

Ensuring protection? The European Union and human rights defenders

“Human rights defenders and victims of human rights violations in different parts of the world expect a lot from the EU. Rightly so: the EU as a value-based community can be expected to further the cause of human rights and democracy with great ambition.”¹

1. INTRODUCTION

Human rights defenders (HRDs) are crucial actors in the struggle for political, social and economic rights. Amnesty International believes that supporting and giving legitimacy to the work of HRDs is one of the most important ways to protect and promote the human rights of everyone. Since its creation in 1961, Amnesty International has worked with or on behalf of thousands of HRDs and much of the organization’s work has benefited from information and insights contributed by HRDs.

Their position at the forefront of defending and promoting human rights often puts HRDs at particular risk of attack and intimidation. Amnesty International continues to work in solidarity with HRDs and calls on governments to take all legislative, administrative and other steps as may be necessary to ensure the rights and freedoms for the defence of human rights as set out in the UN Declaration on Human Rights Defenders.²

In this context, Amnesty International strongly welcomed the adoption by the European Union (EU) of Guidelines on Human Rights Defenders (hereafter referred to as “the Guidelines”) in June 2004.³ The Guidelines represent a unique commitment by the EU – both EU institutions and individual member states – to promote the principles in the UN Declaration on Human Rights Defenders in its relations with countries outside the EU. The purpose of the Guidelines “is to provide practical suggestions for enhancing EU action” in relation to HRDs. If properly and fully implemented, the potential of the Guidelines for bringing about change is very significant. The fact that all member states have agreed with them provides a strong basis for the EU to develop an effectively coordinated human rights policy.

¹ Council of Ministers/European Commission, *EU Annual Report on Human Rights 2006*, p.10.

² *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>

³ *Ensuring Protection – European Union Guidelines on Human Rights Defenders*, available at <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf>

The level of ambition has been high. Since their adoption under the Irish Presidency, consecutive EU Presidencies – The Netherlands, United Kingdom, Austria and Finland – have put the implementation of the Guidelines high on their agenda. In particular, as an outcome of its review of the implementation of the Guidelines in June 2006, the Austrian Presidency provided a valuable set of recommendations to improve the knowledge and application of these Guidelines.⁴ However, the Austrian review also confirmed Amnesty International's initial findings that there is a significant gap between ambition and actual implementation, especially at country level. Amnesty International therefore continued its monitoring of the Guidelines in order to contribute to their being used more fully and effectively. While this report briefly highlights the progress that has been made at central level, the focus is mainly on how the recommendations are taken forward at country level. In assessing whether the Guidelines are achieving their purpose, it aims to support the EU and member states in enhancing action for HRDs in third countries.

This report presents Amnesty International's assessment of the implementation of the Guidelines mainly during 2006 based on research carried out in relation to eight countries: Angola, China, Ethiopia, Iran, Mozambique, Russia, Tunisia and Turkey. These countries were chosen on the basis of Amnesty International's concern for the difficult situation of local HRDs as well as its estimate of the potential for EU action to make a positive difference. Although the situation in some of these countries is more serious than in others, in all of these countries the rights of HRDs have been violated in ways that warrant an EU response. Angola and Mozambique were included on the basis of research findings by the Netherlands Institute for Southern Africa. The findings are based on interviews, conducted mostly in person, with both HRDs and representatives of EU missions (embassies of EU member states and delegations of the European Commission), especially representatives of the Austrian and Finnish Presidencies and the European Commission Delegation. In total, 43 HRDs and representatives of 41 EU missions were interviewed. The findings are also based on the concrete experience of Amnesty International and the other organizations in advocating for EU action in relation to individual cases in these countries.⁵

⁴ *Council Conclusions on EU Guidelines on human rights defenders, Annex II*, available at http://www.protectionline.org/IMG/pdf/AnnexII_EU_Guidelines_evaluation.en06.pdf. While the Austrian review provided many valuable recommendations, the findings on which these recommendations were based were less detailed. The present report, in contrast, provides findings in relation to the level of implementation of different provisions of the guidelines, and makes recommendations which are also based on the experiences of HRDs. This report furthermore attempts to assess to what extent the Guidelines have contributed to an increase in activities in support of HRDs.

⁵ The research did not assess funding of human rights organizations, since Amnesty International considers the Guidelines more a political than a financial instrument. Also, the research focused on the use of the stronger and more formal instruments explicitly provided for in the Guidelines, as opposed to informal and usually confidential contacts with third country governments. For this reason, and because for each of the researched countries only a selection of embassies could be interviewed that usually at least included the EU Presidency and the more active EU member states, Amnesty International cannot claim to have identified each and every EU action, especially the ones implemented by individual member states. Amnesty International however believes it was able to obtain a sufficiently complete

Amnesty International's main conclusion is that, while there have been numerous positive initiatives by successive EU Presidencies to promote the Guidelines, the Guidelines have yet to be sufficiently employed on the ground for the purpose of enhancing EU efforts to support and protect HRDs. There are examples of good practice in all of the countries examined in this research, but the overall picture is patchy and the implementation of the Guidelines has yet to be prioritized and systematized. After the first phase of the implementation process of the Guidelines, during which the focus was on generating political support and concrete suggestions for making the Guidelines operational, there is now a dire need for a focus on implementation at country level, for which the efforts of not only EU institutions (Presidency and Commission), but also of EU member states, are needed. Amnesty International believes that the Guidelines will only be effective if their implementation is consistent across the full diversity of situations in third countries, and if all individual EU member states play an active role.

