



DEFENDING DEFENDERS?

AN ASSESSMENT OF EU ACTION ON HUMAN RIGHTS DEFENDERS

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Cover photo: Aurat March (Women's March) Pakistan

Thousands of women took to the streets of Pakistan to mark International Women's Day. These pictures are from Lahore.

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MAP



1. EXECUTIVE SUMMARY

Around the world, people are speaking up and working to defend human rights, frequently at risk to their safety, freedom or life. All too often, these human rights defenders (HRDs) are labelled as “criminals”, “foreign agents”, “terrorists” or threats to “development” or “traditional values”. Many suffer violations of the very rights they defend. They are harassed and intimidated, unjustly prosecuted and imprisoned. Some are tortured, killed or forcibly disappeared.

Many states have introduced restrictive laws to silence and repress HRDs and attack the civic space in which they work. Some states have turned their back on previous commitments to the international human rights framework, even questioning the definition of a human rights defender.

Simultaneously, challenges around specific human rights issues, and for the HRDs working on them, have intensified. Social media threats, smear campaigns and surveillance are an everyday reality for HRDs worldwide. At heightened and intersecting risk are women HRDs as well as those working on the rights of lesbian, gay, bisexual, transgender or intersex (LGBTI) people, Indigenous communities and refugees and migrants.

In this changing world, the European Union (EU) and its member states are increasingly called on to exercise leadership on human rights and HRDs. The EU’s global status, along with its broad range of policies and instruments on human rights, means it can exert significant influence through its relations with third countries and its role in multilateral fora.

1.1 AMNESTY INTERNATIONAL’S RESEARCH

This report focuses on EU and member state action for HRDs in line with their human rights commitments, above all the European Union Guidelines on Human Rights Defenders (EU Guidelines on HRDs). It is based on research by Amnesty International focusing on implementation of the Guidelines between January 2014 and April 2019 in Burundi, China, Honduras, Russia and Saudi Arabia, and draws on compelling testimony of individual HRDs from these countries.

This report looks at how the EU and its member states have acted practically and politically to:

- protect individual HRDs and promote their work;
- engage governments and other key stakeholders on HRDs’ working environment and civil society space; and
- validate human rights concerns raised by HRDs by giving them full political backing and supporting their efforts to address these issues.

The report provides background on the EU and HRDs, including key commitments and challenges in implementing the EU Guidelines on HRDs.

The report focuses on EU and member state action on HRDs in Burundi, China, Honduras, Russia and Saudi Arabia. These countries were selected for their geographical diversity, their diverse relations with the EU and, above all, the serious challenges faced by HRDs working in them. The report provides an overview of EU action by looking at: closed-door diplomacy; public action; trial monitoring; engagement with HRDs; financing, training and capacity building; relocation and visa support and engagement with regional and international fora. Each chapter concludes with country-specific recommendations to the EU and its member states.

1.2 FINDINGS

Amnesty International found an apparent lack of overall strategy and consistency in EU efforts to support HRDs, insufficient visibility of EU actions and channels of support and the absence of a targeted and impact-oriented approach to public action. The findings of this report do not point to an outright failure to deliver on EU human rights commitments but rather to an inconsistent implementation of the EU's HRD policy.

Indeed, clear disparities in EU action emerged both between and within the different countries analysed, for example with robust public messages in support of HRDs in China contrasting with limited or weak support for HRDs in Saudi Arabia. Factors such as the state of the EU's relations with a third country, the level at which public messaging is issued, the individual HRD involved and the personal engagement of EU or member state staff all appear to play a role in determining how action under the EU Guidelines on HRDs is pursued. Such unwarranted disparities suggest a lack of overall strategy and predictability in the EU's efforts to support HRDs and risk being perceived as arbitrary at best and politically motivated at worst. These inconsistencies could undermine the credibility and robustness of the EU's HRD policy at the global level.

This report also finds that EU action is primarily reactive, often responding to escalations in human rights violations impacting HRDs rather than anticipating them. Key areas of action like trial observation, relocation support or even public statements, regularly lack visible follow up once action is taken.

More could also be done to ensure that the EU's public actions and commitments to HRDs reach their target audience in a strategic and results-oriented way. Similarly, it deserves more critical and strategic thinking about whether and how the EU should publicize its quiet diplomacy and how such a step could enhance support to HRDs. The lack of visibility given to certain EU actions risks limiting their positive impact for HRDs and obscures what type of support HRDs can expect from the EU.

At a moment when women, LGBTI and Indigenous human rights defenders, as well as those working on issues related to the land, territory and environment, are particularly at risk, the EU Guidelines on HRDs urgently need to be joined up with other EU policies and instruments.

The report also identifies several recurring debates and perceived challenges for EU action on HRDs. These include debates around the benefits of private diplomacy versus public messaging in support of HRDs, the impact of a lack of unity among EU member states on the EU's HRD policy and the scope for EU action in the absence of formal dialogue or strained relations with specific third countries. However, the report's findings point to thoughtful and innovative approaches that have emerged in response to these challenges. Systematizing, sharing and propagating these approaches across different countries, and cultivating good practices, will be essential to overcome internal debates and systemic challenges in the areas where the EU continues to punch below its weight. Further work will be essential to embed the range of actions, tools and instruments at the EU's disposal within a broader, strategic vision of how best to support and protect HRDs in practice.

1.3 RECOMMENDATIONS

The sole way forward to confront the rapidly evolving challenges HRDs face today, will be for the EU and its member states to adopt a more strategic, visible, innovative and impact-oriented approach to protect HRDs and promote their crucial work.

In light of this report's findings, Amnesty International believes that the EU needs to develop a strategy in response to the burgeoning challenges that HRDs face worldwide. This strategy could take the form of Council Conclusions on HRDs and should be results-oriented, seek to bolster the visibility of EU and member state action for HRDs and aim to foster innovative approaches in response to the constantly evolving restrictions and threats they face. The EU and its member states must take this overall strategy forward along with local HRD strategies tailored to the specific circumstances in each third country. Given political backing up to the highest level, such a two-pronged approach can more effectively link individual EU actions with global work to support and protect HRDs and will go a long way to address some of the EU's key policy shortcomings.

The report ends with two sets of detailed recommendations aimed at achieving a proactive policy on HRDs in the spirit of the EU Guidelines.

Key recommendations include:

AT THE GLOBAL LEVEL

- Issue annual Foreign Affairs Council Conclusions on EU action to promote and protect HRDs in its foreign policy;
- Ensure that the Foreign Affairs Council systematically considers the situation of HRDs; and proactively address EU member state disunity on human rights.

AT THE THIRD COUNTRY LEVEL

- Develop results-oriented country level strategies for EU action on HRDs;
- Regularly assess the impact of EU actions in support of HRDs, based on clearly defined benchmarks;
- Align all EU external action in third countries with EU action to protect HRDs and promote their work.

IN RELATION TO KEY AREAS OF CONCERN

- Reinforce EU and member state efforts on trial observation;
- Systematize the EU and member state response to legislation that unduly restricts the work of human rights defenders; and
- Reinforce strategic thinking and concrete policies to respond when human rights defenders face reprisals for engaging with the EU.

IN RELATION TO COMMUNICATIONS AND VISIBILITY

- Develop a global public communication strategy on HRDs;
- Improve the visibility and accessibility of EU commitments and channels of support to HRDs; and
- Use targeted social media to boost the visibility of HRDs and EU action for HRDs.

In terms of moving beyond established policies and practices, Amnesty International's key recommendations include:

AT THE GLOBAL LEVEL

- Counter the current pushback to weaken the international human rights framework; and
- Publicly reaffirm support for HRDs in EU policies and in the EU's joint statements with third countries.

AT GLOBAL AND THIRD COUNTRY LEVELS

- Increase consultation with HRDs in third countries and at a higher political level in Europe and multilateral fora; and
- Seek channels for meaningful EU action even when formal channels of dialogue are closed.

AT THIRD COUNTRY LEVEL

- Expand good practices to access HRDs in regions, using consulates or visits to development projects as points of entry; and
- Explore alternative ways to promote human rights and the work of HRDs in third countries, including through cultural events, marches, social media and prizes.

IN RELATION TO KEY AREAS OF CONCERN

- Develop a concrete strategy to achieve EU impact for HRDs with intersectional concerns and facing specific challenges and risks as a result;
- Reinforce the EU response for HRDs in human rights crises and conflicts;
- Develop concrete strategies to protect and support HRDs in exile; and
- Boost EU capacity to counter smear campaigns against HRDs and address targeted digital surveillance.

With this report, Amnesty International aims to provide constructive analysis and practical ways forward at this crucial and challenging moment for human rights defence. Above all, it aims to highlight good practices and innovations with a view to advancing debate and a more ambitious, unified and strategic approach for HRDs by the EU and its member states.

2. METHODOLOGY

This report is based on research conducted by Amnesty International between May 2018 and May 2019. At a crucial moment when human rights are under assault worldwide, the report looks at how the European Union (EU) and its member states deliver on their commitments to protect Human Rights Defenders (HRDs) and promote their work.

The report documents EU and member state action on HRDs in five countries – Burundi, China, Honduras, Russia and Saudi Arabia.¹ These countries were chosen on the basis of:

- their geographical diversity;
- the varying status of their relations with the EU; and above all,
- the serious challenges facing HRDs, including a high incidence of attacks on HRDs, state criminalization of human rights defence, and/or undue restrictions on the rights to freedom of expression, peaceful assembly and association.

This report focuses on EU and member state action for HRDs under the overall human rights commitments in their foreign policy,² in particular under the **European Union Guidelines on Human Rights Defenders (EU Guidelines on HRDs)**,³ which provide practical guidance for the EU and its member states to act meaningfully for HRDs in third countries (outside of the EU) and at all levels worldwide.

While the EU Guidelines on HRDs have been in place since 2004, there is little public information available on their practical implementation and few academic and policy reviews of their impact.⁴ This research looks at the implementation of the Guidelines between January 2014 and April 2019 in the five selected countries.

The report explores how the EU and its member states act practically and politically to:

- protect individual HRDs and promote their work;
- engage governments and other key stakeholders on HRDs' working environment and civil society space; and

¹ No EU member states were included in this research as the EU Guidelines on HRDs are a foreign policy instrument and do not apply to EU action on human rights or HRDs within its own territory. The choice not to include an EU member state in this report in no way diminishes Amnesty International's concerns about, and the EU and its member states' responsibility for, human rights defenders within the EU.

² While the European Parliament is not directly involved in implementing the EU Guidelines on HRDs, this report highlights the crucial role of the parliament in catalysing EU and member state action on HRDs as well as speaking out on the situation of individual HRDs and/or HRDs and civil society in countries covered in this report.

³ *Ensuring protection – European Union Guidelines on Human Rights Defenders*, https://eeas.europa.eu/sites/eeas/files/european_union_guidelines_on_human_rights_defenders.pdf.

⁴ See Karen Bennett, 'European Union Guidelines on Human Rights Defenders: a review of policy and practice towards effective implementation', *The International Journal of Human Rights* 19:7, 2015, 908-934, <https://www.tandfonline.com/doi/full/10.1080/13642987.2015.1075303>; Karen Bennett, *Assessing the implementation of the EU Guidelines on Human Rights Defenders – the cases of Kyrgyzstan, Thailand and Tunisia*, Policy Department DG External Policies of the European Parliament, June 2013, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410221/EXPO-DROI_ET\(2013\)410221_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410221/EXPO-DROI_ET(2013)410221_EN.pdf); Peace Brigades International, *Ten years of the European Union Guidelines on Human Rights Defenders: An assessment from the field*, June 2014, https://pbi-guatemala.org/fileadmin/user_files/projects/guatemala/files/english/1406_PBI_10YearsGuidelines_eng.pdf; Amnesty International, *The European Union – Rising to the Challenge of Protecting Human Rights Defenders* (Index: EUR 01/009/2008), June 2008, <https://www.amnesty.org/download/Documents/52000/eur010092008eng.pdf>. See also Front Line Defenders, *The European Union: What it can do, getting it to take action: Protection handbook for human rights defenders*, September 2013, <https://www.frontlinedefenders.org/en/file/1136/download?token=gM78dKSe>.

- validate human rights concerns raised by HRDs by giving them full political backing and supporting their efforts to address these issues.

Key areas of EU action examined include: exchanges with HRDs, trial monitoring, relocation and visa support, financing, training and capacity building, coordination, reporting, private diplomacy, public statements⁵, and support to an overall safe and enabling environment – along with wider engagement in bilateral relations as well as regional and international fora.

The research covers developments under the EU Action Plan on Human Rights and Democracy of 2015-2019⁶ and since the 10th anniversary of the EU Guidelines on HRDs (23 June 2014).⁷

The research comprised:

- A review of relevant literature on the situation of HRDs and on EU HRD policy and its implementation, including relevant non-governmental organization (NGO), academic and expert publications, press statements, public communications and media reports.
- Interviews with 33 HRDs from Burundi, China, Honduras, Russia and Saudi Arabia, with attention to balance in the representation of gender, age, ethnicity, area of operation (urban/rural) and thematic areas of focus.
- Interviews with 36 EU and EU member state officials, including from the European External Action Service (EEAS); Council of the EU; the European Commission; EU delegations to Burundi, China, Honduras, Russia and Saudi Arabia and from the Ministries of Foreign Affairs of Germany, France, Finland, the Netherlands, Spain, Sweden and the United Kingdom (UK). The latter diplomats were based either in their member state capital, or in the five countries of focus.
- Ongoing and past research by Amnesty International's regional teams on the human rights situation in the five countries analysed, including challenges and abuses faced by HRDs.
- Ongoing and past research and advocacy by Amnesty International's national sections on EU and member state efforts to protect and support HRDs.
- Desk research on EU and member state action on human rights and the situation of HRDs both globally and in the five focus countries.
- Consultation with six Brussels based NGOs working on human rights as well as with representatives of civil society and international human rights experts working on HRDs and/or the five countries of focus.

Constantly evolving constraints on diplomats as well as security risks and other practical restrictions on HRDs posed challenges for data collection. Where face-to-face or telephone interviews were not possible, written responses to a questionnaire were collected. In some instances, interviews were held with HRDs in exile where engaging with HRDs in their country represented a risk for them or their work. This report does not disclose the names of HRDs interviewed to protect their confidentiality and security. Wherever names or cases of individual HRDs are mentioned, this information is publicly available and/or previously published by Amnesty International.

Amnesty International recognizes that EU and member state actions often extend beyond what this research has been able to document or what can be safely made public in this report, particularly given EU interventions

⁵ For the purposes of this report, an EU public statement includes any public statement with reference to HRDs, civil society, NGOs and/or restrictive laws in relation to these groups, and issued by the EU delegation, the HR/VP spokesperson, the HR/VP on behalf of the EU and member states or the EU at the UN HRC. While they complement EU public statements, public positioning in speeches of the HR/VP, Council Conclusions or communications of an EU head of delegation are not considered as EU statements in our research. Similarly, for the purposes of comparison between countries, the count of EU statements given in this report does not include: 1) general EU statements on human rights issues or human rights defenders without explicit reference to one of the focus countries of this report; 2) public statements given at fora specific to one region but without an equivalent in others (in particular the OSCE and the Council of Europe); and 3) statements on the situation of journalists or political opposition in the focus countries. Still, given the relevance of the latter statements for the EU's global engagement on HRDs and civil society, these statements are included in our wider analysis of EU and member state action on their behalf. This report's count of EU statements is solely based on statements that were published and readily available on the EEAS and/or EU delegation websites at the time of writing. While more statements may have been delivered orally in specific settings, all statements that remain unpublished are neither visible nor accessible to HRDs and states, and thus could not be counted for the purposes of this report.

⁶ *EU Action Plan on Human Rights and Democracy (2015-2019)*, https://eeas.europa.eu/sites/eeas/files/eu_action_plan_on_human_rights_and_democracy_en_2.pdf.

⁷ *Council Conclusions on the 10th Anniversary of the EU Guidelines on Human Rights Defenders*, 23 June 2014, <https://www.consilium.europa.eu/media/28043/143313.pdf>. Here, the EU and its member states commit to: "intensify [...] political and material support to human rights defenders and step up its efforts against all form of reprisals and will actively support the strengthening of UN monitoring in this regard. The EU is particularly committed to improve its support to vulnerable and marginalized human rights defenders. The EU will intensify outreach to those operating in remote and rural areas. Particular attention is paid to women human rights defenders."

often occur behind closed doors. To protect both ongoing EU work for HRDs in volatile settings and those HRDs who benefit from it, some EU action for HRDs could not safely be shared in this public report. This should in no way imply that the EU and member states currently make comprehensive use of their policies and instruments to support HRDs in their foreign policy worldwide.

Amnesty International thanks the many HRDs, EU diplomats and members of civil society who offered their knowledge, time and experience to provide input to this report. We also thank the consultants who worked on the report, as well as colleagues from five regional teams, global campaigns team, the European Institutions Office, Law and Policy and research teams and national sections, for their precious contributions to this report.



HUMAN RIGHTS DEFENDERS: WHO ARE THEY AND WHY ARE THEY IMPORTANT?

