

# **THE OBSERVATORY**

## **for the Protection of Human Rights Defenders**

### **L'OBSERVATOIRE**

**pour la Protection des Défenseurs des Droits de  
l'Homme**

### **EL OBSERVATORIO**

**para la Protección  
de los Defensores de Derechos Humanos**

## **First Evaluation of the EU Human Rights Defenders Guidelines “Promoting HRDs best interest”**

**May 2, 2006**

### **Introduction and methodology**

The Observatory for the protection of human rights defenders, a joint venture of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), is an action programme based on the conviction that strengthened co-operation and solidarity among defenders and their organisations will contribute to break the isolation they face. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression against defenders. The Observatory's activities are based on the consultation and the co-operation with national, regional, and international NGOs.

The Observatory mainly operates through 1) a systematic alert of the international community on cases of harassment and repression against human rights defenders particularly when they require an urgent intervention. For instance, in 2005, the Observatory issued 286 urgent interventions (urgent appeals, open letters to the authorities, private communications, press releases) concerning 847 defenders, in 58 countries.

2) the investigation on freedom of association, the observatory of judicial proceedings, and whenever necessary, direct legal assistance.

3) the preparation, publication and worldwide diffusion of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world.

4) sustained lobbying with various regional and international intergovernmental institutions.

Both FIDH and OMCT, through the Observatory or through their daily activities, seek to use the EU Guidelines on Human Rights Defenders (hereafter “the Guidelines”), sensitise their local partners on their existence, and interact with the European Union delegations or headquarters in order to promote the full use of the Guidelines.

Thus, the Observatory has systematically transmitted relevant information to the EU as regards the situation of Human Rights Defenders at risk and regularly calls on the EU to make the issue of Human Rights Defenders and freedom of assembly an integral part of its external relations.

In order to feed into this evaluation, FIDH and OMCT have requested contributions from their partners in the field, in submitting to them the questionnaire prepared by the EU Presidency, as well as a number of additional questions. They have also analysed the impact of their activities in Brussels or through their interaction at the local level with EU delegations and Member States' embassies.

It is important to note at this stage that the evaluation has been impaired by the fact that a number of our partners, as well as our organisations' respective staff, lack information and feedback to the requests for intervention they have made in application of the Guidelines, thus rendering it difficult to evaluate how the Guidelines are used or not. Furthermore, the limited time given for the evaluation explains the restraints on the geographical coverage of

the evaluation.

## 1. An essential protection tool for human rights defenders

The Observatory for the protection of human rights defenders has welcomed the adoption by the Council of the European Union of the Guidelines. Indeed, our organisations had been calling for their adoption since the 2000 Annual Forum on Human Rights and subsequently worked together with the Irish Presidency and the COHOM members on their drafting.

Recognising the role of Human Rights Defenders and supporting the principles contained in the United Nations Declaration on Human Rights Defenders, the Guidelines provide for a set of “*ways and means*” to “*effectively work towards the promotion and protection of human rights defenders in third countries, within the context of the Common Foreign and Security Policy*”.

The adoption of these Guidelines have represented a genuine step towards the protection of Human Rights Defenders around the world. They indeed provide for:

- an important role for EU Heads of Missions, which are to address the situation of Human Rights Defenders “*in their reporting, noting in particular the occurrence of any threats or attacks against defenders*” and which “*should make recommendations to COHOM for possible EU actions, including condemnation of threats and attacks against human rights defenders, as well as for demarches and public statements where human rights defenders are at immediate or serious risks*”.
- an important role for EU Missions in third countries (Embassies of EU Member States and European Commission Delegations), which will “*maintain suitable contacts with human rights defenders, including by receiving them in Missions, and visiting their areas of work [and] appoint specific liaison officers, where necessary on a burden sharing basis, for this purpose*”;
- the inclusion, “*where relevant*”, of the situation of human rights defenders in “*the human rights component of political dialogues between the EU and third countries and regional organisations. The EU will underline its support for human rights defenders and their work, and raise individual cases of concern whenever necessary*”;
- “*the strengthening of existing regional mechanisms for the protection of human rights defenders*”;
- efforts to ensure that human rights defenders in third countries can access resources, including financial, from abroad.

Following the adoption of these guidelines, our organisations have welcomed the nomination of an **EU personal representative of M. Javier Solana on human rights**, and the subsequent allocation of a staff member to assist him, as a means to strengthen, *inter alia*, the effective implementation of these Guidelines through awareness-raising, dialogue and interventions, as well as mainstreaming.

The Observatory contributed to their implementation with the Dutch, Luxemburg, British and Austrian Presidencies, as well as with the EU personal representative of M. Solana on human rights, Mr. Michael Matthiessen, the Council Secretariat, the Commission, the European Parliament, and local EU delegations and Member States’ embassies.

All of the partners consulted for this evaluation have recognised the importance and relevance of such a policy tool, urging for their further promotion in the field. The following remarks on their implementation can be made.