After a brief description of the Guidelines, the report examines the implementation of the Guidelines both in terms of concrete actions to support and protect HRDs as well as policy processes and procedures. In each section, Amnesty International presents its findings and makes recommendations towards EU institutions and member states. Where possible, the report provides examples which could be emulated elsewhere. The report ends with a summary and conclusion.

2. THE EU GUIDELINES ON HUMAN RIGHTS DEFENDERS

The purpose of the Guidelines is to provide practical suggestions for enhancing EU action in relation to HRDs.

The Guidelines provide for a variety of actions by the EU to support and protect HRDs. EU missions in third countries should monitor and report periodically on the situation of HRDs, both the institutional framework within which they operate, and threats or attacks against individual HRDs. They should make recommendations to the Council of the EU's Working Group on Human Rights (COHOM) for possible EU actions, including condemnation of threats and attacks against HRDs, as well as for *démarches*⁶ and public statements where HRDs are at immediate or serious risk. COHOM and other relevant working groups should identify situations where EU actions are called for and decide the actions to be taken or,

picture for each of the eight countries, and that the diversity of countries selected provides a sample upon which generalizations regarding the implementation of the guidelines can reliably be made. The reliability of our findings was confirmed in those cases where Amnesty International obtained public or confidential statistical information regarding EU actions.

⁶ *Démarches* are issued as part of EU foreign policy by unanimous inter-governmental agreement between the member states.

where appropriate, make recommendations for such action to the Council's Political and Security Committee.⁷

According to the Guidelines, in many third countries, EU missions are the primary interface between EU member states and HRDs on the ground. Missions have an important role to play in putting into practice the EU's policy toward HRDs and should therefore adopt a proactive policy. The Guidelines provide for actions by EU missions such as co-ordination and sharing of information on HRDs, maintaining contact with HRDs, giving HRDs visible recognition, and observing trials.⁸

When EU officials are visiting third countries, according to the Guidelines, where appropriate, they will meet HRDs and raise individual cases with the local authorities. The situation of HRDs will be included in political dialogues, in which the EU will underline its support for HRDs and – again – raise individual cases of concern.

Finally, the Guidelines provide for practical support to HRDs through social and economic development programmes of the EU and individual member states. This can 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.

3. ASSESSMENT OF THE IMPLEMENTATION OF THE GUIDELINES

3.1 CONCRETE ACTIONS BY THE EU OR MEMBER STATES TO SUPPORT AND PROTECT HUMAN RIGHTS DEFENDERS

3.1.1 Monitoring the situation of human rights defenders and providing visible recognition

Monitoring the situation of HRDs is important in order for the EU to understand their situation and relevant developments, as a basis for effective and appropriate action. While the UN Declaration on Human Rights Defenders makes clear that it is the responsibility of individual states to investigate alleged abuses of the rights of local HRDs, the EU nevertheless has its own need for fact-finding, in order to make a proper assessment of the human rights situation in a country. As one EU diplomat in Russia stated, the EU requires information beyond that provided by the non-governmental organization (NGO) who alleges the violation, and “more information than the Russian Ministry of Foreign Affairs.” For this reason, close EU monitoring of the situation of HRDs is necessary. Visible contact with HRDs contributes to raising their public profile increasing the legitimacy of their work and their security. Monitoring of the situation of HRDs and visible contact with HRDs is one of the stronger points in which the EU can show support for their work.

⁷ *Ensuring Protection*, p. 4.

⁸ *Ensuring Protection*, p. 5.

China

Some EU missions in China do not maintain visible contact with HRDs at risk. The embassy of the UK, on the other hand, has made a point of familiarizing itself with HRDs at risk and monitoring their situation. It has tried to minimize the risks to HRDs by maintaining contact in ways that the HRDs themselves find appropriate. On this basis, it has been able to intervene when the rights of HRDs have been violated. In August 2006, a representative of the British Embassy attempted to visit the HIV/AIDS activist Hu Jia at Mr. Jia's request. He had been illegally placed under house arrest. Although the diplomat was denied access to the compound where Mr. Jia was held by what appeared to be plainclothes police, she was nevertheless able to indicate her concern.

Amnesty International found that awareness of the situation of HRDs among mission staff was generally high. Diplomats keep themselves informed through exchanges with colleagues, monitoring the local and international media, research on the internet, information from local and international NGOs, direct contact with HRDs, and other methods. In addition to the example described above, Amnesty International identified a number of other examples of visible contact, including visits to the offices of HRDs at risk in Ethiopia, Tunisia and Turkey, and visits to the area of work of an HRD in Angola.

However, not in all cases that Amnesty International researched did the EU assess in sufficient detail possible violations against HRDs. For example, in Turkey, according to information gathered, EU missions are generally aware that a systematic way authorities harass HRDs is through the use of the legal system. In the south-east for instance, the government brings what one EU diplomat called "frivolous and unfounded cases" against HRDs. However, these violations are not further assessed. In China, some missions said they did not monitor the situation of HRDs at risk because direct contact with them would "make them more vulnerable" or further endanger their security. However, it was not clear if this position was taken in consultation with Chinese HRDs, many of whom have told Amnesty International that they want more consistent and visible contact with EU missions. Monitoring of the situation of HRDs is therefore sometimes insufficient. Amnesty International is concerned about this because in such cases, inadequate information and analysis contributes to insufficient knowledge of the human rights situation in one country and lack of appropriate EU action.