A human rights defender (HRD) is someone who, individually or in association with others, acts to defend and promote human rights at the local, national, regional or international levels, without resorting to or advocating hatred, discrimination or violence.

HRDs come from every walk of life. They may be journalists, lawyers, health professionals, teachers, trade unionists, whistle-blowers, farmers, and victims or relatives of victims of human rights violations and abuses. Their human rights defence work may be conducted as part of their professional role or be undertaken voluntarily or on an unpaid basis.

In 1998, 50 years after the adoption of the Universal Declaration of Human Rights, the United Nations (UN) General Assembly (UNGA) reaffirmed the principles of freedom and justice by adopting by consensus the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms – often referred to as the HRD Declaration.⁸

Through the HRD Declaration, states recognize the importance of civil society actors in defending human rights. Crucially, the HRD Declaration places the responsibility on states to implement and respect all its provisions, particularly the duty to protect defenders from harm because of their work.

Today, however, HRDs and the civic space in which they work is being targeted and attacked instead of supported and protected.⁹ Governments, armed groups, companies and other powerful entities and communities who believe their interests are threatened by human rights are using a range of tactics and tools to silence and repress HRDs. These tactics range from personal attacks such as threats, beatings and killings to the use of legislation to criminalize human rights-related activities¹⁰; surveillance; smear campaigns and stigmatization; and attacks on the capacity of HRDs to communicate and practice their rights to peaceful assembly, association and freedom of movement.

Since the adoption of the HRD Declaration over 20 years ago, state and non-state actors have killed or forcibly disappeared thousands of HRDs. Far from being recognized and protected, HRDs are portrayed as criminals, undesirables, “foreign agents”, “anti-nationals” and “terrorists”, and branded as a threat to development or traditional values.

HRDs who experience intersecting forms of discrimination and structural inequality are at an increased risk of attack for what they do and who they are. Discrimination and oppression may be based on age, sex, gender, language, ethnicity, sexual orientation, gender identity, race, caste or class, Indigenous identity, disability, religion or belief, nationality or other status. These different forms of discrimination can overlap and interact, intensifying and diversifying an individual’s experience. HRDs who experience such discrimination are often denied resources, opportunities and security, and are commonly excluded from decision-making.¹¹

Today, this assault against HRDs has reached a crisis point and demands concerted action to ensure a safe and enabling environment for HRDs and civil society worldwide. Where states fail in their obligations to respect and protect the right to defend human rights, HRDs cannot operate effectively and contribute to making a safer, more just world.

⁸ UN Office of the High Commissioner for Human Rights (OHCHR), *UN Declaration on Human Rights Defenders*, 1998, <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>.

⁹ Amnesty International, *Human Rights Defenders under threat: A shrinking space for civil society* (Index: ACT 30/6011/2017), 16 May 2017, <https://www.amnesty.org/download/Documents/ACT3060112017ENGLISH.PDF>.

¹⁰ Amnesty International, *Laws Designed to Silence: the global crackdown on Civil Society Organizations* (Index: ACT 30/9647/2019), February 2019, <https://www.amnesty.org/download/Documents/ACT3096472019ENGLISH.PDF>.

¹¹ See, for example: Amnesty International, *Deadly but Preventable Attacks: Killings and Enforced Disappearances of Those who Defend Human Rights* (Index: ACT 30/7270/2017), April 2017, p.15ff., <https://www.amnesty.org/download/Documents/ACT3072702017ENGLISH.PDF>; *Human Rights Defenders World Summit 2018 Action Plan*, https://hrdworldsummit.org/wp-content/uploads/2018/12/EN_Action-Plan-2.pdf.

3. BACKGROUND

3.1 THE EU AND HRDS

The EU and its member states have a wide range of commitments and instruments¹² on HRDs that guide their foreign policy and actions to promote and protect HRDs in third (i.e. non-EU) countries.

Above all, in the 2009 Lisbon Treaty,¹³ the EU and its member states commit to place human rights at the centre of their foreign policy by undertaking “action on the international scene... guided by the principles which have inspired [the EU’s] own creation, development and enlargement and which it seeks to advance in the wider world... the universality and indivisibility of human rights.”

The EU has committed to ensuring the protection and promotion of the work of HRDs as a cornerstone of its human rights policy. The EU Guidelines on Human Rights Defenders (EU Guidelines on HRDs)¹⁴ are the key instrument as they intend to:



...provide practical suggestions for enhancing EU action in relation to [support to HRDs]... in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights.

The Guidelines also provide for interventions by the Union for human rights defenders at risk and suggest practical means of supporting and assisting human rights defenders.

The commitments in the Guidelines are reaffirmed in the Strategic Framework on Human Rights and Democracy (2012),¹⁵ in which the EU commits to “intensify its political and financial support for human rights defenders and step up its efforts against all forms of reprisals” and to “[support] human rights defenders under the European Instrument for Democracy and Human Rights and make funding operations more flexible and more accessible.”

Similarly, the EU’s 2016 Global Strategy for Foreign and Security Policy sets out the EU’s ambitions as a global actor in a dynamically changing world. It recognizes the need for the EU to: “reach out more to... human rights defenders and speak out against the shrinking space for civil society including through violations of the freedoms of speech and association”.¹⁶

¹² For a more detailed account of EU and member state commitments, policies and instruments relating to HRDs, see Appendix II.

¹³ *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*, 13 December 2007, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12007L%2FTEXT>.

¹⁴ *Ensuring protection – European Union Guidelines on Human Rights Defenders*.

¹⁵ Council of the EU, *EU Strategic Framework and Action Plan on Human Rights and Democracy*, 25 June 2012, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf.

¹⁶ EEAS, *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign And Security Policy*, June 2016, http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf. For further analysis of the Global Strategy from a human rights perspective, including its importance for HRDs, see also Amnesty International, “Securing universal human rights through the new EU Global Strategy” (News, 27 July 2016), <https://www.amnesty.eu/news/securing-universal-human-rights-through-the-new-eu-global-strategy/> and “EU Global Strategy must keep human rights at its centre” (News, 15 February 2016), <https://www.amnesty.eu/news/eu-global-strategy-must-keep-human-rights-at-its-centre/>.

With this wide range of commitments, instruments and policies at their disposal, the EU and member states are well-equipped to act for HRDs. Nonetheless, challenges remain in the delivery of their stated commitments in practice.

3.2 THE CHALLENGES

Recent years have seen a widespread questioning of existing human rights norms – including the very definition of an HRD¹⁷ – by countries such as China and Russia,¹⁸ as well as within the EU itself. New initiatives on “win-win cooperation” or “human rights with Chinese characteristics” are emerging alongside a long-standing debate about human rights as a “Western” construct. These challenge the universality and indivisibility of human rights, as well as the EU’s own positioning on human rights as a “Western” actor.

At the same time, challenges around specific human rights issues and for the HRDs working on them, have intensified. At heightened and intersecting risk are women human rights defenders (WHRDs),¹⁹ Lesbian, gay, bisexual, transgender or intersex (LGBTI) and Indigenous defenders, as well as HRDs working on issues related to the land, territory and environment,²⁰ on the rights of migrants and refugees,²¹ or on business and human rights.²² Engaging on their behalf is more challenging in practice, especially when their situation lies at the intersection of different EU instruments (for example, Guidelines on LGBTI rights and HRDs), or between conflicting EU interests.

Finally, just a few of the other developments that challenge the EU to support and protect human rights defenders include:

- The proliferation of restrictive legislation aimed at NGOs and civil society,²³ including in four of five of the countries surveyed in this report;
- HRDs in acute and protracted conflict or crisis situations;
- Communities of exiled HRDs and/or countries with few or no HRDs remaining on the ground (for example Burundi and Saudi Arabia);
- Social media threats, smear campaigns or digital surveillance of HRDs, demanding continued update to EU action in responses to continually evolving threats;
- Situations where EU relations with a third country break down or either lack or lose regular, formal channels for human rights exchanges;
- HRDs or other individuals at risk with dual EU nationality and/or under pressure of *refoulement* from one third country to another (for example, China);²⁴ and

¹⁷ International Service for Human Rights, “UNGA 72: Third Committee adopts resolution on human rights defenders by consensus”, 21 November 2017, <https://www.ishr.ch/news/unga-72-third-committee-adopts-resolution-human-rights-defenders-consensus..>

¹⁸ *Inkstone News*, William Nee, “With the US gone, the world must keep an eye on China’s human rights”, 22 June 2018, <https://www.inkstonenews.com/politics/william-nee-us-pulls-out-unhrc-other-nations-must-be-guard-against-china/article/2152008>; International Service for Human Rights, “General Assembly adopts important resolution on human rights defenders in face of opposition from China and Russia”, 25 November 2015, <https://www.ishr.ch/news/general-assembly-adopts-important-resolution-human-rights-defenders-face-opposition-china-and->

¹⁹ The term WHRDs (women human rights defenders) refers both to female HRDs (who may work on any human rights issue), and to defenders (not necessarily women) who work on women’s rights or on gender-related issues. See UNGA, *Report of the Special Rapporteur on the situation of women human rights defenders*, 10 January 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/004/97/PDF/G1900497.pdf?OpenElement>.

²⁰ See UN HRC, *Resolution recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development*, 20 March 2019, http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_40_L22_Rev1.docx; and UNGA, *Report of the Special Rapporteur on the situation of environmental human rights defenders*, 3 August 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement>. For the Americas specifically, see Amnesty International, *We are defending the land with our blood: Defenders of the land, territory and environment in Honduras and Guatemala* (Index: AMR 01/4562/2016), 1 September 2016, <https://www.amnesty.org/download/Documents/AMR0145622016ENGLISH.PDF>; and *A recipe for criminalization: Defenders of the Environment, Territory and Land in Peru and Paraguay* (Index: AMR 01/8158/2018), 26 April 2018, <https://www.amnesty.org/download/Documents/AMR0181582018ENGLISH.PDF>.

²¹ See UNGA, *Report of the Special Rapporteur on the situation of human rights defenders defending the rights of all people on the move*, 16 January 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/008/51/PDF/G1800851.pdf?OpenElement>.

²² Global Witness, *At what cost? Irresponsible business and the murder of land and environmental defenders in 2017*, 24 July 2018, <https://www.globalwitness.org/en/campaigns/environmental-activists/at-what-cost/>.

²³ Amnesty International, *Laws Designed to Silence*.

²⁴ Amnesty International, “China: Government claims on Gui Minhai ‘ludicrous’” (News, 6 February 2018), <https://www.amnesty.org/en/latest/news/2018/02/china-government-claims-on-gui-minhai-ludicrous/>; *Thailand: Chinese refugees at risk of refoulement* (Index: ASA 39/9180/2018), 28 September 2016, <https://www.amnesty.org/download/Documents/ASA3991802018ENGLISH.pdf>.

- HRDs in the EU itself, or HRDs from third countries under surveillance, threat or risk within the EU.²⁵

Alongside these challenges, EU member states themselves have increasingly divergent positions on human rights in third countries. This EU disunity on human rights was most strikingly witnessed in the failure to agree on a joint EU position on China at the UN Human Rights Council (HRC) in June 2017.²⁶ The question of EU unity comes against the backdrop of long-standing tendencies towards finger pointing in EU human rights debates – the EU may blame member states for blocking action, while member states may “hide behind” EU action.

In a changing world where human rights are coming under assault and states are increasingly disengaging from the international human rights framework, the EU and its member states are increasingly called upon to exercise leadership on human rights and HRDs.

Recognizing the critical situation of HRDs worldwide and the ever more challenging environment for human rights, this report hopes to contribute analysis and practical ways forward at this crucial, challenging moment for human rights defence.

In this constructive spirit, it points out challenges, gaps and open questions, as well as highlighting good practices and innovations with a view to advancing debate and a more ambitious, unified and strategic approach for HRDs in EU external action.

²⁵ See, for example, “Amnesty International condemns constant death threats against employee of Palestinian human rights organization in the Netherlands” (News, 10 August 2016), <https://www.amnesty.nl/actueel/amnesty-condemns-constant-death-threats-against-employee-of-palestinian-human-rights-organisation-in-the-netherlands>.

²⁶ *Reuters*, “Greece blocks EU statement on China human rights at UN”, 18 June 2017, <https://www.reuters.com/article/us-eu-un-rights/greece-blocks-eu-statement-on-china-human-rights-at-u-n-idUSKBN1990FP>.

4. IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN BURUNDI



From 2014 onward, Burundian HRDs, journalists and civil society came under ever-greater pressure in a fast-onset crisis that culminated in an almost total absence of HRDs and civil society space at the time of writing in April 2019. Accelerating harassment and arbitrary detention of HRDs and journalists were the canary in the coal mine for this human rights crisis. At the start of the crisis, the EU was well placed as a donor to Burundi and partner of the government. In response, it initiated intense political dialogue, launched consultations under article 96 of the Cotonou Agreement in October 2015,²⁷ and finally suspended all aid conducted through the government in March 2016.

This response raised serious questions about how the EU and member states deliver on their stated commitment to support and protect HRDs in rapidly evolving crises. Since the activation of article 96, Burundi has become proverbial

for a perceived human rights stalemate, with most diplomats seeing few further options for EU engagement after deploying this “nuclear” option. Today’s situation opens further questions about how the EU and member states can better engage with a country with limited formal channels for discussing human rights. The EU’s leadership on a resolution mandating a Commission of Inquiry on Burundi at the UN HRC is one alternative and suggests other avenues can and should be explored.

²⁷ Council of the EU, *Consultation procedure (article 96)*, <https://www.consilium.europa.eu/en/policies/cotonou-agreement/article-96-cotonou-agreement/>.

At the same time, Burundi presents extraordinary challenges. A large proportion of HRDs and civil society has gone into exile in the region and in the EU, where their need for protection and support are likely to persist.

4.1 BACKGROUND AND MAIN CHALLENGES FACED BY HRDS

Since Burundi obtained independence in 1962, it has witnessed multiple outbreaks of ethnic violence,²⁸ marked each time by grave violations of human rights and crimes under international law.

Following the assassination of the democratically elected President Melchior Ndadaye, a Hutu, in 1993, Burundi suffered a protracted conflict between the predominantly Tutsi army and Hutu rebel groups, in which at least 300,000 Burundians are estimated to have been killed. All sides to the conflict were responsible for committing crimes under international law. In 2000, the Arusha Agreement was brokered to provide for power sharing between the two ethnic groups.²⁹ One of the principal armed Hutu opposition groups, the CNDD-FDD (the National Council for the Defence of Democracy-Forces for the Defence of Democracy), ceased hostilities in 2003 and joined the political process.³⁰ The CNDD-FDD won the 2005 elections and has remained in power ever since.

Tensions arose again in 2010, when opposition parties rejected the results of communal elections in which the CNDD-FDD won 64% of the vote and boycotted the following rounds of presidential and legislative elections. The security situation deteriorated soon afterwards when largely unidentified armed groups clashed with Burundian security services. Many extrajudicial executions were reported in 2010 and 2011.

The government of Burundi once again began to clamp down on political space in 2014, ahead of the 2015 elections. The rights to freedom of association and peaceful assembly began to be unduly restricted for political opposition groups, the press, the Burundian Bar Association, human rights defenders and civil society organizations (CSOs).³¹ HRDs were a key target. Pierre Claver Mbonimpa, founder of the Association for the Protection of Human Rights and Detained Persons (Association pour la Protection des Droits Humains et des Personnes Détenuées, APRODH) and one of Burundi's most respected human rights defenders, was detained from May to September 2014.³²

The EU issued four statements during his detention. In May 2014, the EU delegation issued a local statement expressing concern about Pierre Claver Mbonimpa's arrest,³³ followed by a spokesperson statement at Brussels level in June 2014.³⁴ Both statements failed to call for his immediate release, nor did they recognize his arrest as a symptom of a wider closure of civil society space. Rather, the statements focused on calls for judicial procedures and the rights of the accused to be respected as an essential prerequisite for the forthcoming elections. Similarly, when Pierre Claver Mbonimpa was initially transferred to hospital, then released in September 2014, two EU statements responded to these steps as a sign of respect of national and international law, failing to note his status as an HRD, call for his release and link his detention with the wider human rights situation.³⁵

²⁸ Outbursts of extreme violence occurred in 1965, 1972, 1988, 1991 and 1993. See: Vandeginste S., 'Transitional Justice for Burundi: A Long and Winding Road', in Ambos K., Large J., Wierda M. (eds), *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development*. 2009, Springer, Berlin, Heidelberg.

²⁹ *Arusha Peace and Reconciliation Agreement for Burundi*, 28 August 2000, https://peacemaker.un.org/sites/peacemaker.un.org/files/BI_000828_Arusha%20Peace%20and%20Reconciliation%20Agreement%20for%20Burundi.pdf.

³⁰ *Comprehensive Ceasefire Agreement between the Government of the Republic of Burundi and the National Council for the Defence of Democracy-Forces for the Defence of Democracy*, 16 November 2003, <https://reliefweb.int/report/burundi/global-ceasefire-agreement-between-burundi-and-cndd-fdd-s20031105>.

³¹ Amnesty International, *Burundi: Locked Down. A Shrinking of Political Space* (Index: AFR 16/002/2014), 29 July 2014, <https://www.amnesty.org/download/Documents/4000/afr160022014en.pdf>.