## 2. An instrument insufficiently known

The main obstacle for an effective implementation of the Guidelines remains the lack of awareness of these Guidelines, both amongst the organisations they are designed to assist and the EU delegations in the field or Member States missions.

As a matter of fact, a number of the reports that we have received from our partners in the field, and through our respective organisations’ encounter with local EU delegations or Member States’ embassies, witness the lack of

awareness about this policy instrument, lack of awareness about the priority given to HRDs, lack of knowledge about the ways and means to implement them.

*For instance, in **Sierra Leone**, the EU mission was not aware of the Guidelines when asked about it. Likewise, in **Niger**, when our partner contacted the EU delegation in Niamey in order to get the Guidelines when receiving our questionnaire, they never got them. Besides, although they were invited, the EU did not participate at a sub regional meeting on the situation of human right defenders in the Mano River Union organised by NGOs in Sierra Leone in July 2005.*

Similarly, very little information on the Guidelines went to the field. Indeed, most of the NGOs that replied to our evaluation said they were mostly, or even completely, unaware of the EU Guidelines before receiving our questionnaire, such as in Cameroon, Ivory Coast, Mexico, Niger, Nigeria, the Occupied Palestinian Territories (OPT), Sierra Leone, Democratic Republic of Congo.

NGOs which knew about the policy were those which attended international conferences (OSCE, African Commission, EU Forum...) or met other international NGOs, mainly in the EU countries, such as OMCT and FIDH.

Yet, we have also noted interesting sensitisation efforts :

- The publication and translation of a booklet containing all the Guidelines;
- The sensitisation efforts by the Personal Representative on Human Rights of the Council working groups, CFSP, other institutions, partners and human rights defenders on the Guidelines;
- Following the 2004 Annual Forum on Human Rights organised by the Dutch Presidency and the EU Commission, the Dutch Foreign Ministry edited a manual on the implementation of these Guidelines and distributed it to its embassies;
- At the 2005 Annual forum on Human Rights organised by the British Presidency and the EU Commission, a representative of the Irish Ministry for Foreign Affairs explained how their Human Rights Unit organised training of all the Foreign Affairs staff on how to use the Guidelines.

Such initiatives need to be pursued and reinforced. Hence we would like to recommend the following :

- ***Systematic training on the HRDs Guidelines and on the ways and means to implement them should be organised for all the EU delegations staff, as well as Member States embassies in the field. The successive COHOM Presidencies should request Member States and the Commission to submit information on how they have furthered awareness raising on the Guidelines, and feel free to openly discuss ways and means to strengthen such campaigns in one or another Member State Foreign Ministry.***
- ***EU missions should organise meetings and consultations with NGOs in the field, in order to discuss and explain the use of the Guidelines, as well as to assess the situation of the defenders.***
- ***Training should therefore be provided to both HRDs and EU missions.***

### **3. Practical support for human rights defenders: the need for a systematic feedback**

As regards the assessment of the effectiveness of practical support measures for human rights defenders, it came into light that some partners in the field did not have any information regarding **projects** carried out by the EU in favour of human rights defenders, like in the OPT, Niger, Tunisia, Nigeria, Azerbaijan, Cameroon, Ivory Coast, Mexico and Bangladesh.

Yet, several actions have to be acknowledged. For instance, in the OPT, the EU and EU missions have played an active role in sponsoring projects on the development of the judiciary, the rule of law and police within the Palestinian context. EU missions also play a central role in the funding of human rights organisations that allow them to carry out activities relating to all aspects of human rights including HRDs.

When asked about their own experience with **coordination and information sharing** with EU missions or European Commission Delegation on human rights defenders, several partners underlined the good relationships they had with a number of EU missions, saying that they were in regular contact with them on a

variety of human rights issues, including human rights defenders. However, it seemed that this mainly concerned NGOs who were aware about the EU Guidelines and that are used to attend international meetings and/or meet with international NGOs. It was also pointed out that most often the NGOs were the ones initiating the contacts with the missions, and it was rare that the latter organised spontaneously meetings with human rights NGOs.

Many **public interventions** on individual cases were welcomed, such as sending observers to a trial of a human rights defender or organisation, visits to detained defenders or public statements in favour of HRDs.

Moreover, at the 2005 Annual Forum on Human Rights organised by the British Presidency and the EU Commission, a number of NGO representatives pointed out the lack of knowledge on the measures undertaken by the EU missions and the European Commission delegations in the framework of **confidential demarches**. Different EU Member States outlined in response the importance for discreet approaches, and the subsequent challenges faced if they were to publicise them.

Absence of information on the demarches undertaken was further reported by our partners in Tunisia, DRC, Djibouti, Colombia, Cameroon, Cambodia, Niger, Azerbaijan, insofar as there is often no feedback to the regular information sent by the NGOs to the EU missions or the European Commission Delegation. In addition, numerous partners in the field deplored the lack of regular contacts with the EU missions.