Tunisia

Mohammed Abbou is considered a prisoner of conscience by Amnesty International, detained since April 2005 largely for publishing two Internet articles critical of the Tunisian authorities and denouncing torture in Tunisia. In November 2005, Mr. Abbou's detention was declared arbitrary by the UN Working Group on Arbitrary Detention. Mr. Abbou went on hunger strike between 11 March and 15 April 2006 to protest his continued detention and harassment by the prison administration.

Though EU missions observed Mr. Abbou's trial in 2005, they did not make its assessment public. Some missions recognize that his trial did not meet international standards. EU missions in Tunisia are also aware of Mr. Abbou's poor health and the poor conditions in which he is being kept, they are also aware that Mr. Abbou's wife has been harassed and threatened and has been attacked during attempts to visit her husband at El Kef prison in December 2006. In spite of this, the EU has made no public statements nor issue a *démarche* in relation to Mr. Abbou's case.

Important sources of information on the situation of HRDs include the annual reports of the UN Special Representative on Human Rights Defenders and the country reports she produces when she visits a country. These reports – containing an assessment of the situation of HRDs and recommendations regarding what needs to be done to improve it – could be readily used by the EU as a basis for taking appropriate action to support and protect HRDs. It is therefore unfortunate that the research found that in some cases (Angola and Turkey), the country reports were hardly known or acted upon by EU representatives in these countries.

Recommendations

- With a view to taking action to support and protect the rights enshrined in the UN Declaration, the EU should make an extra effort to identify those HRDs most at risk and to assess reported violations against them.
- These assessments should be made through field visits, consultation with experts (lawyers, etc.) and consultation with the HRDs themselves.
- The EU should be proactive, undertaking its own initiatives to ascertain the details of allegations of violations against HRDs.
- In consultation with the HRDs concerned, the EU should undertake visits to HRDs in prison and under house arrest, observe public demonstrations, and visit HRDs in their areas of work, especially those outside the capital.

- Except in cases where it endangers an HRD or the continuity of effective EU action, reports on the situation of HRDs and individual cases should be made publicly available.
- The EU should provide feedback to HRDs on what was done with the information received.

3.1.2 Démarches concerning the situation of human rights defenders and individual cases

Ethiopia

Due to critical reporting of the post-election process, the licences of two Ethiopian journalists working for *Deutsche Welle Radio* were withdrawn. The Director General of *Deutsche Welle Radio* came to Ethiopia and met the Minister of Information and subsequently the German government issued a démarche towards the Minister of Information. The journalists' licences were restored.

Démarches were undertaken in relation to HRD issues or cases in a number of the countries surveyed: four in Russia, four in Iran, four in China, and one in Tunisia. However, in some exemplary cases, such as the arbitrary detention of the lawyer Mohammed Abbou in Tunisia, no démarches took place.⁹ Amnesty International's research also revealed that in three of the countries surveyed – Ethiopia, Angola and Turkey – no démarches were made at all during 2006 in relation to HRDs. In Turkey, instead of issuing démarches, the EU has limited itself to requesting further information from the Turkish authorities on specific issues or cases during regular political monitoring meetings. As a rule, where the EU did not issue a démarche, neither did individual EU members. The inconsistent use of démarches – whether as a concerted EU action or by individual member states – concerns Amnesty International since the démarche is a valued diplomatic instrument to raise concerns with third countries and in most cases taken seriously by recipient governments.

While it was difficult to obtain complete information about this confidential instrument, the lack of EU démarches on behalf of HRDs in certain countries appears to reflect a lack of consensus among EU members. Collective action is impossible when individual member states prioritize other foreign policy interests or have other views regarding the best way to address the situation of HRDs or individual cases.

⁹ The UN Working Group on Arbitrary Detention ruled in November 2005 that Mohammed Abbou's detention was arbitrary. The Working Group's opinion is contained in its report of 12 December 2005, available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2006/7&Lang=E>. The full text of the opinion is available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/106/04/PDF/G0710604.pdf?OpenElement>, pages 14-19.

Speaking globally, during 2006, the EU made a total of 28 démarches concerning HRDs in 16 different countries. Figures indicate that well over half of the démarches (17) were made in only five of these countries (China, Colombia, Iran, Russia and Uzbekistan). One démarche was carried out in each of the other 11 countries. While 24 démarches were made under the Austrian EU Presidency in the first half of the year, only four were made in the second half of the year under the Finnish Presidency. Since the overall situation of HRDs did not significantly improve in the course of the year, this appears to represent an inconsistent approach in using démarches in relation to HRD issues and cases.

In an attempt to put these figures into perspective, one could look at the statistics the Observatory for the Protection of Human Rights Defenders published in its annual report of 2006.¹⁰ In this report, there are 18 countries with more than 20 reported individual cases of government repression of HRDs¹¹ which may have required action by EU governments. The EU did not issue any démarches in almost half (10) of these 18 countries. The picture that arises is therefore one of patchy implementation of this particular instrument. It is applied a lot in a small number of countries, but applied little in many other countries where the situation of HRDs is similar.

Recommendations

- The EU should make greater and more consistent use of démarches to express concerns about the situation of HRDs and individual cases, in particular in countries where this instrument is currently not being used.
- Individual member states should increase their commitment to concerted EU action. When concerted action is not possible, EU members should consider making démarches on an individual basis.
- The EU should continue to issue a record of démarches and certain other actions taken in the area of human rights and ensure appropriate follow up.