³² See, for example: Amnesty International, "Burundi: Shooting of human rights activist increases climate of fear" (News, 6 August 2015), <https://www.amnesty.org/en/latest/news/2015/08/burundi-shooting-of-human-rights-activist-increases-climate-of-fear/>; Amnesty International, "Burundi: Pierre Claver Mbonimpa has recovered but questions remain on who wanted him dead" (News, 10 August 2018), <https://www.amnesty.org/en/latest/campaigns/2018/08/burundi-pierre-claver-mbonimpa-has-recovered-but-questions-remain-on-who-wanted-him-dead/>.

³³ "Déclaration de la Délégation de l'Union européenne sur le climat politique et l'arrestation du président de l'APRODH", 21 May 2014, http://eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2014052101_fr.pdf.

³⁴ "Déclaration du porte-parole sur la situation politique au Burundi", 10 June 2014, http://www.eeas.europa.eu/archives/docs/statements/docs/2014/140610_01_fr.pdf.


³⁵ "Déclaration locale de l'Union européenne sur la situation du président de l'Association pour la protection des droits humains et des personnes détenues (APRODH), Pierre Claver Mbonimpa, et sur le cas des membres du parti Mouvement pour la Solidarité et la Démocratie", 10 September 2014, http://eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2014/declaration_10092014_fr.pdf; "Déclaration locale de l'Union européenne sur la libération provisoire et conditionnelle du président de l'Association pour la protection des droits humains et des personnes détenues (APRODH), Pierre Claver Mbonimpa", 30 September 2014, http://www.eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2014/declaration_30092014_fr.pdf.

From August 2014 onward, Amnesty International called on the EU and member states as well as the High Representative of the European Union for Foreign Affairs and Security Policy/Vice President of the European Commission (HR/VP) to highlight individual HRD cases and the worsening political and human rights situation in Burundi.³⁶

In August 2015, Pierre Claver Mbonimpa was shot and injured in Bujumbura but survived to escape the country. His son-in-law was killed by unknown assailants in October 2015, and his son was killed in November 2015 after being arrested by the police.

Among EU member states, France's Ministry of Foreign Affairs condemned the attempted murder of Pierre Claver Mbonimpa and called for the perpetrators to be brought to justice.³⁷ Several high-level diplomats visited him in hospital, and diplomatic interventions helped ensure that he was granted permission to leave Burundi for treatment. Members of his immediate family were relocated with support from several EU member states.



 ↑ Pierre Claver Mbonimpa speaks to the press. At a press conference sponsored by the United States Permanent Mission to the United Nations, Burundian human rights activists Pierre Claver Mbonimpa, founder and president of the Association for the Protection of Human Rights and Incarcerated Persons and Agnes Kironera Muvira, member of the Burundi Women and Girl's Movement for Peace and Security, offered their assessment of the year-long ongoing political and humanitarian crisis in the African nation. ©Albin Lohr-Jones/Pacific Press/LightRocket via Getty Images

In a similarly emblematic case, Bob Rugurika, Director of the independent Radio Publique Africaine (RPA), was detained in January 2015 for reporting on senior intelligence officials' involvement in the killing of civilians.³⁸ Among EU member states, the Belgian Parliament called for his immediate release, underlining the disproportionate nature of his detention as well as expressing concerns about press freedom.³⁹

³⁶ Amnesty International, "Letter to Baroness Ashton: As political space shrinks in Burundi, the EU must ensure human rights are upheld" (News, 4 August 2014), <https://www.amnesty.eu/news/letter-to-baroness-ashton-as-political-space-shrinks-in-burundi-the-eu-must-ensure-human-rights-a/>; Amnesty International, "As violence escalates, the EU must do more for Burundi's Human Rights Defenders" (News, 17 November 2015), <https://www.amnesty.eu/news/as-violence-escalates-the-eu-must-do-more-for-burundis-human-rights/>.

³⁷ "Burundi – Attempted murder of Pierre Claver Mbonimpa", 3 August 2015, <https://www.diplomatie.gouv.fr/en/country-files/burundi/events/article/burundi-attempted-murder-of-pierre-claver-mbonimpa-03-08-15>.

³⁸ Amnesty International, "Burundi: Prominent journalist must be released: Bob Rugurika" (News, 23 January 2015), <https://www.amnesty.org/download/Documents/AFR1600012015ENGLISH.pdf>.

³⁹ "Communiqué de presse de l'Union Interparlementaire – Section Burundi", 23 January 2015, http://www.zrihen.be/images/presse/Belgique_Parlementaires_Free_Bob_Rugurika.pdf.

Shortly after the European Parliament adopted resolutions on the cases of Pierre Claver Mbonimpa⁴⁰ in September 2014 and Bob Rugurika⁴¹ in February 2015 calling for their immediate and unconditional release, both men were freed. Indeed, EU and international pressure⁴² is credited with both releases from detention, as EU statements came together with those of other like-minded states and international organizations to contribute to public pressure for the release of those detained.⁴³

Against the background of these arrests and the closure of civil society space, protests broke out in April 2015 against President Pierre Nkurunziza's decision to run for a third term, a step which many Burundians saw as a violation of the Arusha Agreement. In response, the government imposed a blanket ban on demonstrations, violating the rights to freedom of expression and peaceful assembly. The police response was marked by further human rights violations against protesters, including the use of excessive and at times lethal force.⁴⁴

Since 2015, Burundi has seen an upsurge of extrajudicial executions, arbitrary arrests and detention, torture and other cruel, inhuman and degrading treatment, often targeting real or perceived opponents of the ruling party. The government has cracked down on any form of dissent or independent oversight. Five NGOs were suspended in November 2015.⁴⁵ In October 2016, the Minister of Interior and Patriotic Training, Pascal Barandagiye, ordered their permanent closure for "working to tarnish the image of the country and sow hatred and division among the Burundian population". Burundi's oldest human rights NGO, Ligue Iteka, was shut down in January 2017. The President of Action by Christians for the Abolition of Torture, Armel Niyongere, along with two other lawyers working on human rights – Vital Nshimirimana (President of the Forum for the Strengthening of Civil Society - Le Forum pour le Renforcement de la société civile) and Dieudonné Bashirahishize (Vice-President of the East African Law Society) – were disbarred in January 2017 in reprisal for their cooperation with the UN Committee Against Torture, while another, Lambert Nigarura, was suspended.⁴⁶

In 2017, five more human rights defenders were arrested for their human rights work – Germain Rukuki, Nestor Nibitanga, Emmanuel Nshimirimana, Aimé Constant Gatore and Marius Nizigiyimana. In 2018, all were convicted of threatening state security, and received sentences ranging from five to 32 years in prison. Emmanuel Nshimirimana, Aimé Constant Gatore and Marius Nizigiyimana were acquitted on appeal in December 2018 and eventually released in March 2019. The fate and whereabouts of human rights defender Marie-Claudette Kwizera and journalist Jean Bigirimana, who were forcibly disappeared on 10 December 2015 and 22 July 2016 respectively, remain unknown.⁴⁷

Due to this crackdown, the overwhelming majority of Burundi's HRDs had to flee the country for their safety. Some HRDs interviewed for this report estimated that over 100 Burundian HRDs live in exile and struggle to financially support themselves and their families. One Burundian HRD told Amnesty International: "It is difficult to express ourselves here [in exile] – we are followed, though we have freedom of expression. We have a problem obtaining funding."

This can be particularly challenging for WHRDs: "Women HRDs in exile with their husbands and families have difficulties integrating. The husbands... say: 'Have we lost everything due to your struggle?'"

The crackdown on HRDs in Burundi was matched by the country's disengagement on human rights more broadly. In October 2016, Burundi announced its withdrawal from the International Criminal Court, effective the following year. The government declared the three independent experts of the UN Independent

⁴⁰ European Parliament resolution of 18 September 2014 on Burundi, in particular the case of Pierre Claver Mbonimpa (2014/2833(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2014-0023&language=EN&ring=B8-2014-0106>.

⁴¹ European Parliament resolution of 12 February 2015 on Burundi: the case of Bob Rugurika (2015/2561(RSP)),

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0036&language=EN&ring=P8-RC-2015-0144>.

⁴² Radio France Internationale, "Barack Obama souhaite la libération du Burundais Pierre-Claver Mbonimpa", 24 September 2014, <http://www.rfi.fr/afrique/20140924-barack-obama-souhaite-liberation-burundais-pierre-claver-mbonimpa>; UN News, "Jailing of Burundian journalist raises concerns ahead of elections – UN Rights Office", 6 February 2015, <https://menub.unmissions.org/node/100039241>.

⁴³ "Social media sites, local radio and Burundian campaigning groups have been highly active in calling for his release. Each Friday has been labelled by Burundian activists as 'Green Friday' ('vendredi vert') and sympathizers wear green – to represent the colour of the country's prison uniforms – in solidarity with Pierre Claver Mbonimpa." Extract from Amnesty International, *Pierre Claver Mbonimpa is a prisoner of conscience* (Index: AFR 16/003/2014), 22 August 2014, <https://www.amnesty.org/download/Documents/4000/afr160032014en.pdf>.

⁴⁴ Amnesty International, *Burundi: Braving bullets: Excessive force in policing demonstrations in Burundi* (Index: AFR 16/2100/2015), 28 July 2015, <https://www.amnesty.org/download/Documents/AFR1621002015ENGLISH.PDF>.

⁴⁵ The Forum for the Strengthening of Civil Society (Forum pour le Renforcement de la Société Civile, FORSC), Forum for Consciousness and Development (Forum pour la Conscience et le Développement, FOCODE), Christian Action Against Torture (Action Chrétienne pour l'Abolition de la Torture), Association for the Protection of Human Rights and Detained Persons (Association pour la Protection des Droits Humains et des Personnes Détenues, APRDH) and the Network of Honest Citizens (Réseau des Citoyens Probes, RCP).

⁴⁶ Amnesty International, *Burundi: Amnesty International's written statement to the 34th session of the UN Human Rights Council (27 February – 24 March 2017)*, (Index: AFR 16/5678/2017), 14 January 2017, <https://www.amnesty.org/download/Documents/AFR1656782017ENGLISH.pdf>.

⁴⁷ Amnesty International, *Abacu: Keeping a candle burning for victims of violence in Burundi*, 16 May 2018, <https://www.amnesty.org/en/latest/campaigns/2018/05/abacu-keeping-a-candle-burning-for-victims-of-violence-in-burundi/>.

Investigation on Burundi *persona non grata*, and suspended cooperation with the Office of the UN High Commissioner for Human Rights (OHCHR). In 2018, the members of the UN Commission of Inquiry on Burundi were also declared *persona non grata*. OHCHR closed its office in Burundi in February 2019, following a government order in December 2018.

Furthermore, restrictive laws introducing oversight measures and financial controls on national and international NGOs operating in Burundi came into force in 2017.⁴⁸

Today, with the majority of HRDs in exile and civil society space under extreme pressure, the EU and member states are challenged to provide meaningful support and protect HRDs and their work.

4.2 ASSESSMENT OF ACTION BY THE EU AND EU MEMBER STATES

Relations between the EU and Burundi are governed by the Cotonou Agreement, which regulates interactions between the EU and African, Caribbean and Pacific (ACP) countries. The Cotonou Agreement sets out provisions for political dialogue (including human rights benchmarks) between the EU and ACP countries, as well as the delivery of EU development aid funding. It contains clauses relating to respect of the rule of law and human rights standards, as well as provisions for the suspension of the relationship in case of non-compliance.

Prior to 2015, the EU's relationship with Burundi was predominantly a donor-aid recipient one, with the EU providing €196 million in direct budget support to the government in 2004-2015.⁴⁹ The EU member states present on the ground – Belgium, France, Germany and the Netherlands – were involved in providing financial and capacity building assistance to the government and state structures. Belgium, France and the Netherlands supported the training of Burundian police ahead of the 2010 and 2015 elections.⁵⁰

In late 2015, the EU launched an intensified consultation process with Burundi to address the deteriorating human rights situation, as foreseen by the Cotonou Agreement. The EU and its member states also imposed travel restrictions and an asset freeze on four individuals whose activities were seen to be “undermining democracy or obstructing efforts to achieve a political solution to the crisis”.⁵¹

At the same time, the EU was receiving hundreds of applications from HRDs requesting emergency relocation grants because they feared for their safety. Civil society representatives interviewed for this report believe that the EU delegation was not prepared to handle such a high number of requests and lacked both the human and the financial resources to meet the demand. In addition, several interviewed felt that the EU delegation's existing network and knowledge of HRDs in Burundi did not allow it to make timely and effective decisions on allocating funding for urgent relocation of individuals at risk.

In the absence of notable progress in the consultations with the government, the Council of the EU concluded consultations under Article 96 of the Cotonou Agreement in March 2016 and suspended direct financial support to the Burundian administration, while maintaining assistance to the population and civil society.⁵² EU member states took a similar approach – Belgium and the Netherlands suspended support to the police and army reform programme in 2015 following reports of excessive use of force by these entities.⁵³

The government of Burundi responded by shutting down lines of communication with the EU, including dialogue between the EU and relevant line ministries, and by refusing to continue political dialogue, including on human rights. A demonstration was organized in front of the EU delegation in January 2017 to protest against a European Parliament resolution on Burundi.⁵⁴ The authorities also accused the EU delegation of

⁴⁸ National NGOs are now required to receive the approval of the Ministry of Interior or the appropriate ministry for all their activities or face sanctions, which could include closure of their offices and suspension of activities. Any foreign funding must be transferred through the Central Bank. National NGOs are required to renew their registration biannually. The law limits the formation of coalitions of NGOs working in the same sector. The activities of international NGOs operating in Burundi must be aligned with the programmes and priorities set by the government. International NGOs are obliged to sign programme implementation agreements with the relevant ministerial departments and/or local partners. See Amnesty International, “Burundi: Suspension of NGOs will throw vital services into disarray” (News, 2 October 2018), <https://www.amnesty.org/en/latest/news/2018/10/burundi-suspension-of-ngos-will-throw-vital-services-into-disarray/>.

⁴⁹ Delegation of the EU to Burundi, *Burundi and the EU*, 11 May 2016, https://eeas.europa.eu/delegations/burundi/996/burundi-and-eu_en.

⁵⁰ Amnesty International, *Burundi: Braving bullets: Excessive force in policing demonstrations in Burundi*.

⁵¹ Council of the EU, *Burundi: the EU adopts sanctions against 4 individuals*, 1 October 2015, <https://www.consilium.europa.eu/en/press/press-releases/2015/10/01/burundi-sanctions/>; *Burundi: EU renews sanctions until 31 October 2019*, 25 October 2018, <https://www.consilium.europa.eu/en/press/press-releases/2018/10/25/burundi-l-ue-renouvelle-les-sanctions-jusqu-au-31-octobre-2019/>.

⁵² Delegation of the EU to Burundi, *Burundi and the EU*.

⁵³ Government of the Netherlands, “The Netherlands suspends aid to Burundi”, 14 May 2015, <https://www.government.nl/latest/news/2015/05/14/the-netherlands-suspends-aid-to-burundi>.

⁵⁴ *European Parliament resolution of 19 January 2017 on the situation in Burundi*, (2017/2508(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0004&language=EN&ring=P8-RC-2017-0075>.

financing individuals working to destabilize the country, referring to the provision of relocation funds to an HRD, Pacifique Nininahazwe.⁵⁵

The activation of article 96 of the Cotonou Agreement and the consequent suspension of aid through the Burundian government represented one of the strongest political tools at the EU's disposal. With the subsequent breakdown of political dialogue and overall relations between the EU and Burundi, EU diplomats interviewed for this report asserted that it had become impossible to apply fully the EU Guidelines on HRDs. Still, they stressed that the EU continued to work in the spirit of the Guidelines, with a focus on individual cases and the rights of women, youth and other groups at risk.

At the same time, the EU has been actively engaging with regional and international mechanisms to keep the human rights situation in Burundi on the international agenda. In 2016, the EU led an initiative to establish the Commission of Inquiry on Burundi at the UN HRC,⁵⁶ which continues its work to date. The EU likewise cooperates closely with UN and African Union counterparts in Burundi.⁵⁷

4.3 EU EFFORTS TO IMPLEMENT THE HRD GUIDELINES

CLOSED-DOOR DIPLOMACY

Prior to 2016, EU diplomats reported having useful discussions with the government within a justice sector working group, coordinated by the UN office in Bujumbura, which brought together donors and relevant ministries. However, this ongoing dialogue and the EU's role as key donor and partner to Burundi could no longer be leveraged after the activation of article 96. Its activation impacted on the EU's opportunities to engage the Burundian government on human rights, and the general breakdown in relations narrowed the space for formal human rights dialogue and limited interaction with the Burundian government. However, EU diplomats reported still issuing demarches on human rights issues.

Despite the challenges, HRDs welcomed EU engagement on behalf of detained HRDs even in the absence of tangible outcomes across the board. A Burundian HRD interviewed for this report praised the EU's commitment to the article 96 process, "showing that the EU holds firm to values and the need to improve the situation and that they give value to the advocacy of HRDs".

