

The EU Guidelines on the Protection of Human Rights Defenders



Imprint

For human rights. Worldwide.

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Society for Threatened Peoples is an international human rights organisation which campaigns with and on behalf of threatened and persecuted ethnic and religious minorities, nationalities and indigenous peoples. STP has an advisory status at the United Nations (UN) since 1993 and participant status at the Council of Europe (COE) since 2005.

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Cover photo: The Mauritanian human rights defender Biram Dah Abeid – a courageous and peaceful anti-slavery campaigner, repeatedly imprisoned because of his activism [Photo by Hanno Schedler (STP)]

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Table of Contents

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Abstract	5
I. Introduction	7
II. Problems	9
III. Recommendations	12
IV. Conclusion	14
V. Quoted References	15

Abstract

The EU guidelines on the protection of human rights defenders were adopted by the Council of the EU on June 14, 2004 and renewed in 2008. These guidelines contain legally not fully binding “practicable suggestions and recommendations” about how to help and support human rights defenders in countries not belonging to the European Union (third countries). The operational part of these guidelines is meant to be implemented by the EU through a transnational and comprehensive reporting and monitoring system. Thus, the guidelines stipulate that the heads of the EU Delegations should regularly give an account on the situation of human rights in their respective countries of accreditation, as well as help to reform the local laws in order to provide for the best protection possible of human rights defenders. This should take place through local implementation strategies that should also include emergency actions in case human rights defenders find themselves in urgent need of help.

This memorandum is aimed to depict the difficulties NGOs and human rights defenders encounter on a daily basis with these guidelines in practice. Furthermore, the EU should take the 10th anniversary of the establishment of the guidelines (June 14, 2014) as an opportunity to draw a balance of their actual application, implementation and effectiveness, as well as to establish recommendations for further improvement of their praxis.

The ministers of the EU member states were hoping this way for an improvement of the support and the protection of human rights defenders in third countries. Because human rights defenders are important stakeholders within the European Union, since they take part as supporters and as critiques in the development of the various positions within EU human rights policies.

The implementation system of the guidelines within third countries is yet highly intransparent; therefore human rights defenders often do not know how they can use at best the already existing protection mechanisms. Thus, NGOs defending human rights have no possibility to create their own monitoring system, strongly

needed for reaching the best implementation possible of the guidelines within third countries. Only the improvement of transparency within the EU system of protection will enable civil society organisations and human rights defenders to actively participate in the further implementation of the guidelines and to use these in an optimal way.

Therefore, an autonomous monitoring office should be established in order to exchange information with the civil society, strictly independent from the Council of the EU, and their working groups and committees. This autonomous monitoring office could also establish and maintain up to date a list of local focal points, collect information, and initiate specific programmes for the increase of awareness concerning the guidelines. Furthermore, the EU should establish union-wide standards for the granting of visa for human rights defenders living in acute danger and for a more effective implementation of the guidelines.

Ensuring Protection – The European Union Guidelines on Human Rights Defenders

I. Introduction

In the first paragraph of the EU guidelines on human rights defenders (2004/2008) is stated that “[s]upport for human rights defenders is already a long established element of the European Union’s human rights external relations policy.”¹ These guidelines have been adopted by the Council of the EU on June 14, 2004² and renewed in 2008. The ministers of the EU member states expected from the guidelines an improvement of the support and protection of human rights defenders in non EU countries (third countries).³

“Practical suggestions” for the help and support of human rights defenders shall be put into practice when in contact with third countries. The guidelines shall be implemented and monitored in third countries through a transnational and comprehensive reporting and controlling system. These provisions stipulate, among other aspects, that the heads of EU Delegations shall report regularly on the situation of human rights in their respective country of accreditation, as well as help to reform the local laws in order to ensure the best protection possible for human rights defenders. This shall be realized through local implementation strategies (LIS)⁴ which shall also provide quick help for human rights defenders in urgent need.

In this context, the ambassadors of the EU member states and the heads of the EU Delegations (Heads of Mission) are asked to regularly establish reports on the situation of human rights defenders in their respective countries, which shall then be gathered and evaluated by the Council Working Party

¹ Ensuring Protection – The European Union Guidelines on Human Rights Defenders : <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>

² Press Release of the Council of the European Union on June 14, 2004:

http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/80951.pdf

³ Europa-Website: http://europa.eu/legislation_summaries/human_rights/human_rights_in_third_countries/l33601_en.htm

⁴ Local Implementation Strategies (LIS) are elaborated by the EU heads of Mission in cooperation with the national government of the respective third country in order to guarantee an optimal implantation of the guidelines on a local level.

on Human Rights (COHOM)⁵. Furthermore, the Heads of Mission shall build up personal contacts with the local human rights defenders in order to guarantee a constant exchange of information with them and to strengthen their protection. The COHOM is the central monitoring body for the implementation of the guidelines and reports to the Political and Security Committee (PSC)⁶ and to the Permanent Representatives Committee (COREPER)⁷ on the actual development and progress of the implementation of the guidelines.