3.1.3 Public statements concerning human rights defenders

In almost all the countries researched, the EU made some kind of public statement to address the situation of HRDs or raise individual cases. In January 2006, for example, the Austrian Presidency issued a statement expressing concern about the effects of the new NGO law on civil society organizations in Russia. The EU also made statements on the murder of a Russian journalist and the closure of an NGO which reported on human rights abuses in Chechnya. In relation to China, two EU statements were made in 2006, both relating to the release from prison of HRDs who had in any case almost completed their sentences. The UK

¹⁰*Steadfast in Protest – the 2006 Annual Report of the Observatory for the Protection of Human Rights Defenders*, March 2007, pages 12-13, available at http://www.fidh.org/article.php?id_article=4108

¹¹ Arrests without detention, arbitrary detentions, judicial proceedings, sentencing.

government issued statements urging that due process be respected in the trial of a HRD and, when it was not, protesting against his conviction. In Ethiopia, the Ambassadors Donors Group, in which many EU governments and the European Commission participate, stated publicly that it continued to advocate the release of detained civil society members. The European Commission condemned the expulsion of two members of staff of the European Commission Delegation for accompanying to the Kenyan border a lawyer who it was believed was about to be arrested on political grounds, though it did not refer to the arrest of the lawyer – also employed by the European Commission Delegation – once it happened. In Turkey, the EU has publicly urged the government to respect freedom of expression, including of HRDs. During 2006, a total of five statements were made concerning HRDs in Iran.

Iran

During 2006, the EU Presidency made five declarations concerning HRDs in Iran. These statements addressed both the situation of HRDs as well as individual cases: the arrest of a trade union leader, harassment/intimidation of HRDs and journalists, unfair trials, ill-treatment in prison, detention and imprisonment of HRDs for exercising freedom of expression and the right to form and join trade unions, lack of a fair and public trial by an impartial and independent tribunal in the case of the human rights lawyer Abdolfattah Soltani. The EU also asked for an independent investigation of the death of an activist in prison. On at least some occasions, HRDs were consulted and – even though public EU support could open them to accusations of being “agents of the West” – agreed that the statements be made. They considered such actions to be very positive.

However, in relation to many other exemplary or serious cases in the same countries, the EU remained silent.¹² In Angola no public statements of concern were made. In Tunisia, the EU made a public statement in relation to the Tunisian Human Rights League (Ligue Tunisienne de Droits de l’Homme), although it failed to clearly condemn the violations to which the organization was being subjected. Virtually across the board, the HRDs interviewed by Amnesty International in the course of this research believed that the use of public statements should increase. HRDs’ most frequent criticism of the EU was that it often does not speak out in cases of violations of human rights, including violations against HRDs. The pattern with respect to public statements was similar to that concerning démarches: where the EU refrained from making statements, individual member states did the same.

¹² Such cases include violations against the Ethiopian Teachers Association and the Ethiopian Human Rights Commission in Ethiopia, journalist Stanislav Dmitriyevsky in Russia, leaders of the Human Rights Association in south-east Turkey, harassment and detention of prominent HRDs such as Chen Guangcheng (no EU statement), Hu Jia and Gao Zhisheg in China, and the unfair trial and arbitrary detention of Mohammed Abbou in Tunisia.

During 2006, a total of 22 declarations by the Presidency on behalf of the EU were made relating to the situation of HRDs or individual cases in 11 countries. Statistics show that more than half of these statements concerned HRDs in China, Uzbekistan, Myanmar and, in particular, Iran and Belarus. One statement was made in relation to each of the other six countries. Furthermore, when comparing these figures to the statistics of the Observatory for the Protection of Human Rights Defenders¹³, it appears that in around half the countries with more than 20 reported individual cases of government repression of HRDs, the EU did not issue any kind of public statement. The picture that emerges is therefore similar to that concerning démarches, one of patchy implementation of this particular instrument. Amnesty International is concerned about the insufficient use of public statements by EU institutions and member states, since public statements contribute significantly to moral support for HRDs and to increasing the public legitimacy of their work.

The aim of public statements should be to make the EU's views widely known. It is therefore a point of concern to Amnesty International that when statements by the EU or its member states were made, they were sometimes not known by HRDs or even EU diplomats at the country level. Such was the case with the EU's declaration on the Russian NGO law and the UK's statement on a Chinese activist. This suggests that the EU should make more effort to ensure dissemination of such statements.

Recommendations

- The EU and its member states should make greater and more consistent use of public statements to support and protect the rights of HRDs.
- The EU should express concern about violations against HRDs and underline the legitimacy of the work of HRDs through reference to international standards and the third country government's own human rights commitments, including the UN Declaration on Human Rights Defenders.
- The EU and its members should themselves ensure that statements are widely and accurately disseminated at the country level.

3.1.4 Integration of human rights defenders in political dialogue

The EU engages in some form of formal political dialogue with most countries. In the case of Ethiopia, Angola and Mozambique, political dialogue takes place in the framework of the Cotonou Agreement, the EU's co-operation agreement with African, Caribbean and Pacific states. According to this agreement, human rights are an important subject for the political dialogue. With Turkey, the political dialogue revolves around the reforms that the country should implement in order to qualify for EU membership. With China, the EU maintains a

¹³ *Steadfast in Protest – the 2006 Annual Report of the Observatory for the Protection of Human Rights Defenders*, March 2007

formal “human rights dialogue”. It had the same with Iran until 2004, when Iran withdrew from the process. With Russia, the dialogue takes the form of biannual human rights “consultations”. With Tunisia, the dialogue takes place within the framework of the EU-Tunisia Association Agreement.