PUBLIC ACTION

The EU diplomats asserted that the current state of EU-Burundi relations made it difficult to achieve meaningful outcomes through public action, pointing to this constraint as the reason for the lack of statements at local level and a shift in political dialogue to Brussels as well as to regional and international levels. At the same time, EU diplomats remain locked in debate about how to engage on HRDs and human rights meaningfully and safely – to "do no harm".

Since the activation of article 96, only one local statement was issued by the EU delegation and member state representations in 2017. This statement formally refuted accusations by the Burundian government of EU "destabilization" of Burundi and explicitly affirmed the importance of human rights and HRDs in EU external action:⁵⁸

The government of Burundi just published a communiqué making allegations of EU implication in a project of destabilization of Burundi. We formally refute these accusations.

They are based on an intentionally erroneous interpretation of a program of support to human rights defenders. The external action of the EU is founded on the promotion of human rights worldwide and the protection of human rights defenders.

⁵⁵ IWACU English News, "Burundi Charges European Union", 16 December 2017, <http://www.iwacu-burundi.org/englishnews/burundi-charges-european-union/>.

⁵⁶ UN HRC, "Human Rights Council adopts four resolutions, creates commission of inquiry on Burundi", 30 September 2016, <https://www.ohchr.org/EN/newsEvents/Pages/DisplayNews.aspx?NewsID=20619&LangID=E>.

⁵⁷ EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates- Burundi, https://eeas.europa.eu/sites/eeas/files/compiled_country_updates_annual_report_on_human_rights_and_democracy_2017_clean_0.pdf.

⁵⁸ Delegation of the EU to Burundi, "Déclaration locale suite aux accusations de volonté de déstabilisation du Burundi", 7 June 2017, https://eeas.europa.eu/delegations/burundi/27703/d%C3%A9claration-locale-suite-aux-accusations-de-volont%C3%A9-de-d%C3%A9stabilisation-du-burundi_en.

Any durable resolution of the crisis in Burundi must take into account past and present human rights violations, and the protection of people and organisations that work to this end.

From this point onward, all statements on Burundi were issued from outside the country – at Brussels level, in HR/VP and spokespersons' statements,⁵⁹ in Council Conclusions,⁶⁰ and statements at multilateral fora such as the UN HRC.

In May 2018, the HR/VP made a declaration on behalf of the EU ahead of the constitutional referendum in Burundi, directly referencing the arbitrary and harsh prison sentence of HRD Germain Rukuki:⁶¹

The EU remains deeply concerned by the human rights situation in Burundi, which undermines any initiative for reconciliation, peace and justice. It highlights in particular, the persistence of extrajudicial executions and arbitrary arrests, (including of human rights defenders such as Germain Rukuki, who faces a sentence which is as arbitrary as it is harsh) and the lack of political space and restrictions on freedom of expression and association. In this context, the implementation of the two resolutions adopted at the 36th session of the Human Rights Council in Geneva remains a political priority.

The chair of the European Parliament's subcommittee on human rights, Pier Antonio Panzeri, went a step further a few days later by calling for Germain Rukuki to be immediately released.⁶² In her July 2018 speech to the European Parliament, the HR/VP once again cited the EU's concern about ongoing human rights violations in the country.⁶³

Overall, the EU made 21 statements between January 2014 and April 2019 referring to HRDs or human rights organizations, alongside other communications through the HR/VP (such as in the European Parliament's plenary) or Council Conclusions.⁶⁴ Of these, 10 used the term "human rights defender" (above all since mid-2017) and seven referred to the names of individual HRDs. Still, only one EU statement directly called for the release of detained individuals. Five statements also raised the cases of organizations with activities suspended or closed down by the authorities. Eight expressed concern about human rights violations suffered by HRDs or members of civil society, including harassment, ill-treatment or lack of due process.

Interestingly, 13 of these 21 EU statements were issued *after* the suspension of aid under article 96, nine of them at the UN HRC, suggesting a shift in EU engagement towards the multilateral level. Three of these referred specifically to concerns about potential reprisals for HRDs' work and/or for their cooperation with international mechanisms. This body of statements confirms that EU public positioning is indeed still possible beyond the activation of article 96 both at bilateral and multilateral levels, allowing for explicit messages to be sent on individuals at risk and on the importance of HRDs for EU foreign policy. From the perspective of the "do no harm" debate, EU statements to date have not had any demonstrable negative fallout on EU-Burundi relations nor on HRDs themselves – the most cogent argument for an even more explicit EU position to call for the release of detained HRDs.

While without significant positive outcomes in individual cases, this relatively consistent communication highlights EU human rights concerns to the government and civil society. However, EU statements on Burundi are often general and descriptive rather than explicitly demanding the release of human rights defenders.⁶⁵ Ultimately, while these statements demonstrate an EU willingness to speak out on human rights in Burundi, they also represent a missed opportunity for the EU to more explicitly call for specific action and for the release of those detained.

⁵⁹ EEAS, "Statement by the Spokesperson on the banning of Ligue Iteka in Burundi", 16 January 2017, https://eeas.europa.eu/delegations/burundi/18316/statement-spokesperson-banning-ligue-iteka-burundi_en.

⁶⁰ Council Conclusions on Burundi, 22 June 2015, <https://www.consilium.europa.eu/en/press/press-releases/2015/06/22/fac-burundi/>.
⁶¹ "Declaration by the HR/VP Federica Mogherini, on behalf of the European Union on the situation in Burundi ahead of the constitutional referendum", 8 May 2018, <https://www.consilium.europa.eu/en/press/press-releases/2018/05/08/declaration-de-la-haute-representante-federica-mogherini-au-nom-de-l-union-europeenne-sur-la-situation-au-burundi-en-amont-du-referendum-constitutionnel/>.

⁶² European Parliament, "DROI chair Panzeri calls on authorities to release human rights defender Rukuki", 16 May 2018, <http://www.europarl.europa.eu/committees/en/droi/publications.htm?id=20180516CPU18822>.

⁶³ FedericaMogherini.net, Debate on Burundi at the European Parliament's plenary, 5 July 2018, <http://www.federicamogherini.net/debate-on-burundi-at-the-european-parliaments-plenary/?lang=en>.

⁶⁴ Several Council Conclusions were issued on Burundi in 2015-2016. Of particular interest are the Council Conclusions of 16 March 2015, which make explicit reference to the prosecution of civil society engaged in human rights defence, and express concern that arrests and sentences risk undermining the credibility of the electoral process and justice system. *Conclusions du Conseil des Ministres des Affaires étrangères de l'Union européenne du 16 mars 2015 sur la situation politique au Burundi dans le contexte pré-électoral*, 16 March 2015, http://eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2015/cp_conclusions_du_conseil_sur_la_situation_politique_a_u_burundi_preelectoral_160315_fr.pdf.

⁶⁵ In a similar vein, the EU's 2017 annual report on human rights and democracy on the world noted simply that "there have been significant cases of human rights defenders arrested and detained" in Burundi. *EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates-Burundi*.

In interviews with Amnesty International, HRDs highlighted how EU human rights commitments were not sufficiently reflected in public actions in response to the crisis. Burundian HRDs felt it was crucial for the EU to take a stronger public stance on key issues, such as the arbitrary detention of HRDs. One said:

... the case of political prisoners requires a very firm intervention of the international community. I don't think the EU should adopt a line of silence... If they are supporting human rights in the long term, they should maintain the main actions, [show that] the EU has principles. Yes, there are actions that cannot be taken without [an HRD's] consent, but they can still cite their case.

Burundian HRDs also criticized EU statements that decried the overall human rights situation in the country but failed to mention specific cases and the daily challenges HRDs face. They refuted the idea that avoiding communication on individual cases might shield HRDs from reprisals. One said:

An argument I heard from certain partners is that their involvement risks worsening an HRD's situation or confirming that they are in contact with the international community. If they are already arrested, then this information is already there. The regime is already aware that embassies are following the case closely. Local silence does not imply that the HRD is not in contact with the outside...

Burundian HRDs welcomed European Parliament resolutions on Burundi citing individual cases of HRDs, most recently in July 2018,⁶⁶ pointing to the need for the EU to take an equally vocal stance of support to individual HRDs in the country.

TRIAL MONITORING

Since the onset of the crisis in 2015, HRDs welcomed EU and member state trial observation as they reported feeling supported by this activity and believed it had a positive influence on the judicial authorities.

HRDs interviewed for this report stated that the EU had been very visible in its actions such as trial monitoring before 2015 but pointed to a decline in trial monitoring since the crisis.

HRDs underlined that visible EU action provides an invaluable boost in morale to people who are prosecuted simply for their human rights work, and that trial monitoring by other bodies could not replace EU diplomatic presence at trials. One said:

The EU said sometimes they are not very visible because of the anti-Western context, but that there is the AU [African Union] and OHCHR. I said that there is not one partner that replaces another, and the EU presence on the ground, accompanying HRDs, is patchy.

ENGAGEMENT WITH HRDS

Before 2015, the EU delegation organized regular consultations with HRDs based in Bujumbura, at times in the presence of EU member state ambassadors. EU diplomats reported that when the delegation was alerted to HRDs at risk, staff met the individuals to take note of their circumstances and need for protection. EU diplomats likewise recalled visiting HRDs when they were threatened or at risk and organizing prison and hospital visits to defenders.

EU member state missions are reported to have also actively engaged with HRDs, establishing spaces for exchange that were very well received by HRDs. One said:

They initiated a dinner with several ambassadors to exchange on the case. It was just me and the ambassadors. That comforted us that day.

Still, many Burundian HRDs reported first learning of the existence of the EU Guidelines on HRDs in 2015 – through word of mouth from international contacts responding to the crisis.

Before and since the 2015 crisis, HRDs reported that their contacts with EU diplomats often happen solely on an ad hoc basis and depend on the personal commitment of individual diplomats. The crisis only weakened EU contacts with the few remaining HRDs in the country. One said:

Before, there was a sort of discussion space that they established, like meetings where several HRDs were invited on the basis of their work and the opportunities that the EU could consider

⁶⁶ European Parliament resolution of 5 July 2018 on Burundi (2018/2785(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0305&language=EN&ring=P8-RC-2018-0333>.

in the development of their actions – we want them to try to restore this... They need a model to engage to the maximum with HRDs who will tell them the best way to give support.

As a result, for some, the EU delegation was not the first port of call when they felt threatened. One said:

The local delegation is a bit bureaucratic and it's a bit difficult to master the partnership with them. They should organize meetings to raise awareness of the Guidelines. [Even] if they are on the website, it's not all HRDs who can consult them. If there is a problem, HRDs address themselves to [international NGOs]. It shows that HRDs are not sufficiently informed... EU should have a programme to share these Guidelines with partners and HRDs who are active.

Today, EU diplomats report meeting with Burundian HRDs in the country whenever the security situation allows it, and the EU's 2017 annual report on human rights and democracy in the world noted that "EU Heads of Missions have continued to follow up on cases of human rights defenders who are allegedly in danger."⁶⁷

Some Bujumbura-based HRDs reported they were able to easily arrange a meeting with the EU delegation in Burundi, while others said they met EU representatives on the margins of UN human rights mechanism sessions. Diplomats reported meeting on occasion with HRDs in exile, although this is not a systematic practice.

In response to Burundi's protracted human rights crisis, EU contact with HRDs is challenged to go beyond the current ad hoc, person-dependent approach, which reaches mainly already well-established HRDs. HRDs reported that their colleagues based in remote locations, with limited or no access to mobile phone or internet connection, were generally unaware of measures the EU could take to protect them if they found themselves at risk.

The almost complete closure of civil society space in Burundi and the burgeoning community of exiled Burundian HRDs challenge the EU to seek meaningful alternatives to reinforce its network with a widened range of HRDs.

FINANCING, TRAINING AND CAPACITY BUILDING

The EU has multiple instruments available to contribute to the protection of HRDs and journalists at risk in Burundi, including the European Instrument for Democracy and Human Rights (EIDHR) emergency fund, supplemented with medium and long-term support for training, capacity building and project funding for CSOs. Globally both the EU delegation and the EU member state missions assist HRDs in building international networks by supporting travel to conferences and international fora. Through the EIDHR, the EU also co-finances international NGOs working in partnership with local CSOs to support HRDs⁶⁸; this is complemented by support from EU member states.

Burundian HRDs forced into exile and operating from outside of the country also continue to receive support. One reported:

... the EU saw that the HRDs in exile could continue to follow what is happening in country, so we got together as civil society to ask them to continue to support us. They didn't delay much... I can say that the EU helped HRDs in exile... something that we really appreciate.

Other HRDs reported having difficulty in obtaining EU funding to support their response to restrictive legal changes. One said:

We don't have a legal expert to help us analyse the new legal texts. We asked for support for a legal expert to better analyse the texts and the Constitution – they said they don't give that support.

Stepping up consultation and engagement between the EU and HRDs can address gaps in support – particularly crucial in an ongoing crisis.

Ultimately, EU funding will not be sufficient on its own to support or protect Burundian HRDs. That requires sustained EU diplomatic presence and visibility. The risks of providing financial support without full political and public backing are evident in this high-risk situation.

⁶⁷ EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates-Burundi.

⁶⁸ EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates-Burundi.

RELOCATION AND VISA SUPPORT

As the 2015 crisis deepened, the need for funding for urgent relocation peaked with the EU delegation receiving exceedingly high numbers of requests in a short period. EU diplomats reported assisting Burundian HRDs with urgent relocation by providing for their travel costs or accompanying their transport to the airport. EU member state missions also reported helping HRDs by facilitating visas for them and their families. One HRD reported receiving assistance from an EU member state mission to participate in a rest and respite programme.

In retrospect, some EU diplomats viewed the vetting process for individuals requesting relocation as one of the weakest points of the EU's response for HRDs during the 2015 crisis. This was particularly true for HRDs based outside Bujumbura or not in "elite" circles. While the EU delegation enlisted the support of trusted partners such as the UN office and established HRD contacts to help with vetting, several international CSOs told Amnesty International that they felt this process was poorly managed, lacked coordination and delayed timely protection to HRDs.

Overall, HRDs felt the process of obtaining relocation support from the EU was too lengthy and bureaucratic, even if the highest diplomatic levels were involved in a case. Some HRDs also reported feeling they did not have sufficient information about the relocation assistance offered by the EU. One said:

I saw that [the] EU helped some who were in the country to flee, but we didn't know what mechanism they went through. We remained thirsty to know how it worked, especially for those of us still at risk in the country.

HRDs also pointed out that the EU lacked a strategy for temporary local protection measures until an HRD could be successfully relocated.

Following relocation, exiled HRDs still faced specific challenges related to their everyday lives and work, including continuing threats and surveillance by both their home and host states – a further challenge for the EU. One reported:

HRDs in exile require a lot of support and vigilance on the part of the EU. For example, if an HRD is arrested in exile, this requires a rapid intervention on the part of the EU... There were those who were arrested in Tanzania. There are some states that evoke a big concern, principally Tanzania, but I also believe that Uganda and Rwanda, even Kenya, all the states in the region are subjects of concern, given the political evolution and state relations that could have an impact on [exiled] HRDs.

Civil society interlocutors also raised questions about how to reinforce the depth and frequency of EU interaction with exiled HRDs, especially given the presence of numerous Burundian HRDs in Brussels, in direct proximity to the EEAS and member state permanent representations.

ENGAGEMENT AT REGIONAL AND INTERNATIONAL FORA

In September 2016, the EU tabled a resolution at the UN HRC to set up a Commission of Inquiry on the human rights situation in Burundi, a mechanism whose one-year mandate has since been renewed twice.⁶⁹ In September 2018, the government declared the three members of the UN Commission of Inquiry on Burundi *persona non grata* and in December 2018, the government requested OHCHR to permanently close its office in the country. The work of the Commission of Inquiry continues at the time of writing.

Since the activation of article 96, the interactive dialogue sessions with the Commission of Inquiry at the UN HRC have become a key venue for the EU to voice concern about human rights violations in Burundi. At the HRC, EU statements explicitly refer to the restrictions on civil society and reprisals suffered by HRDs.⁷⁰ The EU position in these sessions may also be shared publicly on social media by the EU delegation in Geneva (@EU_UNGeneva).⁷¹

At the 40th session of the HRC in March 2019, the EU statement lists individual HRDs, expressing concern about "sentences pronounced in violation of the right to a fair trial in the cases of several HRDs, such as Germain Rukuki, Nestor Nibitanga, Emmanuel Nshimirimana, Aimé Constant Gatore and Marius Nizigama,

⁶⁹ UN HRC, *Commission of Inquiry on Burundi*, <https://www.ohchr.org/en/hrbodies/hrc/coiburundi/pages/coiburundi.aspx>.

⁷⁰ See, for example, EEAS, "HRC 39 – Dialogue interactif avec le Haut-Commissaire aux Droits de l'Homme sur la situation au Burundi", 11 September 2018, https://eeas.europa.eu/delegations/burundi/50306/hrc-39-dialogue-interactif-avec-le-haut-commissaire-aux-droits-de-lhomme-sur-la-situation-au_en.