This way the guidelines are aimed to make a contribution to the strengthening of the EU human rights policy.

A decent example of a rather transparent and well accomplished implementation of the guidelines is given by the LIS edited in Turkey on December 14, 2010. This local strategy has been developed through close cooperation between the EU Delegation responsible for Turkey, the competent Turkish authorities and even human rights defenders and is publicly accessible on the websites of the EU Delegation and the embassies of the member states. This LIS lists the contact details of the person in charge of human rights defenders (Ms Elena Sanchez) so that human rights defenders that need urgent and quick help in Turkey can be readily assisted. Furthermore, meetings of the EU Delegation, the Turkish authorities, human rights defenders and NGOs are scheduled at least once a year to discuss the actual situation of human rights defenders in Turkey and to develop suggestions for improvement. The current developments and reports stemming from these meetings are published on the websites of the EU Delegations, so that the civil society is constantly and transparently informed.⁸

⁵ The Council Working Party on Human Rights (COHOM) accomplishes the preliminary work for the EU Council concerning human rights issues and is composed by experts of the EU commission and member states.

http://eeas.europa.eu/human_rights/workgroup/index_en.htm

⁶ The Political and Security Committee (PSC) monitors the international situation in the areas covered by the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP). It plays a central role in the definition of and follow-up to the European Union's response to a crisis.

http://europa.eu/legislation_summaries/foreign_and_security_policy/cfsp_and_esdp_implementation/r00005_en.htm

⁷ The Permanent Representatives Committee or Coreper (Article 240 of the Treaty on the Functioning of the European Union – TFEU) is responsible for preparing the work of the Council of the European Union. It consists of representatives from the Member States with the rank of Member States' ambassadors to the European Union and is chaired by the Member State which holds the Council Presidency. http://europa.eu/legislation_summaries/glossary/coreper_en.htm

⁸ EU LIS to support and defend human rights defenders in Turkey.

http://www.avrupa.info.tr/fileadmin/Content/Files/File/EIDHR/EU_local_strategy_on_HRD_draft_07012011_L-EN.pdf

In 2012 the EU received the Nobel Peace Prize for its engagement for freedom, reconciliation, democracy, and human rights in Europe. It has also underlined the importance of commitment to human rights and human rights defenders as part of its foreign relations. The support of civil societies in third countries became thus officially a significant and major keystone of the EU foreign policy. Human rights defenders are considered as being important actors and partners within the EU human rights policy. Because of their unmediated human rights activities they are the most important and most competent source of information for the EU in their aim to prevent and fight infringements of human rights.⁹

Even though the guidelines are not legally binding, being a document issued by the Council of the EU they are granted high political importance since they are documenting a union-wide political statement. This is shown by the fact that the Council of the EU, EU Delegations and member state embassies regularly refer to them. Likewise, the steadily growing number of LIS of the guidelines shows that their importance is by far not merely symbolic.

Nevertheless, the question arises if, in the past nine years of existence of the guidelines, the protection of human rights defenders in third countries has been actually improved.

II. Problems

A clear evaluation of the implementation of the guidelines in third countries to date is difficult.

The implementation system of the guidelines is so highly intransparent that human rights defenders find it very difficult to use the already existing protection systems. Furthermore, this lack of transparency deprives NGOs of the possibility

⁹ Council of the EU: Guidelines-Human Rights and Internationale Humanitarian law, March 2009, p. 40 : http://eeas.europa.eu/human_rights/docs/guidelines_en.pdf

of establishing their own monitoring system which would contribute to an optimal implementation of the guidelines within third countries.

Points of critique:

- The local implementation strategies (LIS) are only seldom publicly accessible: merely the LIS from Turkey, Nepal, Republic of Uganda, Tanzania and the Democratic Republic of Congo are found on the websites of the respective EU Delegations. This lack of transparency is not acceptable since infringements of human rights and actions against human rights defenders are known to be happening in more than 100 countries world-wide.
- The Council Working Party on Human Rights (COHOM) is responsible for the implementation of the guidelines, but publishes only its agenda, not the minutes, thus impeding the public to access any information about the current state of implementation.
- PSC and COREPER serve as intermediary entities for handing the information on to the Council of the EU, yet are excluding the public as well.
- The internal structures of the above mentioned committees and working groups are difficult to oversee for outsiders: it is not clear whom to contact within these committees and working groups. The same applies to contact persons in charge for human rights defenders within other EU offices.
- There exists no external monitoring process by the civil society of reviewing and controlling the actual implementation of the guidelines. In the beginning, most of the NGOs welcomed the adoption of the guidelines hoping for more effective work on human rights. Yet, they have been very quickly disappointed and thus abandoned the idea of building up their own schemes of monitoring and implementation: too scarce and intransparent was the information obtained.