Russia

Since 2005, the EU has held human rights consultations with Russia, consisting of two meetings per year. Initially Russian HRDs were not even aware of these meetings. After that, they pressed for more involvement. During 2006, the EU met them before the consultations to hear their assessments and concerns, and briefed them on the discussions afterwards. The EU has also raised HRDs issues such as the NGO Law and individual cases during the meetings. A Russian HRD involved in the process stated that HRDs were satisfied with their level of involvement, although they were still concerned that they had no way of knowing the content of the discussions, and that the meetings did not produce agreements which could be followed up.

According to the Guidelines, the situation of HRDs and individual cases should be included in the human rights components of political dialogues where relevant. HRDs issues and cases have been integrated to varying degrees in the dialogues with Russia, China and Ethiopia. In the context of the EU membership process, the dialogue with Turkey has resulted in key legal reforms which have introduced greater freedom for the activities of HRDs. However, Amnesty International’s research also revealed that there are numerous situations where key HRDs issues and cases are still not being integrated into the dialogue. While in countries like Tunisia and Angola there has no been political dialogue during 2006, key individual cases of judicial harassment of HRDs have not been raised in the context of the political dialogue with Turkey. Amnesty International is concerned about the limited integration of HRDs issues and cases in political dialogues because of the opportunity that these dialogues provide for the EU to raise concerns about violations against the principles enshrined in the UN Declaration for Human Rights Defenders with one voice, to obtain concrete commitments from third country governments, to monitor the fulfillment of these commitments, and to take measures when the situation does not improve.

Besides integrating HRDs issues and cases, the EU is committed to involving HRDs in the preparation, conduct (through parallel meetings) and follow-up of the dialogues. However, in most of the countries, this does not occur in any systematic manner. HRDs are largely unaware of the timing of the meetings, the agendas and the outcomes. Amnesty International believes that the situation of HRDs in one country is a reflection of the human rights situation there, therefore involving HRDs in the political dialogue is on the one hand an important way of integrating human rights issues into the dialogues with third countries but it also lends legitimacy to the work of HRDs and allows them not only to provide input regarding their own situation, but also in relation to the issues they are working on.

Recommendations

- The EU should make a greater effort to ensure systematic integration of both the context in which HRDs carry out their work and individual cases in all political dialogues.
- The EU should seek to obtain from third country governments concrete responses to the EU's concerns, and commitments to addressing violations against the rights of HRDs.
- The transparency and relevance of the dialogues should be improved through systematically involving HRDs in the preparation, conduct and follow-up of the dialogues, in accordance with the EU Guidelines on Human Rights Dialogues.¹⁴

3.1.5 Trial monitoring

Trial monitoring is one of the most broadly implemented tools of the Guidelines. Amnesty International welcomes the fact that in a number of the countries surveyed - Ethiopia, Turkey and Russia – the EU or its member states have directly monitored or observed trials related to HRDs. In China and Iran, trials have been monitored through secondary sources such as lawyers and family. HRDs consider trial observation to be an effective intervention. One activist in Russia, for example, said that the presence of an EU observer meant that he was given a suspended sentence instead of being sent to prison. There is, however, room for improvement. Some important cases were not monitored. Examples include trials involving HRDs in south-east Turkey and hearings involving HRDs in Russia. In Iran, where trials and imprisonment are the most common tools of harassment of HRDs, EU missions do not appear to be very active in requesting to attend hearings. Obviously, lack of capacity may be a limiting factor to trial observation practices, as it concerns a rather labour-intensive activity.

¹⁴ “Guidelines on Human Rights Dialogues,” in *EU Guidelines on Human Rights*, Council of the European Union, General Secretariat, May 2005, pages 23-29.

Ethiopia

In November 2005, opposition party leaders, HRDs and journalists were arrested in connection with opposition protests against the results of elections held in May 2005. The EU called for the release of the detainees, but instead they were charged and put on trial. The EU then decided to appoint a British human rights lawyer as an international trial observer in an effort to provide at least some safeguard for a fair trial. The observer was well-briefed on international trial observation. During 2006, he was able to attend all the hearings and submitted regular reports, including a final interim report. When the observer returned to his private law practice, he was replaced by another British lawyer to observe the trial on behalf of the EU.

While local HRDs generally believed that giving visibility to the observer would have a positive effect, in no cases where trials were observed had the EU made efforts to do so. In Ethiopia, the EU maintained that if it gave more visibility to its observer, the government would deny him access to the hearings. In Turkey, one mission stated that EU observers are easily recognizable in the courtroom. However, in other cases the reasons why the EU did not give visibility were not clear. In relation to cases in Iran and the case in China the EU make its views regarding the trials public, while in the other cases it did not.

Recommendations

While trial monitoring has been one of the best implemented provisions of the Guidelines, Amnesty International believes that there is an opportunity to further enhance the scope and effectiveness of this tool, both as a visible show of concern and to assess the fairness of trials in relation to international standards. The EU should:

- Aim to cover, in each country, a certain minimum number of trials involving HRDs in order to achieve consistency.
- Co-ordinate attendance of trials in order to overcome resource constraints.
- Assess the propriety of investigations against HRDs and charges filed against them.
- Increase visibility of its observers and make their findings public in a timely manner.
- Press the authorities to allow access for trial observers, or failing this, monitor trials and hearings through contact with lawyers, family members and local and international NGOs.

- Follow up diplomatic and/or public action towards third country governments in cases where trials have not met international standards. This should include assessing the conformity of laws used to prosecute HRDs with international standards and pressing for revision of these laws.