⁷¹ @EU_UNGeneva, 17 September 2018, Twitter, https://twitter.com/EU_UNGeneva/status/1041616230581514240.

as well as their ill treatment” and “calls for their immediate release”.⁷² While Burundi has refused to engage with the Commission of Inquiry and has actively attempted to undermine its work,⁷³ the EU-led establishment of the Commission has been instrumental in keeping Burundi’s human rights crisis, including individual cases, on the international agenda – and likewise suggests a way forward for the EU to engage through multilateral fora where in-country human rights action is obstructed.

VERTICAL AND HORIZONTAL COORDINATION

At the time of writing, the EU delegation, EU member state missions, countries such as Switzerland and the USA, and the AU and UN representatives present in Burundi meet monthly to exchange information and coordinate action on individual cases (such as private diplomacy, public statements, trial observation and hospital visits).

Still, some international CSOs express concern that such coordination risks leading to a lowest common denominator – with divergent approaches and/or lack of political will hampering overall efforts to more vocally address the human rights violations taking place in Burundi.

4.4 CONCLUSIONS AND RECOMMENDATIONS

Against the background of an acute human rights crisis, the almost total closure of civil society space and the shutdown of exchange with the authorities, the EU response for HRDs in Burundi points to several good practices. These include:

- statements and actions on detention or attacks on HRDs, in particular Pierre Claver Mbonimpa and Germain Rukuki; and
- boosted engagement in international human rights fora as formal dialogue channels diminish in country.

At the same time, the experience in Burundi highlights the urgent need for the EU to develop a more concrete, strategic approach to supporting HRDs in a spiraling human rights crisis. Based on the experience in Burundi, it will be crucial for the EU to develop tools for assessing and responding to the onset of a human rights crisis and to identify indicators of possible wider upcoming repression, such as the arbitrary detention and prosecution of HRDs. Developing such strategies and tools could be key both to respond in a timely manner to a crisis as it unfolds and to develop alternative courses of action where established channels close down.

Substantive alternatives include:

- intensifying engagement at a multilateral level;
- deeper collaboration with the UN and other like-minded actors; and
- supporting HRDs in country and in exile.

Still, none of these can serve as an alibi for EU inaction elsewhere. The persistent debate on “do no harm” in Burundi must be tested against realities on the ground and by consultation with HRDs themselves, who argue strongly for a more robust and visible EU position in support of HRDs.

⁷² EEAS, “HRC 40 – Intervention de l’UE: Dialogue interactif avec la Commission d’enquête sur le Burundi”, 12 March 2019, https://eeas.europa.eu/headquarters/headquarters-homepage/59653/hrc-40-intervention-de-lue-dialogue-interactif-avec-la-commission-denqu%C3%AAt-sur-le-burundi_en.

⁷³ UN, “UN rights chief denounces Burundi for “belligerent and defamatory” attack on inquiry team”, 25 October 2018, <https://news.un.org/en/story/2018/10/1024162>.



TO IMPROVE IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN BURUNDI, THE EU AND MEMBER STATES SHOULD:

- **Pro-actively develop alternative channels to engage and influence the authorities on the human rights situation**, even if formal channels have been closed, as was the case after article 96 was activated.
- **Step up local networks in country to continue sustained monitoring of the human rights situation** in the absence of formal dialogue with the government or when denied access to locations such as places of detention or court hearings. Match this by continuing to engage with the Burundian authorities for EU and EU member state access to legal proceedings. Ensure protection and emergency support for HRDs and other contacts still in country to protect them from reprisals.
- **Invest long term in the protection and capacity of HRDs remaining in country during a human rights crisis**, ensuring that the EU and its member states adopt a strategic and sustained approach in response to the almost complete closure of civil society space and the protracted nature of the human rights crisis. Complement this with long-term exchange with, and support for, HRDs in exile.
- **Provide flexible and urgent funds to HRDs and their family members** in case of need, independently of whether they already receive project funding from the EU.
- **Build measures into the successor of the Cotonou Agreement to consult with civil society** regularly and to consider its input on the human rights situation in preparation for political dialogue.

5. IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN CHINA



The EU and China have a long and fraught relationship as regards human rights, plagued by many tensions around the annual EU-China human rights dialogue; conflicting interests leading to divisions among EU member states; proactive Chinese efforts to divide and counter EU efforts; and persistent challenges in mainstreaming EU engagement on human rights, including if and how individual cases are raised at summits and high-level visits.

However, in recent years, the EU has developed relatively strong public positions on human rights in China. Together with existing human rights policies of the EU, including the HRD Guidelines, this positioning represents a solid point of departure for more strategic and effective engagement on human rights in China. Now, as always, the challenge is to deliver on these commitments, in particular on the defence of the universality, interdependence and indivisibility of human rights; working towards making an impact on individual cases; and maintaining EU member state unity and consistent mainstreaming of EU human rights concerns across a wide range of exchanges with China.

5.1 BACKGROUND AND MAIN CHALLENGES FACED BY HRDS

China continues to repress severely a range of human rights, including the rights to:

- freedom of expression;
- seek, receive and impart information;
- freedom of association and peaceful assembly;
- freedom of thought, conscience, religion and belief;
- fair trial and freedom from arbitrary detention, torture and other ill-treatment; and
- equality and non-discrimination.

In recent years, human rights defenders in China have faced increasing intimidation, harassment, arbitrary detention and attacks.⁷⁴ The government has enacted several national security laws that present serious threats to the protection of human rights and HRDs.⁷⁵ Police often arbitrarily detain HRDs outside formal detention facilities, sometimes without access to a lawyer for long periods, thereby exposing them to the risk of torture and other ill-treatment.⁷⁶ HRDs interviewed for this report referred to the systematic targeting of the “new five black” categories⁷⁷ of defenders: human rights lawyers, representatives of religious minorities, political dissidents, online activists and advocates for disadvantaged social groups. HRDs active in remote and minority regions such as the Xinjiang Uighur Autonomous Region and Tibet remain particularly at risk.

Beginning on 9 July 2015, almost 250 lawyers and activists were questioned or detained by state security agents in an unprecedented government crackdown on human rights lawyers and activists, sometimes referred to as the “709” crackdown.⁷⁸ At least 12 of those detained – including prominent human rights lawyers Zhou Shifeng, Sui Muqing, Li Heping, Xie Yang and Wang Quanzhang – were held in “residential surveillance in a designated location”, which allows the authorities to detain individuals suspected of involvement in state security crimes for up to six months outside the formal detention system without access to legal counsel or families.

On 28 January 2019, Wang Quanzhang, the last lawyer awaiting a verdict in connection with the 2015 mass crackdown, was sentenced to four and a half years in prison for “subverting state power”.⁷⁹ Police originally detained Wang Quanzhang on 3 August 2015. It was only in July 2018 that a lawyer informed his family that he was alive and being held in Tianjin. His trial on 26 December 2018 followed more than three years in pre-trial detention. Wang Quanzhang worked on issues considered sensitive by the Chinese government, such as defending religious freedom and representing members of the New Citizens’ Movement, a network of grassroots activists promoting government transparency and exposing corruption. Due to his role in representing such cases, he had faced frequent intimidation prior to his detention.

In addition to raids on their homes and offices, HRDs’ family members have also been subjected to police surveillance, harassment and restrictions on their freedom of movement, in an attempt to exert pressure on defenders to end their activities.⁸⁰ In 2016 and 2017, the authorities televised “confessions” and arranged

⁷⁴ Amnesty International, *Amnesty International Annual Report 2016/17*, China, p. 118, <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>; *Amnesty International Annual Report 2015/16*, p. 117, <https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF>.

⁷⁵ Amnesty International, *Submission to the NPC Standing Committee’s Legislative Affairs Commission on the Criminal Law Amendment (9) (second draft)*, (Index: ASA 17/2205/2015), 5 August 2015, <https://www.amnesty.org/download/Documents/ASA1722052015ENGLISH.pdf>; “Scrap draconian new national security law” (News, 1 July 2015), <https://www.amnesty.org/en/latest/news/2015/07/china-scrap-draconian-new-national-security-law/>; *Submission to the NPC Standing Committee’s Legislative Affairs Commission on the draft “Cyber Security Law”* (Index: ASA 17/2206/2015), 5 August 2015, <https://www.amnesty.org/download/Documents/ASA1722062015ENGLISH.pdf>; *Submission to the NPC Standing Committee’s Legislative Affairs Commission on the second draft Foreign Non-Governmental Organizations Management Law* (Index: ASA 17/1776/2015), 2 June 2015, <https://www.amnesty.org/download/Documents/ASA1717762015ENGLISH.pdf>; *Submission to the NPC Standing Committee’s Legislative Affairs on the draft “National Intelligence Law”* (Index: ASA 17/6412/2017), 5 June 2017, <https://www.amnesty.org/download/Documents/ASA1764122017ENGLISH.pdf>; “Why China must scrap new laws that tighten the authorities’ grip on religious practice” (News, 31 August 2017), <https://www.amnesty.org/en/latest/news/2017/08/china-must-scrap-new-laws-tighten-authorities-grip-on-religious-practice/>.

⁷⁶ Amnesty International, *China: No end in sight: torture and forced confessions in China* (Index: ASA 17/2730/2015), 11 November 2015, <https://www.amnesty.org/download/Documents/ASA1727302015ENGLISH.PDF>; “China: New supervision law a threat to human rights” (News, 20 March 2018), <https://www.amnesty.org/en/latest/news/2018/03/china-new-supervision-law-threat-to-human-rights/>; *China: Submission to the NPC Standing Committee’s Legislative Affairs Commission on the draft “Supervision Law”* (Index: ASA 17/7553/2017), 6 December 2017, <https://www.amnesty.org/download/Documents/ASA1775532017ENGLISH.pdf>.

⁷⁷ China Digital Space, “New five black categories”, https://chinadigitaltimes.net/space/New_five_black_categories.


⁷⁸ Amnesty International, “Third Anniversary of the lawyers crackdown in China: Where are the human rights lawyers?” (News, 9 July 2018), <https://www.amnesty.org/en/latest/campaigns/2018/07/china-human-rights-lawyers-crackdown-third-anniversary/>.

⁷⁹ Amnesty International, “China: Disgraceful 4 and a half years prison term for human rights lawyer Wang Quanzhang” (News, 28 January 2019), <https://www.amnesty.org/en/latest/news/2019/01/china-disgraceful-prison-term-fo-human-rights-lawyer-wang-quanzhang/>.

⁸⁰ See, for example: *The Guardian*, “Detained Chinese lawyer’s 16-year-old son disappears while trying to flee to US”, 10 October 2015,

interviews of detained lawyers and HRDs by mainland state media and two pro-government Hong Kong media outlets, undermining their right to the presumption of innocence and greatly diminishing their chance for fair trials. The authorities have also disbarred human rights lawyers as a tactic to curb their work.⁸¹



 ↑ Illustrations of eight lawyers who were detained or went missing in July 2015 as part of a nationwide crackdown. They are: Top (left to right): Wang Quanzhang , Liu Shihui , Liu Sixin , Li Heping. Bottom (left to right): Sui Muqing , Liu Xiaoyuan , Wang Yu , Zhou Shifeng. @badiucao

Other human rights activists have been arbitrarily detained solely for exercising their right to freedom of expression, accused of “leaking state secrets”,⁸² “inciting subversion of state power”⁸³ and other vague and overly broad charges such as “picking quarrels and stirring up trouble”.⁸⁴ Advocates for Tibetan language education,⁸⁵ anti-corruption,⁸⁶ anti-discrimination,⁸⁷ women’s rights,⁸⁸ workers and labour rights⁸⁹ and pro-democracy activists⁹⁰ have also been targeted in a systematic campaign to silence dissent about Chinese government policies.

<https://www.theguardian.com/world/2015/oct/10/detained-chinese-lawyers-16-year-old-son-disappears-while-trying-to-flee-to-us>; Amnesty International, “Prominent blogger’s family detained over letter lambasting President Xi” (News, 25 March 2016),

<https://www.amnesty.org/en/latest/news/2016/03/china-prominent-bloggers-family-detained-over-letter-lambasting-president-xi/>; Amnesty International, *China: Further Information: Poet Under Illegal House Arrest ‘Prepared to Die’: Liu Xia* (Index: ASA 17/8361/2018), 8 May 2018, <https://www.amnesty.org/download/Documents/ASA1783612018ENGLISH.pdf>.

⁸¹ Human Rights Watch, “China: Free Rights Lawyers, Reinstate Law Licenses”, 5 July 2019, <https://www.hrw.org/news/2018/07/05/china-free-rights-lawyers-reinstate-law-licenses>; *Jurist*, Patrick Poon, “Disbarment, Suspension and Harassment”, 30 March 2018, <https://www.jurist.org/commentary/2018/03/patrick-poon-outcast-lawyers-in-china/>.

⁸² Amnesty International, *China: Immediately and Unconditionally Release Huang Qi & Ensure Access to Prompt Medical Care for all Detained Human Rights Defenders* (Index: ASA 17/9358/2018), 5 November 2018, <https://www.amnesty.org/download/Documents/ASA1793582018ENGLISH.pdf>.

⁸³ Amnesty International, *Website founder Faces an Additional Charge: Liu Feiyue* (Index: ASA 17/6980/2017), 24 August 2017, <https://www.amnesty.org/download/Documents/ASA1769802017ENGLISH.pdf>; Amnesty International, *Torture fears for detained HRD: Zhen Jianghua* (Index: ASA 17/1717/2017), 27 September 2017, <https://www.amnesty.org/download/Documents/ASA1717172017ENGLISH.pdf>.

⁸⁴ Amnesty International, *China: Two singer-songwriter activists criminally detained: Xu Lin and Liu Sifang* (Index: ASA 17/336/2017), 25 October 2017, <https://www.amnesty.org/download/Documents/ASA173362017ENGLISH.pdf>.

⁸⁵ Amnesty International, “China: Tibetan activist handed grotesquely unjust 5 year prison sentence after featuring in New York Times video” (News, 22 May 2018), <https://www.amnesty.org/en/latest/news/2018/05/china-tibetan-activist-unjust-sentence-nyt-video/>.

⁸⁶ Amnesty International, “Anti-corruption activist to be freed but relentless crackdown goes on” (News, 14 July 2017), <https://www.amnesty.org/en/latest/news/2017/07/china-anti-corruption-freed-but-relentless-crackdown-goes-on/>.

⁸⁷ Amnesty International, *Activists remain in detention in China*, 6 July 2015, <https://www.amnesty.org/download/Documents/ASA1720052015ENGLISH.pdf>; Amnesty International, *Two activists released in China*, 15 July 2015, <https://www.amnesty.org/download/Documents/ASA1720972015ENGLISH.pdf>.

⁸⁸ Front Line Defenders, “Su Changlan released after completing three-year sentence”, 27 October 2017, <https://www.frontlinedefenders.org/en/case/case-history-su-changlan>.

⁸⁹ See, for example: Amnesty International, *Chinese labour activist held incommunicado* (Index: ASA 17/0264/2019), 26 April 2019, <https://www.amnesty.org/download/Documents/ASA1702642019ENGLISH.pdf>.

⁹⁰ Amnesty International, “China: Release supporters of Hong Kong pro-democracy protests” (News, 28 September 2015), <https://www.amnesty.org/en/press-releases/2015/09/china-release-supporters-of-hong-kong-protests/>; “China: Callous guilty verdicts against supporters of Hong Kong pro-democracy protests” (News, 31 March 2017), <https://www.amnesty.org/en/latest/news/2017/03/china-callous-guilty-verdicts-supporters-of-hong-kong-pro-democracy-protests/>.

Introduced in 2017, the Foreign NGO Management Law imposes increased restrictions on foreign and domestic NGOs in terms of registration, reporting, banking, hiring requirements and fundraising.⁹¹ The wide discretion granted to the police to oversee and manage the work of foreign NGOs working with Chinese civil society creates the possibility for authorities to intimidate and prosecute HRDs and NGO staff. Foreign NGOs that have not yet registered could face a freeze of their bank accounts, shutting down of premises, confiscation of assets, suspension of activities and detention of staff.⁹²

At the global level, China remains ambiguous in its commitment to a rules-based international order. While China has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and signed the International Covenant on Civil and Political Rights (ICCPR), it has yet to ratify the latter over 20 years on, despite repeatedly stating its intention to do so.⁹³ The Constitution of the Peoples' Republic of China was amended in 2004 to include a reference to respecting and preserving human rights, such as the rights to freedom of expression and freedom of religious belief, yet also includes undue limitations on exercising these rights.⁹⁴

In international fora, Chinese authorities are keen on changing the narrative and creating alternatives to the current international human rights framework.⁹⁵ One recent example was seen at the UN HRC in March 2018, where China presented a resolution on "Promoting the International Human Rights Cause through Win-Win Cooperation". This resolution proposed an alternative to the established human rights system, promoting cooperation and mutual respect while eschewing universal and indivisible rights and signaling China's ever more assertive role in multilateral fora.⁹⁶

5.2 ASSESSMENT OF ACTION BY THE EU AND EU MEMBER STATES

Over the past decade, EU-China relations have grown in importance, progressing from a primarily trade-oriented relationship towards one covering a broad spectrum of issues, reflecting the EU's growing foreign policy role and China's increased financial power and global influence. Formal EU-China relations encompass an annual summit at the highest political level, ministerial meetings and more than 60 sectoral dialogues, including an annual dialogue on human rights. Interactions continue to expand into new areas, as exemplified by the 2016 launch of the EU-China Legal Affairs Dialogue, aimed at enhancing exchanges on best practices relating to the rule of law.⁹⁷

EU policy documents outlining its approach towards China contain numerous commitments on human rights, of varying strength. Jointly adopted with China in 2013, the EU-China 2020 Strategic Agenda for Cooperation governs the overall EU-China relationship and contains relatively weak statements on deepening "exchanges on human rights at the bilateral and international level on the basis of equality and mutual respect" and strengthening the human rights dialogue with "constructive discussions on jointly agreed key priority areas"⁹⁸ – language consistent with the worrying "win-win" discourse presented by China on the global stage.