- There exists no up to date and complete list of EU contact persons in third countries which encumbers human rights defenders to find qualified contact persons locally. Therefore, in cases of emergency human rights defenders have to rely on alternative protection mechanisms that are proposed e.g. by NGOs.
- Thus, the strengthening of the civil society that was envisioned by the Council of the EU cannot be achieved, since the relevant protection mechanisms are not well enough known among human rights defenders. That is why it is urgent to reconsider the implementation process.
- Furthermore, there is still much uncertainty and lack of awareness among the diplomatic delegates of the EU member states concerning the guidelines, although they are supposed to play a major role in their implementation process.
- A concrete action plan concerning uniform measures of implementation within third countries is lacking. Without such an action plan the guidelines can not be implemented by all EU Delegations and embassies of the EU member states in a uniform way.

All these problems present major barriers to the implementation and the application of the guidelines. The primary goal of strengthening and improving the support and protection of human rights defenders can thus not be achieved. In many embassies of the EU member states the lack of awareness about the existence of these guidelines and the uncertainty about their exact implementation are still too high.

III. Recommendations

In the following, suggestions are made on how to operate in the future with the guidelines, their implementation and their monitoring.

- LIS should be made publicly accessible in any case, even though sensitive paragraphs can be blackened or removed. In addition, an extensive list of all already existing LIS should be published in order to obtain a general overview and to guarantee transparency.
- In order to facilitate transparency within the working groups and committees an independent and competent “monitoring office” should be established that gathers and evaluates every information and development data concerning the implementation of the guidelines. The results of this work should be accessible for the public.
- COHOM, being a major stakeholder within the monitoring process, should transfer all information concerning the guidelines to the independent monitoring office via an already existing competent department within COHOM, e.g. the Human Rights Policy Guidelines and Multilateral Cooperation Department.
- PSC and COREPER should be invited to keep constant contact with the independent monitoring office to guarantee a proper exchange of information and uniform methods of operation.
- The independent monitoring office should publish at least once a year a report on the actual state of implementation of the guidelines based upon the gathered data. These reports should be made public and should be sent directly to COHOM, PSC, and COREPER.

- The independent monitoring office should also be responsible for the elaboration, actualisation and publication of local focal point lists. Furthermore, if not already existing, local emergency action plans for human rights defenders should be established, the latter can make use of in case of need.
- In order to work against the general uncertainty concerning the practical application of the guidelines, an awareness campaign supervised by the independent monitoring office should be conducted. This campaign should include special programs for embassies, EU Delegations and human rights defenders, in order to promote the guidelines and to identify specific local implementation mechanisms. Governments of third countries should also participate in the campaign so that local governmental and political offices may understand the importance and the scope of the guidelines.
- Furthermore, an action plan should be formulated to define concrete measures and mechanisms for uniform implementation within third countries. This would enable human rights defenders to use the implemented mechanisms at their best. In addition, this would also counter the impression that the guidelines are mainly of symbolic character.
- Therefore, the EU should offer more proposals for concrete and uniform measures. A union-wide standard for granting visa to threatened and embattled human rights defenders should be created. Simplified and accelerated visa procedures would enable human rights defenders to seek at least temporarily protection within a EU member state and thus to escape a concrete threat. Union-wide programs and implementation standards should be created with this aim.
- The EU should promote similar guidelines for other countries within the UN Human Rights Council in order to improve and strengthen the overall protection and recognition of human rights defenders worldwide. The EU could lead by example and correct the above mentioned insufficiencies of the established implementation system.

IV. Conclusion

Even though many NGOs and human rights defenders welcomed the elaboration of the guidelines at first, disenchantment arose quickly, since the lack of transparency rendered their optimal implementation and an effective monitoring outside the EU system impossible. Besides, the confusing and intransparent structures within the committees and working groups impede the human rights defenders a clear overview, so that the implementation of the guidelines and the proper usage of the mechanisms are always associated with great uncertainty.

This ineffectiveness stands in tremendous contrast to the basic idea of the guidelines which is to strengthen the protection of human rights defenders. Thus, the entire human rights policy of the EU is put into question because no factual intention to implement the guidelines properly is perceptible. Therefore, it is necessary to increase transparency within the EU system in order to give civil society organisations and human rights defenders the possibility to participate actively in the future implementation of the guidelines and to use them at their best.

The Society for Threatened Peoples calls for an independent monitoring office that, perfectly detached from the Council of the EU and the associated working groups and committees, strives towards a transparent information exchange with the civil society. Moreover, this monitoring office could also engage in further activities, directly connected to the guidelines, such as the maintenance and constant updating of a list of local focal points, the gathering of data and expertise, and the compilation of special programs for increasing the degree of awareness about the guidelines. In addition, union-wide standards on the granting of visa to human rights defenders in urgent need of help should be established as well as a concrete action plan for the implementation of the guidelines. Only if the guidelines are known at all levels of the EU and if their implementation is controlled by an independent and competent authority, they can develop their full impact and the initially envisioned goal of an improved protection of human rights defenders will be finally achieved.

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