3.1.6 Visas

Although the Guidelines do not provide for the issuing of emergency visas to HRDs at risk, the issue was discussed at the time the Guidelines were drawn up. According to the UN, foreign ministries of individual states, including EU states, could “provide support to defenders fleeing persecution in other countries by facilitating their entry into the State and temporary residence.”¹⁵ While in most cases HRDs are able to flee to a neighbouring country, there are cases where, due to the close ties between intelligence services, they would remain at risk, and as a result would require a temporary visa to an EU country. This is already partly recognized by some EU member states that grant emergency visas. On this basis, the Austrian review requested member states to “consider issuing of emergency visas for HRDs in grave danger, building on experience and good practice of some member states.” HRDs themselves sometimes see a temporary stay outside of their country as the only way to guarantee their security and therefore of crucial importance. HRDs require visas not only in situations of acute risk, but also for carrying out human rights work at the international level.

While emergency visas have been granted in certain cases, in the course of the research Amnesty International also identified instances where visas for HRDs at grave risk were not granted. This affected HRDs from Chechnya and China for example. In Turkey, HRDs noted the growing difficulty of obtaining visas for participating in training or human rights activities in Europe and elsewhere. The periods for which visas are granted are becoming increasingly short. One HRD said that he cancelled his planned participation in a Euromed meeting being held in Morocco in November 2006 because of the difficulties of obtaining a necessary German transit visa.

Recommendations

- EU member states should facilitate temporary emergency visas for HRDs at risk.
- EU member states should issue visas for HRD participation in human rights activities at the European/international level, multiple entry visits to carry out advocacy activities in more than one country and transit visas.

¹⁵ *Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet No. 29*, Office of the UN High Commissioner for Human Rights, April 2004, p. 31.

3.2 IMPLEMENTATION OF THE GUIDELINES AS A POLICY PROCESS

In the previous section, Amnesty International presented its findings regarding concrete actions the EU has undertaken to support and protect HRDs, indicating the need for increased and consistent implementation of the provisions of the Guidelines. This applies both to the EU collectively as well as individual member states. Assessing the implementation of the Guidelines, however, also means looking at the processes and procedures intended to ensure that the EU and its member states act in accordance with this relatively new EU policy.

3.2.1 Policy processes and procedures by EU institutions

Since the adoption of the Guidelines in June 2004, there have been numerous initiatives, in particular by the EU Presidency, to promote their use. These can be seen as a sign of the broad support at policy level within the EU for these Guidelines.

One innovation is in the area of reporting. Since the adoption of the Guidelines in June 2004, the EU has been reporting on the implementation of the Guidelines in its annual report on human rights. The 2006 report reflects several of the actions that the EU has undertaken, including action taken on behalf of HRDs when discussing human rights dialogues and individual countries. Under the Austrian Presidency, the Council General Secretariat initiated a logbook of démarches and certain other Presidency actions taken in relation to human rights issues, including HRDs. This internal database can increase the EU's effectiveness by facilitating consistent follow-up on HRD issues and cases by successive Presidencies.

There have also been other initiatives. Since 2004, the Guidelines have figured on the agenda of the EU's annual NGO forum on human rights. These meetings have allowed for a dialogue on the Guidelines among NGOs, HRDs and EU representatives and have produced recommendations to improve their implementation. Based on the outcomes of the 2004 meeting, the Dutch government produced a "practical handbook for implementation" targeting EU missions in third countries. This handbook was distributed towards the end of 2005.

In June 2006, under the Austrian Presidency, the implementation of the Guidelines was formally reviewed for the first time. The Austrian review resulted in no less than 64 concrete and highly relevant recommendations which EU institutions and member states were requested to act on in areas including monitoring and reporting, trial monitoring, integration of HRDs into political dialogues, public action, planning and publicizing the Guidelines.¹⁶

During the first half of 2006, the Austrian EU Presidency prioritized the protection of women HRDs instructing EU missions in third countries to meet local women HRDs to understand their needs for support and protection. These instructions resulted in proactive efforts by the

¹⁶ see *Council Conclusions on EU Guidelines on human rights defenders, Annex II.*

Presidency to organize meetings with women HRDs in China, Mozambique and Tunisia,¹⁷ illustrating that clear plans and instructions can ensure that some new initiatives take place.

These efforts to promote and apply the Guidelines at central level are commendable. However, they have not yet been fully effective. The EU Annual Report on Human rights, for example, generally fails to provide detailed information such as the number of meetings held with women HRDs and the outcomes of the consultations. Also, only a limited number of countries are covered. For example, in Africa seven countries were covered in a more detailed way. The situation of HRDs and the effectiveness of EU actions in specific countries are reported separately and confidentially.

Regarding the handbook produced by the Dutch government, despite the fact that it was distributed to all EU embassies in third countries, Amnesty International's research revealed that awareness of the handbook at mission level is patchy. Concerning women HRDs, in China, Mozambique and Tunisia there has so far been no specific follow-up to the meetings, and meetings were not organized in Iran, Turkey and Angola, even though these countries are designated for priority action for this campaign.

Lack of specific instructions to implement the Guidelines may explain the reason for the divergence between the efforts at central level and the limited "trickle down" effect at the country level. It is rather illustrative that the mission staff who were interviewed were neither aware of the outcomes of the 2005 annual NGO Forum, nor of the outcomes of the review under the Austrian Presidency.

Recommendations

- Each Presidency should issue clear advice on the steps to be prioritized by COHOM and geographic working groups towards a better implementation of the Guidelines. Emphasis should be placed on the implementation of the recommendations from the Austrian review.
- The EU Presidency should ensure that country-level strategies for the implementation of the Guidelines should be drawn up by EU missions, identifying priorities, HRDs most at risk and actions to be taken, and setting targets and describing expected results. These strategies should make use of the reports of the UN Special Representative on Human Rights Defenders.
- The EU should report on the implementation of these strategies, the actions taken and the results achieved. Except in cases where it endangers an HRD or the continuity of effective EU action, both the strategies and the reports should be publicly available.