By contrast, in 2016, the Foreign Affairs Council adopted strongly worded Council Conclusions on China:

[T]he promotion of human rights and the rule of law will continue to be a core part of the EU's engagement with China. The ongoing detention and harassment of human rights defenders, lawyers, journalists and labour rights defenders and their families remains a major concern. The EU will continue to urge China to fulfil its international obligations, to abide by international standards, and to respect its own constitutional safeguards and stated commitment to upholding the rule of law. The EU continues to call on China to ensure a safe and enabling

⁹¹ For further information, see Amnesty International, *Submission to the NPC Standing Committee's Legislative Affairs Commission on the second draft Foreign Non-Governmental Organizations Management Law*.

⁹² Amnesty International, *Laws Designed to Silence*.

⁹³ The status of ratification of other international human rights instruments is available on the OHCHR website: <https://indicators.ohchr.org/>.

⁹⁴ *Constitution of the People's Republic of China*, 14 March 2004, http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm; an unofficial translation by NPC Observer with amendments in 2018 on lifting the term limit of the presidency, 11 March 2018, <https://npcobserver.com/2018/03/11/translation-2018-amendment-to-the-p-r-c-constitution/>.

⁹⁵ *China Change*, Andrea Worden, "China Pushes 'Human Rights With Chinese Characteristics' at the UN", 9 October 2017, <https://chinachange.org/2017/10/09/china-pushes-human-rights-with-chinese-characteristics-at-the-un/>; *Inkstone News*, William Nee, "With the US gone, the world must keep an eye on China's human rights".

⁹⁶ Human Rights Watch, "China's 'Win-Win' Resolution Is Anything But", 5 March 2018, <https://www.hrw.org/news/2018/03/05/chinas-win-win-resolution-anything>; *Inkstone News*, William Nee, "With the US gone, the world must keep an eye on China's human rights".

⁹⁷ EEAS, *Factsheet on EU-China Relations*, 9 April 2019, https://eeas.europa.eu/sites/eeas/files/factsheet_eu-china_09_04_2019_0.pdf.

⁹⁸ *EU-China 2020 Strategic Agenda for Cooperation*, 2013, <https://eeas.europa.eu/sites/eeas/files/20131123.pdf>.

*environment for civil society – including foreign NGOs – and to protect the rights of people belonging to minorities, not least in Tibet and Xinjiang.*⁹⁹

The Joint Communication of the HR/VP and European Commission released ahead of these Conclusions urges the EU member states to use “the full range of diplomatic, advocacy and other tools at both bilateral and multilateral level” to promote the respect of human rights in China.¹⁰⁰

Most recently, the European Commission issued a joint communication ahead of a European Council discussion on EU-China relations (21-22 March 2019) and the EU-China summit of 9 April 2019.¹⁰¹ This communication establishes several key lines and concerns for EU engagement with China on human rights:

The EU acknowledges China's progress in economic and social rights. However, in other respects, the human rights situation in China is deteriorating, notably in Xinjiang and regarding civil and political rights, as witnessed by the continuing crackdown on human rights lawyers and defenders. The human rights of EU and other foreign citizens in China must be protected.

The EU will strengthen cooperation with China to meet common responsibilities across all three pillars of the United Nations – Human Rights, Peace and Security, and Development.

[China's] investments [in third countries] frequently neglect socioeconomic and financial sustainability and may result in high-level indebtedness and transfer of control over strategic assets and resources. This compromises efforts to promote good social and economic governance and, most fundamentally, the rule of law and human rights.

Despite these stated commitments to human rights and HRDs, the EU's work to implement its HRD Guidelines in China faces multiple constraints, including:

- the lack of coherence among EU and member states policies in their approach to China;
- EU and member states political, trade, investment, security and other interests which compete for airtime with human rights issues; and
- China's multiple government-to-government meetings, ministerial encounters and dialogues with the EU and its member states, which challenge unity in EU positioning across all levels of relations with China.¹⁰²

China has also spearheaded a separate cooperation format with central and eastern European nations, the 16+1,¹⁰³ in what some see as an attempt to connect more closely with both EU member states and non-EU countries and to undermine overall EU unity.¹⁰⁴ Even if the EU attends as an observer,¹⁰⁵ China is also involved in the infrastructure and finance sectors throughout the EU, in particular in southern Europe.¹⁰⁶ Most recently, in March 2019, Italy signed a memorandum of understanding on China's Belt and Road Initiative, as the first G7 member and first EU member state to do so.¹⁰⁷

⁹⁹ European Council, *EU Strategy on China – Council conclusions (18 July 2016)*, <http://data.consilium.europa.eu/doc/document/ST-11252-2016-INIT/en/pdf>.

¹⁰⁰ *Joint communication from the HR/VP and the European Commission, Elements for a new EU strategy on China*, 22 June 2016, http://eeas.europa.eu/archives/docs/china/docs/joint_communication_to_the_european_parliament_and_the_council_-_elements_for_a_new_eu_strategy_on_china.pdf.

¹⁰¹ European Commission, *Joint Communication to the European Parliament, the European Council and the Council: EU-China – A strategic outlook*, 12 March 2019, <https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf>.

¹⁰² EEAS, *EU-China dialogue architecture*, November 2015, https://eeas.europa.eu/sites/eeas/files/2015_november_eu-china_dialogue_architecture.jpg; and European Council on Foreign Relations, François Godement and Abigaël Vasselier, *China at the gates: A new power audit of EU-China relations*, 1 December 2017, pp. 21-22, https://www.ecfr.eu/publications/summary/china_eu_power_audit7242#.

¹⁰³ This cooperation format has evolved into a “17+1” format with the invitation of Greece to the initiative. *The Diplomat*, Emilian Kavalski, “China's ‘16+1’ Is Dead? Long Live the ‘17+1’”, 29 March 2019, <https://thediplomat.com/2019/03/chinas-161-is-dead-long-live-the-171/>.

¹⁰⁴ The March 2019 joint communication on EU-China relations expresses this concern explicitly (bold in original): “Neither the EU nor any of its Member States can effectively achieve their aims with China without **full unity**. In cooperating with China, **all Member States, individually and within sub-regional cooperation frameworks**, such as the 16+1 format, have a responsibility to ensure consistency with EU law, rules and policies.” European Commission, *Joint Communication to the European Parliament, the European Council and the Council: EU-China – A strategic outlook*, p. 2. See also on 16+1 and its implications for the EU: European Council on Foreign Relations, François Godement and Abigaël Vasselier, *China at the gates: A new power audit of EU-China relations*.

¹⁰⁵ European Parliamentary Research Service, *China, the 16+1 format and the EU*, September 2018, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625173/EPRS_BRI\(2018\)625173_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625173/EPRS_BRI(2018)625173_EN.pdf).

¹⁰⁶ European Council on Foreign Relations, François Godement and Abigaël Vasselier, *China at the gates: A new power audit of EU-China relations*, p. 7.

¹⁰⁷ *South China Morning Post*, “Italy becomes first Western European nation to sign up for China's belt and road plan”, 23 March 2019, <https://www.scmp.com/news/china/diplomacy/article/3002986/china-wants-invest-ports-maritime-transport-italy-xi-jinping>; *POLITICO*, “Silk Road opens a rift in Italy's government”, 17 March 2019, <https://www.politico.eu/article/italy-comes-to-silk-road-juncture-with-chinese-mou/>.

Divergent interests of EU member states have had a tangible effect on EU unity and its jointly agreed human rights policy towards China. In a watershed move in June 2017, Greece blocked an EU statement on human rights violations in China at the UN HRC.¹⁰⁸

Diplomats interviewed by Amnesty International referred to the presumed risks of openly defying China as exemplified by the case of Norway. Following the award of the Nobel Peace Prize to Chinese dissident and HRD Liu Xiaobo, Norway's relations with China were frozen for over six years between 2010 and 2017, with some impact on trade.¹⁰⁹ However, despite numerous statements on human rights and HRDs in China, the EU and its individual member states have not faced similar repercussions, suggesting that concerns based on Norway's experience are unfounded and that sustained, critical and public engagement on individual cases remains possible without substantial negative fallout for EU-China relations.

EU diplomats interviewed for this report also stressed the unpredictability of the decisions of the Chinese government on individual HRD cases. Most were cautious about how much the EU could influence the human rights situation in China, with any positive outcomes most likely the result of a mix of international pressure, media attention and domestic considerations.

Still, in recent years, the EU has developed a body of relatively strong and public positions on human rights in China.¹¹⁰ The scope and robustness of these statements, which name specific human rights defenders and often explicitly ask for their release, would be extraordinary for an EU stance in any country, but even more so for a key strategic partner like China. Unfortunately, however, these explicit statements are not always followed up consistently across various exchanges with China, even in the case of Liu Xia, where vocal EU and member state advocacy demonstrated concrete results.

In July 2018, shortly before the EU-China summit, Liu Xia, poet, artist and widow of HRD and Nobel Peace Prize laureate Liu Xiaobo, was released and allowed to travel to Germany after nearly eight years under house arrest.¹¹¹ EU and member state officials had regularly appealed for her release both in private and in public, showing that sustained, committed and high-level pressure can produce positive results. In a statement after the EU human rights dialogue with China, the EU welcomed the release of Liu Xia and linked it with other HRD cases but failed to use the EU-China summit just days later to echo the same messages publicly at the highest level.¹¹²

On occasion, the EU and member states have mainstreamed discussion on human rights issues into other exchanges with China on trade or economic and legal affairs. A notable example is the European Commissioner for Trade mentioning the protection of the right to freedom of expression as a prerequisite for a favourable business climate. In a speech delivered during the EU-China Business Summit in 2017,¹¹³ EU Trade Commissioner Cecilia Malmström made a strong link between trade and economic development and the need for "respect for the rule of law, with independent lawyers and judges who can operate freely and independently". The Commissioner further highlighted that "limits to online freedom also affect peoples' lives and the business climate", delivering a message that EU commitments to human rights and a rules-based international order will remain closely interlinked with its economic and trade stances.

On another occasion, German Chancellor Angela Merkel underlined the importance of regular dialogue with China, ranging from human rights to cooperation in the areas of science and technology, while also expressing concerns about the case of Liu Xia.¹¹⁴ Other examples of mainstreaming include bringing human rights issues

¹⁰⁸ *The Guardian*, "Greece blocks EU's criticism at UN of China's human rights record", 18 June 2017, <https://www.theguardian.com/world/2017/jun/18/greece-eu-criticism-un-china-human-rights-record>.

¹⁰⁹ Human Rights Watch, "Which Norway will visit China?", 5 April 2017, <https://www.hrw.org/news/2017/04/05/which-norway-will-visit-china>.

¹¹⁰ See, for example, EEAS, "The European Union and China held their 37th Human Rights Dialogue", 3 April 2019, https://eeas.europa.eu/topics/external-investment-plan/60561/european-union-and-china-held-their-37th-human-rights-dialogue_en; "EU Delegation to China Statement on International Human Rights Day", 9 December 2018, https://eeas.europa.eu/delegations/china/55020/eu-delegation-statement-international-human-rights-day_en; "Statement by the Spokesperson on the recent conviction of Chinese human rights defender Tashi Wangchuk", 23 May 2018, eeas.europa.eu/headquarters/headquarters-homepage/45089/statement-spokesperson-recent-conviction-chinese-human-rights-defender-tashi-wangchuk_en; and "Statement by the Spokesperson on the verdicts of Wu Gan and Xie Yang in China", 27 December 2017, https://eeas.europa.eu/delegations/china/37921/statement-spokesperson-verdicts-wu-gan-and-xie-yang-china_en. For a full list of EU statements from 2014 to April 2019, see Appendix III.

¹¹¹ Amnesty International, "China: Liu Xia free and on her way to Germany" (News, 10 July 2018), <https://www.amnesty.org/en/latest/news/2018/07/china-liu-xia-free-on-way-to-germany/>.

¹¹² EEAS, "The European Union and China held their annual Human Rights Dialogue", 10 July 2018, https://eeas.europa.eu/delegations/iran/48217/european-union-and-china-held-their-annual-human-rights-dialogue_en; EEAS, "Joint statement of the 20th EU-China Summit", 17 July 2018, https://eeas.europa.eu/delegations/china_en/48424/Joint%20statement%20of%20the%2020th%20EU-China%20Summit.

¹¹³ European Commission, *Speech by European Commissioner for Trade Cecilia Malmström, EU-China Business Summit*, 2 June 2018, http://trade.ec.europa.eu/doclib/docs/2017/may/tradoc_155609.pdf.

¹¹⁴ *Radio Free Europe*, "Merkel In China To Press For Dialogue On Human Rights", 24 May 2018, <https://www.rferl.org/a/merkel-in-china-to-press-for-dialogue-on-human-rights/29246831.html>.

into the EU-China legal affairs dialogue, and member states with closer trade and economic relations more vocally raising human rights concerns with China.¹¹⁵

Still, the EU and its member states remain challenged to raise human rights concerns with China against the backdrop of a complex relationship fraught with conflicting interests, EU disunity, increasing repression in China, and challenges in achieving impact for HRDs.¹¹⁶ At the same time, a body of strong EU statements and evolving efforts towards mainstreaming point the way towards meaningful engagement with China on human rights. A consistent, fully mainstreamed and strategic approach will be key to the EU engaging China effectively on human rights in the future. As the European Commission itself notes in its 2019 Joint Communication, doing so will be “an important measure of the quality of the bilateral relationship”.¹¹⁷

5.3 EU EFFORTS TO IMPLEMENT ITS HRD GUIDELINES

CLOSED-DOOR DIPLOMACY

Since 1982, an annual human rights dialogue provides the primary formal framework for closed-door discussions between the EU and China. During the exchange, the EU has the opportunity to raise concerns about HRDs and to hand over a list of persons of concern, especially those detained, to their Chinese counterparts. For the EU, the dialogue is a crucial moment to link its closed-door diplomacy with its public positioning as the dialogue winds up with an EU press release. The dialogue could also feed into wider exchanges at the EU-China summit held in the same period – an opportunity that has never yet been fully used.

Indeed, the EU-China human rights dialogue is proverbial for being an often-politicized process that risks sectioning off human rights issues from wider political discussions between the EU and China, despite EU commitments to human rights mainstreaming. The EU-China human rights dialogue has regularly been delayed or cancelled by the Chinese authorities,¹¹⁸ while the European Parliament¹¹⁹ has highlighted the need to strengthen it and academics¹²⁰ and human rights organizations¹²¹ fundamentally question the dialogue in its current form. Unlike EU dialogues with many other third countries, where an exchange with civil society is envisaged,¹²² China has not participated in such exchanges, despite specific opportunities to meet civil society, including at the 2019 human rights dialogue.¹²³ Since 2017, Amnesty International and other NGOs have jointly called on the EU to suspend the dialogue in line with the 2016 Council Conclusions rather than further weaken its credibility by participating in an exercise marked by “a lack of clearly articulated benchmarks for progress, vulnerability to Chinese pressure, and exclusion of independent Chinese voices”.¹²⁴

Beyond the annual human rights dialogue, EU diplomats reported that they attempt to observe trials (see below) and also raise individual HRD cases with the Ministry of Foreign Affairs, the Ministry of Public Security and other government bodies. In response to arrests, diplomats reported calling detention centres to ask for

¹¹⁵ European Think-tank Network on China, *Political values in Europe-China relations*, December 2018, http://pure.diiis.dk/ws/files/2551241/ETNC_full_report_2018.pdf. This report observes that “[t]he higher China’s share in a country’s overall trade, the more active and vocal that state tends to be in promoting democracy, human rights and the rule of law in its relations with China”, p. 16.

¹¹⁶ Amnesty International Netherlands, *A ritual dance with the dragon? Dutch government’s response to crackdowns on human rights defenders in China*, June 2016, p. 39, <http://nl.dayoftheendangeredlawyer.eu/wp-content/uploads/sites/2/2015/01/AI-16-20-China-Report-A-Ritual-Dance-with-the-Dragon.pdf>.

¹¹⁷ European Commission, *Joint Communication to the European Parliament, the European Council and the Council: EU-China – A strategic outlook*, p. 2.

¹¹⁸ European Council on Foreign Relations, François Godement and Abigaël Vasselier, *China at the gates: A new power audit of EU-China relations*, p. 25.