The bureaucracy, along with too much discretion and a lack of transparency and visibility of the actions carried out by the EU, were often deplored as obstacles to the efficiency of the implementation of the Guidelines (Cameroon, Azerbaijan, Ivory Coast, Mexico, Russia, Georgia, and Tunisia). It was also sometimes underlined that the EU positions were much slower and weaker than the UN ones, probably due to the diplomatic interests that are at stake.

Thus, while some interventions are visible, such as visits to HRD's headquarters, observation of trials, public statements, the majority of them are, we believe, undertaken behind closed doors, through demarches to the authorities concerned. The absence of feedback on the existence and content of demarches results often in the sheer ignorance on whether and how the Guidelines are being used.

We believe that the question of the feedback on the demarches undertaken should be reconsidered, in order to strengthen the adequate implementation of the guidelines, for the following reasons:

- knowing that a case has been heard and transmitted would enable the source to provide specific details on the **follow-up** to the case raised. When an organisation knows when and how the case was raised with the authorities, it can provide targeted follow-up information on exactly how the situation has evolved. On the contrary, absence of information leads HRDs to repeat the same message, without the necessary nuance that follow-up brings.
- knowing that a case has been raised will draw HRDs **interest in making use** of the tool. Currently, some partners we have consulted disregard the instrument as they cannot measure its impact.
- Public demarches (such as visiting NGO Headquarters, observing trials, public statements) have an equal impact on authorities. Our evaluation has not revealed that they had impaired the "message" transmitted to the authorities. However, at the difference of private demarches, they provide a strong psychological support to HRDs, who **feel supported and heard**. They are also seen as a stronger message to the address of the authorities. Thus reinforcing the political weight of the demarche.
- When the existence of private demarches has been "leaked" informally to HRDs, we have witnessed **no sign of counter-productive impact** on the demarche itself.
- The **UN Secretary General's Special Representative on Human Rights defenders** publicises every year a summary of all the demarches undertaken through her mandate, as well as the responses received. This element has not impaired the fulfilment of her mandate.

Hence, there is an increasingly important need that these diplomatic efforts give rise to implementation of concrete action and policy with regards to the violations addressed. We would therefore like to encourage the following:

***When a measure is undertaken, the EU should inform the source of the complaint. This practice could be done informally, and the EU could request to the source that they do not publicise the information. Yet such feedback***

*would make an important difference. It would reinforce the sense of ownership by HRDs of this political tool, reinforce the HRDs confidence in the international support he or she obtains, and hence reinforce the HRDs action in the field.*

#### **4. Some suggestions of practical steps.**

At several occasions, it came out from this evaluation that it was high time for practical steps to be implemented. In addition to what was just said before, the Observatory for the protection of human rights defenders would like to underline the following elements:

- a) Although some political services of the EU Member States embassies and delegations are aware of the priority given to HRDs, administrative services, such as Visa services are often unaware of the political priority given to them. Hence, a number of HRDs have witnessed difficulties in obtaining visas to travel to Europe for lobbying and advocacy purposes or to seek asylum (DRC, Bangladesh).
- b) A number of the reports we have received reflect the fact that the EU delegations or EU embassies confuse independent NGOs with Governmental NGOs. These confusions were seen in public or private roundtables, where GONGOs were invited alongside independent human rights defenders, leading to arguments, or confusion in the information transmitted. Others have reported that EU funding benefits to GONGOs, and not genuinely independent NGOs. Limited exchanges with NGOs that are not legally recognised were also witnessed, notably in Iran, Tunisia, Egypt, Djibouti, Cameroon, DRC, Georgia.
- c) Finally, in some countries, human rights NGOs that are not legally recognised do not benefit from the same level of political intervention by EU member States as recognised ones, while their absence of legal recognition only results from a repressive intervention of the authorities.

**• *For each country, a list of independent human rights organisations and HRDs should be drawn and shared between EU missions and delegations. These list should gather information based on, inter alia, reports from local missions staff, urgent appeals and reports of international NGOs, interventions and reports of the UNSG on HRDs. Once initially drafted, the list should be cross-checked with international human rights organisations.***

**• *These lists should be elaborated by a local focal point on the Guidelines. They should be regularly updated, and include references to different public or private demarches undertaken, and to the responses obtained, so as to strengthen follow-up and provide a shared track record of actions undertaken. The lists should be available to the visa services, so as to facilitate the granting of travel permits to independent HRDs.***

**• *In cases where NGOs are not legally recognised by the authorities, the EU missions should develop direct contacts with the independent NGOs and initiate projects that correspond to their needs.***

#### **Conclusion: high expectations call for immediate and concrete steps**

The reports our organisations obtained from our partners in the field highlight the high expectations for protection, which leads to the strong need for both greater pressure at the political level in bilateral/multilateral relations and more interventions on individual cases. Indeed, each of these actions are important and effective at different levels.

A more important political and financial support to local NGOs was also stressed out, along with the training of public bodies (police, judiciary, etc.).

But the first and immediate step remains certainly the need to create a better awareness and understanding of these Guidelines, both amongst the EU staff and the human rights defenders to which they are dedicated to.



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