¹⁷ In Tunisia, the meeting was not organized under the Austrian Presidency, but by the Finnish Presidency in the second half of 2006.

- The EU should use the information gathered and contacts made in the course of the campaign on women HRDs to integrate gender in the implementation of the Guidelines in conformity with the document *Recommendations for Gender-Specific Implementation of the EU Guidelines on Human Rights Defenders*.¹⁸

3.2.2 Policy processes and procedures by EU member states

The Netherlands

In June 2006, the human rights department of the Netherlands Ministry of Foreign Affairs organized a “come back day” for around 30 staff working mainly at embassies in partner countries. One session was dedicated to the issue of the implementation of the Guidelines. The Netherlands Section of Amnesty International was invited to make a critical assessment and recommendations regarding the implementation of the Guidelines by the Netherlands government. This was followed by a discussion among participants on issues relating to the implementation of the Guidelines by the embassies. Finally, conclusions were drawn on how the implementation of the Guidelines by the Netherlands government could be improved.

Due to the nature of EU foreign policy, making the Guidelines a success is not only a collective responsibility, but depends critically on the commitment of each individual member state. Individual member states should therefore monitor and report on the situation of HRDs, co-ordinate with and share information on HRDs, publicize the Guidelines, and undertake concrete actions to support and protect HRDs, such as giving visible recognition, monitoring trials, integrating HRDs into the political dialogue, and even démarches and public statements. Individual member states are also responsible for training their staff on the content of the Guidelines and means of implementation.

As some of the best practice examples show, individual states have sometimes taken bold steps to support and protect HRDs. However, Amnesty International’s research shows that individual states often left initiatives to implement the Guidelines to the Presidency, leading to inaction where the Presidency did not take the initiative or consensus could not be reached. Instead of the proactiveness that the Guidelines call for, most EU missions appear to have a rather passive approach. Examples include the lack of translation of the Guidelines into local languages, the limited dissemination of the Guidelines in a number of countries, and the limited use of public statements and démarches in general.

¹⁸ http://yak/website_public/web.nsf/pages/hrd-whrdrecs-eng

The Austrian review found that the level of awareness among EU missions, policy makers in Brussels and in EU member states varied greatly.¹⁹ Amnesty International also found that, while awareness of the Guidelines appears to be growing, many diplomats at EU missions still do not seem to know about their existence. Furthermore, many diplomats who are aware of the Guidelines still do not know their provisions. They sometimes confused the Guidelines with the handbook produced by the Dutch Government. In Turkey, a diplomat stated that the Guidelines are “not really being used or referred to by EU missions.” One EU mission in Ethiopia stated that it knew of the Guidelines and although it was not “using them as a bible,” saw them as “something we are already doing.” In the countries surveyed, several other missions responded similarly, indicating that at mission level, the Guidelines do not play a very central role in the work of EU Missions with regard to HRDs. In Tunisia, one EU diplomat observed that the Guidelines are not so well known, that their status is frequently misunderstood, and that some embassies think they are something from “Brussels” and not a responsibility of all member states.

A crucial factor may be what the Austrian review found “only a few member states have issued operational directives to their missions as a follow-up to the adoption of the Guidelines.”²⁰ Amnesty International was not able to verify which member states did issue such instructions, as it did not come across any mission staff who received such instructions. Amnesty International also found that some EU missions did not take certain actions to implement the Guidelines due to lack of explicit instructions to do so. Illustrative was the fact that none of the EU representatives in any of the countries were aware of the specific steps they were requested to take to implement the Guidelines as an outcome of the Austrian review.

Recommendations

- The Ministries of Foreign Affairs of individual states should:
 - Include the implementation of the Guidelines in annual budgets and plans.
 - Where relevant, include implementation in regional and country policies and plans.
 - Possibly prioritize countries where it wants to start implementation first, and set clear output and outcome objectives.
 - Issue clear instructions to missions regarding concrete actions they should take to implement the Guidelines and contribute to the fulfilment of EU country implementation strategies.

¹⁹ *Council Conclusions*, Annex II, p. 6.

²⁰ *Council Conclusions*, Annex II, p. 6, paragraph 6.

- Report publicly on the implementation of the above-mentioned plans (except in cases where it endangers an HRD or the continuity of effective action).
- Individual member states should ensure adequate training and awareness of relevant staff in their Foreign Affairs ministries and in their diplomatic missions in relation to the Guidelines. Staff should also be familiar with the Recommendations for Gender-Specific Implementation of the EU Guidelines on Human Rights Defenders and take these into consideration when dealing with women HRDs.

3.2.3 Awareness-raising

Mozambique

On 11-12 December 2006, the Mozambican League for Human Rights organized the First National Conference on Human Rights Defenders. One of the purposes of the conference was to provide local HRDs with tools they could use to gain support and protection for their work. The Finnish Embassy, acting as the EU Presidency, accepted an invitation to present the Guidelines and describe their application in Mozambique to the 60 or so participants. In co-ordination with the Presidency and the League for Human Rights, and in advance of the presentation, the European Commission Delegation had printed the Portuguese version of the Guidelines and had copies distributed to participants, who were able to refer to the document as the Finnish representative read through it. After the presentation, participants were able to address questions to the EU Presidency.