¹¹⁹ European Parliament news, “EU-China Human Rights Dialogue should be strengthened, says DROI Chair on the occasion of the 35th dialogue”, 22 June 2017, <http://www.europarl.europa.eu/news/en/press-room/20170622IPR78107/eu-china-human-rights-dialogue-to-be-strengthened-says-droi-chair>.

¹²⁰ Katrin Kinzelbach and Hatla Thelle, ‘Talking Human Rights to China: An Assessment of the EU’s Approach’, *The China Quarterly* 205, March 2011, 60-79, https://www.jstor.org/stable/41305194?seq=1#page_scan_tab_contents.

¹²¹ Amnesty International and other NGOs, “Re: The EU, China and Human Rights”, 13 March 2019, https://amnestyeu.azureedge.net/wp-content/uploads/2019/03/Joint-NGO-letter-EU-China-human-rights_13-03-2019_EU.pdf; “Re: 2018 EU-China Summit”, 13 June 2018, <https://amnestyeu.azureedge.net/wp-content/uploads/2018/10/ASA1786242018ENGLISH.pdf>; “EU: Suspend China Human Rights Dialogue”, 19 June 2017, <https://www.amnesty.eu/news/eu-suspend-china-human-rights-dialogue-1052/>; “Re: EU-China summit”, 22 May 2017, https://amnestyeu.azureedge.net/wp-content/uploads/2018/10/EU_China_letter_May_22nd.pdf.

¹²² *EU Guidelines on human rights dialogues with third countries*, https://eeas.europa.eu/sites/eeas/files/eu_guidelines_on_human_rights_dialogues_with_third_countries.pdf.

¹²³ “The Human Rights Dialogue continued on 2 April with a meeting with the civil society organizations. The Chinese delegation did not participate in this meaningful exchange of views.” EEAS, “The European Union and China held their 37th Human Rights Dialogue”.

¹²⁴ Human Rights Watch, “EU: Suspend China human rights dialogue”, 19 June 2017, <https://www.hrw.org/news/2017/06/19/eu-suspend-china-human-rights-dialogue>.

clarification within the first 24 hours of an HRD's arrest. Sometimes, EU diplomats call for HRDs to be guaranteed the right to access legal representation or that they be allowed to leave the country. At other times, diplomats say interventions are simply intended to let the authorities know that there is international attention for an individual case. EU diplomats reported joint efforts between the EU and its member states for the release of Liu Xia from house arrest and the release of lawyers detained in the "709" crackdown.

In addition to EU exchanges with China, Germany, France, Sweden, the Netherlands and the UK conduct bilateral human rights dialogues with China. EU efforts towards mainstreaming are echoed by similar efforts among member states that still appear ad hoc in nature. The UK's Foreign and Commonwealth Office reports UK diplomats maintaining contacts with HRDs and their families in China and the UK, with ministers raising human rights concerns and individual cases in bilateral meetings with their Chinese government counterparts.¹²⁵ Denmark uses its trade and economics dialogue with China to raise human rights concerns.¹²⁶ Dutch state representatives are reported to have repeatedly raised their concerns about the treatment of HRDs in China.¹²⁷

Chinese HRDs reported that authorities in China are responsive to international pressure, especially when it comes from a variety of sources and channels. The combination of media attention with international and domestic pressure, said one HRD, "has effected positive change [on the Chinese authorities], even though they seem not to care".

PUBLIC ACTION

EU statements referring to individual Chinese HRDs are predominantly made outside the country, at headquarters level by the spokesperson of the HR/VP,¹²⁸ following the annual human rights dialogue or in multilateral fora such as the UN HRC.¹²⁹ From January 2014 to late April 2019, the EU made between six and 10 statements on HRDs annually, usually including names of individuals. There was a total of 46 EU statements in this period explicitly mentioning HRDs, activists or human rights lawyers. Of those:

- 38 mentioned the names of individuals, 35 specifically used the term "human rights defender";
- 35 asked for their release, an end to their detention and harassment and/or welcomed a release;
- 19 called for access to a lawyer, family and/or medical care, and occasionally for diplomatic visits or trial observation; and
- 12 explicitly mentioned allegations or reports of torture – all these statements date after the UN Committee Against Torture review of China in December 2015.

In a relatively exceptional local initiative, on International Human Rights Day (10 December) in 2016, 2017 and 2018, the EU delegation issued statements¹³⁰ expressing deep concern about the situation of the rights to freedom of information, expression and association in China, naming several detained HRDs and calling for an end to their detention and harassment.

In a speech delivered to the European Parliament in April 2019,¹³¹ the HR/VP described the human rights situation in China, including the continued arrest and detention of HRDs. She then stressed the imperative of

¹²⁵ UK Foreign and Commonwealth Office, *Human Rights and Democracy: the 2017 Foreign and Commonwealth Office report*, <https://www.gov.uk/government/publications/human-rights-and-democracy-report-2017/human-rights-and-democracy-the-2017-foreign-and-commonwealth-office-report>.

¹²⁶ European Council on Foreign Relations, François Godement and Abigaël Vasselier, *China at the gates: A new power audit of EU-China relations*, p. 86.

¹²⁷ Amnesty International Netherlands, *A ritual dance with the dragon? Dutch government's response to crackdowns on human rights defenders in China* p. 25.

¹²⁸ See, for example: "Statement by the Spokesperson on the recent conviction of Chinese human rights defender Tashi Wangchuk", 23 May 2018, www.eeas.europa.eu/headquarters/headquarters-homepage/45089/statement-spokesperson-recent-conviction-chinese-human-rights-defender-tashi-wangchuk_en.

¹²⁹ See, for example, "40th session of the UN HRC – EU Statement: Human Rights situation that require the Council's attention", 12 March 2019, https://eeas.europa.eu/headquarters/headquarters-homepage/59657/hrc-40-eu-statement-human-rights-situation-require-councils-attention_en.

¹³⁰ "European Union Statement on International Human Rights Day," 9 December 2016, https://eeas.europa.eu/headquarters/headquarters-homepage_en/16949/European%20Union%20Statement%20on%20International%20Human%20Rights%20Day; "Local Statement by the Delegation of the European Union on International Human Rights Day", 8 December 2017, https://eeas.europa.eu/delegations/china/37014/local-statement-delegation-european-union-international-human-rights-day_en; "EU Delegation to China Statement on International Human Rights Day", 9 December 2018, https://eeas.europa.eu/delegations/china/55020/eu-delegation-statement-international-human-rights-day_en.

¹³¹ *Speech by HR/VP Federica Mogherini at the European Parliament urgency debate on China, notably the situation of ethnic and religious minorities*, 18 April 2019, https://eeas.europa.eu/delegations/china/61227/speech-high-representativevice-president-federica-mogherini-european-parliament-urgency-debate_en. See also: *Speech by HR/VP Mogherini at the plenary session of the European Parliament on the*

the EU passing a clear and unified message on human rights to China at a time when few other global actors may do so:



"[We are] passing the clear message that for Europeans, human rights are not less important than economic interests. On the contrary, they are as if not more important than our economic interests..."

I stress how important it is for us to be consistent and coherent across the European Union institutions on these messages because there might be a tendency in our interlocutors – not only when it comes to China but also with others when we talk about human rights – of thinking that it is the European Union institutions that raise human rights issues and that Member States or individual Members of Parliament do business. I think it is very important that we are consistent in the messages that we pass. And I think that we are possibly making some progress in this consistency and this unity; that our Chinese interlocutors see that this is important for every single European, every single European Member State, every single political family of this hemicycle...

No other global power is doing this in the world today. The global trend on human rights is not encouraging at all. I believe this is exactly one more reason for us not to give up. We cannot afford, as Europeans, to stop engaging. We will continue to advocate for the respect of human rights, be it in China or all around the world."

This speech was a rare instance of a high-level EU official making an explicit push for EU mainstreaming of human rights in exchanges with China across all areas of relations (with economic and human rights concerns juxtaposed) and all European institutions, including the EU and member states. Crucially, this effort is linked to the situation of HRDs and is placed squarely in the context of a changing world with shifting allegiances to human rights and the multilateral order.

Despite this wide range of statements and debate about EU messaging, the EU has a disappointing record of raising human rights publicly at EU-China summits. In 2019, a strongly worded EU press release after the EU-China human rights dialogue, 132 including a long list of individual cases, found little echo at the EU-China summit just one week later.

By contrast, the joint statement issued by the EU and China following the summit acknowledges that "all human rights are universal, indivisible, interdependent and interrelated" but then goes on to highlight how EU-China human rights discussions take place outside the remit of the summit – within the framework of the human rights dialogue and at UN or other multilateral fora, "on the basis of equality and mutual respect".¹³³ The language on universality of rights is crucial and picks up on the EU press release after the human rights dialogue referring to the "importance of the universality, indivisibility and interdependence of human rights". Yet this affirmation is ultimately undercut by jointly agreed language of "equality and mutual respect", suggesting acceptance for the alternative vision of human rights that China actively promotes at international level internationally.

Still, following the 2019 summit, European Council President Donald Tusk affirmed that "human rights are – from our European point of view – as important as economic interests" and that he had "underlined the need to maintain the EU-China Human Rights Dialogue... expressed again the EU's serious concerns as regards human rights, and raised a number of individual cases".¹³⁴

In 2018, official communications at the summit¹³⁵ included little reference to human rights, despite the release of Liu Xia and a strongly worded EU press release following the human rights dialogue mentioning individual cases just days before.¹³⁶ Yet, according to media accounts, European Commission President Jean-Claude

state of EU-China relations, 11 September 2018, https://eeas.europa.eu/delegations/china/50337/speech-hrvp-mogherini-plenary-session-european-parliament-state-eu-china-relations_en.

¹³² EEAS, "The European Union and China held their 37th Human Rights Dialogue".

¹³³ "Joint statement of the 21st EU-China summit", 10 April 2019,

https://eeas.europa.eu/delegations/china_en/60836/Joint%20statement%20of%20the%2021st%20EU-China%20summit

¹³⁴ "Remarks by Donald Tusk after the EU-China summit in Brussels", 9 April 2019, <https://www.consilium.europa.eu/en/press/press-releases/2019/04/09/remarks-by-president-donald-tusk-after-the-eu-china-summit-in-brussels/>. This was just two weeks after Tusk told the European Parliament: "And of course, I can't imagine not having human rights on the agenda. I may be old fashioned, but I still think that human rights are at least as important as trade." ("Report by President Donald Tusk to the European Parliament on March European Council meetings", 27 March 2019, <https://www.consilium.europa.eu/en/press/press-releases/2019/03/27/report-by-president-donald-tusk-to-the-european-parliament-on-march-european-council-meetings/>).

¹³⁵ EEAS, "Joint statement of the 20th EU-China Summit", 11 July 2018,

https://eeas.europa.eu/delegations/china_en/48424/Joint%20statement%20of%20the%2020th%20EU-China%20Summit.

¹³⁶ EEAS, "The European Union and China held their annual Human Rights Dialogue", 10 July 2018,

https://eeas.europa.eu/delegations/iran/48217/european-union-and-china-held-their-annual-human-rights-dialogue_en.

Juncker privately raised the issue of the arbitrary detention of human rights lawyers and defenders during the summit.¹³⁷

By contrast, in 2017, European Council President Donald Tusk raised human rights concerns and went much further. He publicly stated: “our concern about freedom of expression and association in China, including the detention of human rights lawyers and defenders, as well as the situation of minorities such as Tibetans and Uighurs”.¹³⁸

By reverting solely to closed-door diplomacy during the EU-China summits in 2018 and 2019, the EU leadership lost out on the opportunity to mainstream human rights discussions, reiterate human rights messages at the highest level and build on hard-earned progress on cases like that of Liu Xia and others raised at the human rights dialogue. This lack of consistency surely did not go unnoticed by Chinese counterparts and other observers of EU-China relations.

Chinese HRDs expressed concern about such practices. One stated:

There was criticism of the “709” crackdown but [EU member states] still do business in China. If your partner can give you money to soothe criticism, the pressure resulting from the criticism drops.

Such separation of discussions into “human rights” and “other” topics raises concern that human rights may be marginalized to facilitate strategic conversations during summits and other high-level strategic meetings.

The challenge remains of backing up EU public statements consistently across all EU-China relations. EU-China relations see some of the most charged debates about the merits of the EU speaking out on human rights, and the merits of individual member states speaking out or working through jointly agreed EU positions. The EU and member states can meaningfully engage China on human rights with a consciously strategic and ambitious use of public diplomacy. The EU and member states should take full advantage of the interplay between bilateral and multilateral engagement, allowing for initiatives by individual member states as well as a round-robin approach through joint EU statements on human rights.

Chinese HRDs interviewed for this report welcomed EU public action, affirming that EU statements on detained HRDs are likely to improve their situation and make them less susceptible to torture and other ill-treatment, even if they almost never lead to a release before the end of a sentence. In a few instances, however, public international support has led to the release of HRDs, such as the five women’s rights activists released on bail weeks after being detained before International Women’s Day 2015, and the release of Gao Yu on medical parole later that year.¹³⁹

TRIAL MONITORING

EU diplomats reported attempting to observe trials of HRDs, but said that Chinese authorities usually refuse requests, often saying that the courtroom is full. At times, diplomats reported waiting outside the courthouse to obtain information at the close of a hearing.¹⁴⁰ Media reports confirm instances of diplomats being physically pushed back from courtrooms, as during the trial of human rights lawyer Pu Zhiqiang.¹⁴¹

Still, the EU rarely publicizes and denounces Chinese authorities’ regular refusal of trial observation even if it is common knowledge among diplomats. While both the UK’s Foreign and Commonwealth Office¹⁴² and the EU¹⁴³ denounced the treatment of diplomats attempting to monitor the trial of Pu Zhiqiang, such statements have been the exception (3 of 46 statements between January 2014-April 2019). Explicit and consistent EU positioning on the lack of diplomatic access to trials, as well as on fair trial and due process, could be a

¹³⁷ POLITICO Brussels Playbook, 16 July 2018, <https://www.politico.eu/newsletter/brussels-playbook/politico-brussels-playbook-foes-and-friends-all-eyes-on-asia-vestager-vs-google-again/>.

¹³⁸ “Remarks by President Donald Tusk after the EU-China summit in Brussels”, 2 June 2017, <https://www.consilium.europa.eu/en/press/press-releases/2017/06/02/tusk-remarks-eu-china-summit-june/>.

¹³⁹ Amnesty International Netherlands, *A ritual dance with the dragon? Dutch government’s response to crackdowns on human rights defenders in China* p. 44-45.

¹⁴⁰ Amnesty International Netherlands, *A ritual dance with the dragon? Dutch government’s response to crackdowns on human rights defenders in China* p. 48.

¹⁴¹ The Guardian, “Scuffles outside Beijing court as human rights lawyer Pu Zhiqiang goes on trial”, 14 December 2015, <https://www.theguardian.com/world/2015/dec/14/violence-outside-beijing-court-as-human-rights-lawyer-pu-zhiqiang-goes-on-trial>.

¹⁴² The Guardian, “UK criticizes ‘unacceptable’ treatment of diplomats at China trial of human rights lawyer”, 17 December 2015, <https://www.theguardian.com/world/2015/dec/17/uk-criticises-unacceptable-treatment-of-diplomats-at-china-trial-of-human-rights-lawyer>.

¹⁴³ EEAS, “Statement by the Spokesperson on the sentencing of Chinese Human Rights lawyer, Mr. Pu Zhiqiang”, 22 December 2015, https://eeas.europa.eu/delegations/china/3015/statement-spokesperson-sentencing-chinese-human-rights-lawyer-mr-pu-zhiqiang_en.

powerful avenue to highlight overall concerns on the Chinese criminal justice system and how that system is used to target and harass HRDs – while also giving visibility to the EU’s practical engagement on their behalf.


Despite all these obstacles, Chinese HRDs stressed the importance of sustained EU efforts towards trial observation in China, noting how diplomatic missions’ continued requests to observe trials put pressure on local courts and may improve HRDs’ situation.

ENGAGEMENT WITH HRDS

Both EU diplomats and HRDs reported having regular exchanges. HRDs meet diplomats one-on-one, as well as at events and meetings with staff from the EU delegation and member state embassies. One HRD told Amnesty international that they have been able to “deliver testimonies when invited to meetings arranged by [NGOs] who know the human rights officers of the embassies”. Other HRDs reported meeting EU member states’ foreign ministers in person during their visits to China. Diplomats reported that their interactions with HRDs consisted mainly in offering moral support, arranging meetings with other diplomats or media representatives and alerting them to relevant opportunities. EU diplomats also reported being in regular contact with, and providing support to, family members of detained HRDs.

During her visit to China in October 2015, German Chancellor Angela Merkel met a group of Chinese HRDs.¹⁴⁴ She expressed German support for human rights in China and raised the legitimacy of the defenders’ work. However, similar attempts are not always successful. In April 2016, Chinese authorities prevented the EU delegation and Canadian, French, German and Swiss diplomats from visiting Ni Yulan, an HRD under house arrest.¹⁴⁵



 ↑ China housing rights activist Ni Yulan and her husband Dong Jiqing forcibly evicted from their newly-rented house in April 2017. Since then, they have been camping out, moving from place to place, in Beijing, relying on their supporters to provide them with food and other necessities. @Private

¹⁴⁴ Radio Free Asia, “Germany’s Angela Merkel Meets with Rights Activists, Dissidents During China Trip”, 30 October 2015, <https://www.rfa.org/english/news/china/merkel-10302015132820.html>.

