their situations and to proactively report on developments of concern and recommend concrete measures to be taken at mission/capital/Brussels level.”



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EUROPEAN UNION: RISING TO THE CHALLENGE OF PROTECTING HUMAN RIGHTS DEFENDERS

In 2004, the European Union (EU) adopted “Guidelines” to enhance action by the EU and EU member states in relation to human rights defenders outside the EU. The Guidelines, if fully implemented, have the potential to bring about significant change. Many positive initiatives have been taken by successive EU governments to promote the Guidelines but, while much has been achieved at the policy level, challenges still remain at the country level where implementation is inconsistent and often de-prioritized.

In 2007, Amnesty International published a report that assessed progress on implementation of the Guidelines, and made recommendations for improvement. This report reinforces those recommendations and analyzes the lessons that can be drawn from some of the initiatives already taken.

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