Amnesty International believes that raising HRDs' awareness of the Guidelines is an essential precondition to their full and effective implementation. Both the EU and its member states have made some efforts in this area. In 2004, the Dutch Presidency published a hardback booklet containing all the EU human rights guidelines. In 2005, the Council followed up, publishing a paperback version of the same. At country level, there were some positive efforts to publicize the Guidelines among HRDs. In Iran, individual HRDs reported receiving the Guidelines from EU representatives. In Angola and Mozambique, the EU accepted invitations to present the Guidelines at meetings initiated by international organizations or local HRDs.

Despite these examples, Amnesty International's research indicates that the EU has still done little to publicize and explain the use of the Guidelines among HRDs, especially at the country level. Although the Guidelines have been translated into languages including Portuguese, Russian, Chinese, Farsi and Arabic, EU mission staff were largely not aware of these translations, and therefore did not use them to the extent they could have. Meetings with women HRDs took place in China, Mozambique and Tunisia, but even during these meetings, the Guidelines were not explained or distributed. In Turkey, an accurate translation of the

Guidelines is available, but the EU has not been disseminating it.²¹ In Ethiopia, the Guidelines have not been translated into Amharic, which would be essential for effective dissemination.

A visit to the websites of the embassies of Austria, Finland, Germany, The Netherlands, and the UK and the Delegation of the European Commission in the eight countries surveyed reveals that none of the websites makes specific reference to policies on HRDs or to the Guidelines. On this basis, it appears that EU countries do not make use of the websites of their overseas missions to raise awareness of the Guidelines.

Recommendations

In order to ensure HRDs' awareness and understanding of the provisions of the Guidelines, Amnesty International believes that EU missions should, more consistently than currently is the case:

- Hand over copies of the Guidelines and explain them during face-to-face contacts with individual HRDs.
- Present, disseminate and discuss the Guidelines at gatherings of HRDs.
- Explain the Guidelines and post a copy on the mission website, especially the local language version of the site.

These are three simple and effective methods which should be employed consistently in third countries. Where relevant, the Guidelines should be translated.

4. SUMMARY AND CONCLUSION

Amnesty International welcomed the adoption of the Guidelines in June 2004 and commends the EU for the priority given to HRDs in its human rights policy. It also recognizes the efforts that have been made at the central level to promote the implementation of the Guidelines, and the efforts of the EU and its member states in supporting and protecting HRDs, illustrated by the "best practices" highlighted in this report.

The central purpose of the Guidelines is to enhance ongoing efforts to support and protect HRDs. Despite the efforts made at the political level, and despite the good practices that existed before the adoption of the Guidelines and that still exist, Amnesty International's research indicates that, overall, the introduction of the Guidelines as such has not yet resulted in a significant increase in activities to support and protect HRDs. Amnesty International did not come across any examples – with the exception of meetings with women HRDs – where

²¹ This translation was done by the Turkish Ministry of the Interior and appears on its website. According to the Delegation of the European Commission in Ankara, the translation is an accurate one.

diplomats explicitly or implicitly linked initiatives to support and protect HRDs to the implementation of the Guidelines. It therefore appears that the effects of policy processes at the central level have yet to trickle down. Current practice indicates that, generally speaking, action on the ground on behalf of HRDs still depends mostly on the will of representatives of individual member states. Both appreciation of ongoing efforts, as well as disappointment that the Guidelines are not stimulating new activity, is illustrated by what one HRD in Tunisia told diplomats visiting their office: “We appreciate you visiting us, but it’s always the same countries.”

Amnesty International’s findings indicate that awareness and understanding of the use of these important Guidelines among both EU representatives and HRDs are still insufficient, in particular at country level, and that EU missions have received few instructions to undertake concrete actions to implement them. Efforts to publicize the provisions of the Guidelines and the EU support to them among HRDs at the country level have been limited. *Démarches* and public statements, the main diplomatic instruments of the EU, are not consistently used to raise concerns regarding the situation of HRDs or individual cases. Monitoring and reporting on the situation of HRDs at risk, the integration of HRDs in political dialogue, and monitoring and observation of trials are all areas where EU practice does not yet attain the standards set by the Guidelines. Individual member states have sometimes taken bold action to support and protect HRDs. However, the initiative is often left to whichever state holds the EU Presidency.

These findings indicate that the Guidelines must be more systematically and proactively applied to increase concrete EU action to support and protect HRDs, in line with their priority in EU policy. Without this concerted effort at member state level, as well as at central level, the EU will not be able to realize its full potential role in the protection of HRDs in third countries. As one EU representative put it, “if we had a united front, there is so much that could be achieved.”

Many good practices exist and these should now be replicated with a view to achieving consistency in the EU’s response to violations against HRDs. In particular, awareness-raising of the Guidelines, *démarches*, public statements, trial observation, monitoring, reporting, and integration of HRDs in the political dialogue should be enhanced and improved. This development should be achieved through the introduction of processes and procedures – in particular awareness-raising, planning and reporting – which ensure the full and effective implementation of the Guidelines as a policy. While EU institutions, in particular the Presidency, continue to have an important task coordinating efforts by EU member states, member states must ensure full integration of the EU Guidelines in their foreign policies, issuing clear directives to country desk officers and mission staff for implementation. Furthermore, individual EU member states should promote concerted action while also acting on their individual commitments to implement the Guidelines in consultation with the EU Presidency. By urgently taking these measures, many of which echo the recommendations of the review undertaken by the Austrian Presidency, the EU will take an important step towards its ambition of ensuring protection for HRDs in third countries.