¹⁴⁵ The Guardian, “Chinese rights lawyer Ni Yulan placed under house arrest”, 25 April 2016, <https://www.theguardian.com/world/2016/apr/25/chinese-rights-lawyer-ni-yulan-under-house-arrest>.

While the EU delegation maintains contact mainly with HRDs based in or near Beijing, EU member states have explored a good practice of using their consulates in other regions for outreach to HRDs outside the capital.

Despite exchanges with the EU delegation and member states, Chinese HRDs interviewed for this report mentioned hurdles in engaging with them. Many were largely unaware of the EU Guidelines on HRDs and the EU's specific commitments and potential actions on HRDs. They reported not having enough knowledge on how to communicate with the EU or member state missions and not knowing how to acquire this information. The reasons cited for this included: being based outside of Beijing; the information blockade put in place by the Chinese state; and HRDs' limited communication skills in English. This means there is room for improvement to address these hurdles, boost EU awareness raising on the Guidelines, and reinforce outreach to HRDs outside the capital and non-English speaking HRDs.

ENABLING ENVIRONMENT

The EU reports that it continues to urge China to ratify the ICCPR,¹⁴⁶ which China signed in 1998 and committed to ratifying during the Universal Periodic Review (UPR) processes in 2009 and 2013. EU diplomats further reported raising systemic issues impacting on HRDs, such as undue restrictions on the right to freedom of expression and media freedoms, the crackdown on civil society and restrictive legal reforms, including the Foreign NGO Management Law.¹⁴⁷

EU member states have also used human rights prizes to highlight the situation of HRDs at risk. The 2016 Franco-German Prize for Human Rights and the Rule of Law was awarded to Wang Qiaoling, an HRD and wife of imprisoned human rights lawyer Li Heping, for her work in defending the rights of detained lawyers' families. Likewise, Ni Yulan received the Dutch Human Rights Tulip award in 2011.

The EU delegation and EU missions also use cultural activities to promote the recognition and respect of human rights. In 2016, the EU delegation launched a series of art exhibitions focused on human rights.¹⁴⁸ Chinese HRDs reported appreciating similar initiatives organized by the French embassy in Beijing, such as a film screening with a human rights theme. One said:

I hope to see more support for similar activities, such as support for film screenings or reading groups, applying, through films and literary works, a lighter touch to promoting civil and human rights to ordinary people and students.

Chinese HRDs reported overall feelings of isolation and being cut off from the global human rights community by the restrictive environment in China. They see an important role for the EU in strengthening links and communication between HRDs, both within the country and internationally. One HRD told Amnesty International that it was "important to let Chinese HRDs feel a sense of recognition for their profession and their persistence in pursuing human rights".

At the same time, HRDs criticized the lack of a strong, visible EU reaction to new legal restrictions on the operation of NGOs. They wanted the EU to take a more explicit stance on legislation with such far-reaching symbolic and pragmatic importance for their work.

FINANCING, TRAINING AND CAPACITY BUILDING

Chinese HRDs are confronted by challenging working and living conditions, as they rely on the public welfare system and low wages paid by NGOs, which often fail to provide health and social insurance. Chinese HRDs interviewed for this report referred to the personal challenges they face due to the inability to register NGOs legally. One said:

The NGOs I work for are not registered. Therefore, they cannot give me an employment contract and they cannot buy medical and labour insurance for me. My work is completely insecure, unprotected.

¹⁴⁶ For example, at the 2019 human rights dialogue, where the EU asserted that it "expects China to expedite the process of ratifying the International Covenant on Civil and Political Rights, signed by China in 1998", https://eeas.europa.eu/topics/external-investment-plan/60545/european-union-and-china-held-their-37th-human-rights-dialogue_en.

¹⁴⁷ The EU raised the Foreign NGO Management Law at several junctures, including in human rights dialogues (2018, 2019), in EU item 4 statements at the HRC (HRC 31, 33) and in the EU local statement for International Human Rights Day 2017.

¹⁴⁸ EEAS, "EU launches series of art exhibitions focused on human rights (22/02/2016)", http://eeas.europa.eu/archives/delegations/china/press_corner/all_news/news/2016/20160224_en.htm.

Organizations and individuals working directly with victims of human rights abuses have been described as particularly at risk.

Other needs that Chinese HRDs have highlighted include English language training to access and influence global debates; training on non-violent direct action and social leadership; occupational training and psychological counselling for human rights defenders at risk; training and outreach to journalists to encourage them to cover human rights violations; and financial support and protective measures for families of HRDs as they are often threatened because of their relatives' human rights work.

China remains a highly restrictive setting for CSOs to maintain their registered status, to access foreign and international funding, and even to continue their activities or maintain a physical presence in the country. In response, the EU is challenged to meet a need for greater and more flexible funding for Chinese HRDs and NGOs without placing them at risk.

The EU and other international actors will need to innovate to support Chinese HRDs, as they face restrictive NGO legislation that imposes new and burdensome registration requirements and restricts their ability to seek, receive and utilize funding from abroad. One solution may be to develop flexible modalities such as core-funding and confidential grants to avoid putting beneficiaries at risk.¹⁴⁹

ENGAGEMENT AT INTERNATIONAL FORA

The EU regularly makes statements at the UN HRC on individual cases of HRDs at risk and has cooperated with UN Special Procedures during their visits to China. It also advocates with China to accept the many pending requests from UN Special Procedures.¹⁵⁰ At the same time, the EU reports that it has provided guidance for HRDs at risk on how to get in touch with different UN Special Rapporteurs who can raise their situation in a wider international context.

Still, the EU faces a key challenge in linking HRDs with UN Special Procedures due to the extensive reprisals suffered by Chinese HRDs who engage with international mechanisms, as recently documented in an OHCHR report in August 2018.¹⁵¹ In March 2014, Beijing activist and prominent campaigner Cao Shunli died from organ failure after months in custody during which she was denied appropriate medical treatment. She was taken by police at Beijing airport in September 2013 while on her way to Geneva to attend a human rights training programme and the UPR. She had pressed hard for the public to be allowed to contribute to China's UPR report. In June 2013, with her efforts repeatedly denied, she organized a protest outside the Ministry of Foreign Affairs in Beijing for over a month. The Chinese authorities detained her for "picking quarrels and provoking trouble". The EU issued two statements – one upon her initial enforced disappearance and one after her death¹⁵² – just days before an EU-China summit on 31 March 2014, at which her case was mentioned neither publicly nor privately despite the statement issued just days before.

Such reprisals will continue to challenge the EU to champion human rights and HRDs at the international level and to deliver on its stated commitment in the Strategic Framework – to "step up its efforts against all forms of reprisals".

VERTICAL AND HORIZONTAL COORDINATION

On a working level, EU diplomats reported close coordination between the EU delegation and member state missions on HRDs at risk in China. The EU delegation coordinates regular meetings, both formal and informal, to exchange information about ongoing trials, defenders at risk, detention of individuals, harassment of family members, disbarment of lawyers, surveillance and other topics of concern. EU member states with a

¹⁴⁹ ProtectDefenders.eu, *Funding Available for Human Rights Defenders*, 2018, https://www.hrfn.org/wp-content/uploads/2018/01/hrd-funding-study_final.pdf.

¹⁵⁰ As of early 2018, the 14 mandate holders with pending requests are the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions, rights to water and sanitation, minority issues, the right to health, toxic wastes, freedom of expression, torture, freedom of assembly, the situation of human rights defenders, the right to housing, independence of judges and lawyers, freedom of religion or belief and human rights and counter-terrorism, as well as the Working Group on Enforced or Involuntary Disappearances. Amnesty International, *China: Human rights violations in the name of "national security": Amnesty International submission for the UN Universal Periodic Review, 31st session of the UPR working group (November 2018)*, (Index: ASA 17/8373/2018), 1 March 2018, <https://www.amnesty.org/download/Documents/ASA1783732018ENGLISH.pdf>.

¹⁵¹ UNGA, *Annual report of the United Nations High Commissioner for Human Rights*, 13 August 2018, p. 8, 19-20, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/247/10/PDF/G1824710.pdf?OpenElement>.

¹⁵² EEAS, "Statement by EU High Representative Catherine Ashton regarding the case of missing Chinese Human Rights defender, Ms Cao Shunli", 20 October 2013, http://eeas.europa.eu/archives/docs/statements/docs/2013/131020_01_en.pdf; EEAS, "Statement by EU High Representative Catherine Ashton regarding the death of Chinese Human Rights defender, Ms Cao Shunli", 21 March 2014, http://eeas.europa.eu/archives/docs/statements/docs/2014/140315_02_en.pdf.

diplomatic presence outside of Beijing use their wider networks of contacts with HRDs to provide updates on the situation in more remote regions.

Still, there is tension between the EU's common policy towards China and the bilateral relations of individual member states with China. Ultimately, the EU is often charged with taking on the task of raising human rights on behalf of member states in a kind of round-robin approach that addresses human rights concerns jointly but exposes no single member state. Maintaining EU unity on human rights in China thus remains one of the greatest challenges for the effective implementation of the EU Guidelines on HRDs in China – along with the ongoing challenges of working in country and of making human rights mainstreaming a reality for EU relations with China more broadly.

5.4 CONCLUSIONS AND RECOMMENDATIONS

Given the complex relations with vast interests at stake, along with the many challenges of engaging China on human rights, the EU has made significant headway with good and even innovative practices in using public diplomacy, exploring how to put mainstreaming into practice and seeking alternate courses of meaningful practical action for HRDs (such as outreach through consulates). All of these could be useful elsewhere in EU human rights work globally.

At the same time, the experience in China opens up areas for further consideration:

- How to act strategically for the release of arbitrarily detained HRDs?
- How to ensure better follow up on human rights concerns and individual cases through practical action, political intervention and sustained follow up, once these are raised through public diplomacy?
- How to step up engagement on the restrictive legal environment in China, including through more visible engagement on new laws, more flexible funding to HRDs and facilitation of safe contacts with international human rights bodies?
- How to engage with Chinese challenges of human rights norms at the international and multilateral levels?
- How to promote wider engagement of Chinese HRDs with international human rights mechanisms in a context of increasing reprisals against those who do so?
- How best to make a positive out of the potential liability of EU disunity, exploring how to strategically use both bilateral and multilateral actions by EU and member states?



TO IMPROVE IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN CHINA, THE EU AND MEMBER STATES SHOULD:

- **Mainstream human rights engagement throughout all relations with China**, including in political, legal, security and trade-related exchanges – establishing concrete mechanisms to mainstream human rights messages in all EU exchanges with China, and linking up meaningful work being done across the European institutions.
- **Adopt a more ambitious approach to EU divergences**, exploring how joint EU actions can best be used strategically in coordination with bilateral actions by EU member states.
- **Develop innovative approaches to trial observation**. Broaden the scope of trial observation efforts in China to attend those dealing with charges against NGOs. Arrange briefings with journalists who may have better access to trials. Explore alternative ways of supporting HRDs on trial. Adopt a consistent strategy of public communication when access to trial observation is refused. Ensure the full consent of the people involved, and that all actions are undertaken based on an assessment of potential risks, while maintaining a proactive approach to trial observation.
- **Counter isolation of Chinese HRDs** by providing information on the EU Guidelines on HRDs as well as on global human rights rules and networks in Mandarin and other languages spoken in China. Promote networks and exchange of information between Chinese HRDs based in different regions, and between them and their international counterparts. Provide scholarships to HRDs to attend European universities to build their capacities and enhance their networks. Develop safeguards and consistent strategies for communication about reprisals against HRDs engaging with international human rights mechanisms.
- **Work closely with the UN system**. Ensure HRDs are aware of the mechanisms they can address at the multilateral level and support them in doing so safely. Facilitate communications between and contribution to, relevant Special Procedures.
- **Support family members of targeted HRDs**. Protect and financially support the families of targeted individuals, who are often used as leverage on HRDs.
- **Develop strategies for follow up on public statements** with practical actions (such as prison visits, support to lawyers or families) and political engagement (such as reiterating individual cases at summits or high-level meetings).

6. IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN HONDURAS



Honduras is one of the most dangerous and difficult places for HRDs worldwide, in particular for those working on land and environmental issues.¹⁵³ The EU faces many challenges to respond meaningfully here, including:

- high levels of violence and impunity;
- lack of easy access to HRDs in remote rural areas; and
- heightened risks for HRDs working on LGBTI rights, Indigenous rights or on issues related to land, territory and the environment.

¹⁵³ Global Witness, *At what cost? Irresponsible business and the murder of land and environmental defenders in 2017*. Global Witness documented 128 HRDs killed in Honduras from 2010 to 2017, the highest per capita rate of murdered HRDs in this period worldwide. Despite a significant decline in killings in 2017, Global Witness points to increased repression in the country, with the National Human Rights Defenders Network of Honduras documenting 1,232 attacks against Honduran HRDs in 2016-2017, a significant increase compared to previous years.

Beyond its role as a donor, the EU has developed good practices in terms of coordination and public action for HRDs in Honduras, maintaining them even when faced with mounting attacks and killings of HRDs. Yet challenges remain:

- How can the EU leverage its sustained work on one emblematic HRD case, that of Berta Cáceres, to benefit other Honduran HRDs outside the limelight?
- How can the EU match systemic support for a national human rights system with meaningful action when state actors are responsible for human rights violations?
- How to balance the EU's role as a donor, including for projects for the exploration and exploitation of natural resources, against its responsibility to critically engage the Honduran authorities?
- How can the EU and its member states meaningfully anticipate and address tensions between their HRD commitments and their interests in natural resource projects and other business projects that have a potentially adverse human rights impact?

6.1 BACKGROUND AND MAIN CHALLENGES FACED BY HRDS

Honduras still suffers the lasting repercussions of a coup in 2009, and most perpetrators of human rights violations during this period still have not faced investigation or prosecution.¹⁵⁴ The coup created a hostile atmosphere for HRDs and led the Inter-American Commission on Human Rights (IACHR) to grant precautionary measures to protect the life and physical integrity of several HRDs,¹⁵⁵ state officials, journalists and trade unionists in danger because of their work.¹⁵⁶ Many of these precautionary measures still remain in place at the time of writing.¹⁵⁷

Honduras has seen some positive developments, in particular the 2015 Law to Protect Human Rights Defenders, Journalists, Social Commentators and Justice Officials (the Protection Law).¹⁵⁸ Still, Amnesty International's research shows that the Honduran authorities have failed to implement effective protection measures for HRDs at risk.¹⁵⁹ Indeed, most social leaders and HRDs with IACHR precautionary measures continue to face threats and attacks, and impunity for their assailants remains the norm.

One of the best-known beneficiaries of IACHR protection measures, Berta Cáceres of the National Council of Popular and Indigenous Organizations of Honduras (Consejo Cívico de Organizaciones Populares e Indígenas de Honduras, COPINH), was killed on 2 March 2016. In December 2018, seven individuals were found guilty of being the material authors of her killing, but the intellectual authors who planned and ordered the attack still had not been brought to justice at the time of writing in late April 2019.¹⁶⁰

The situation of HRDs is a microcosm of the overall challenges confronting Honduran society. The country suffers alarmingly high levels of violence.¹⁶¹ This is coupled with a lack of legitimacy of Honduran institutions, stemming from alleged collusion with organized crime,¹⁶² corruption and the failure to respond effectively to

¹⁵⁴ Inter-American Commission on Human Rights, *Situation of Human Rights in Honduras*, (OEA/Ser.LV/II.) Doc. 42/15 31, December 2015, para. 17, <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf>.

¹⁵⁵ IACHR granted precautionary measures to HRDs including: Rafael Alegría, national leader of Vía Campesina; Salvador Zuniga, then a member of COPINH; several social leaders of Guapinol de Tocoa-Colon; Andrés Tamayo, President of the Olancho Environmental Movement; members of the Coordinating Committee of Popular Organizations of the Aguan (Coordinadora de Organizaciones Populares del Aguan, COPA); Hedme Castro, then Director of the Alba Nora Gúnera school and currently a member of the organization ACI PARTICIPA; and Antonia Damary Coello Mendoza and 17 members of the Committee of Relatives of the Disappeared in Honduras (Comité de Familiares de Detenidos Desaparecidos en Honduras, COFADEH).

¹⁵⁶ IACHR, Honduran Minister of Foreign Affairs, Patricia Rodas, and request for information on other individuals and Amplification of Precautionary Measures PM 196/09, <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

¹⁵⁷ IACHR, PM 240/11 - Eight members of the El Aguán Authentic Movement for Campesino Claims (Movimiento Auténtico Reivindicador de Campesinos Aguan, MARCA), Honduras; PM 50/14 – Campesino leaders from Bajo Aguán, Honduras, <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

¹⁵⁸ *Ley de Protección para las y los Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia Decreto 34-2015*, <https://www.tsc.gob.hn/biblioteca/index.php/leyes/619-ley-de-proteccion-para-las-y-los-defensores-de-derechos-humanos-periodistas-comunicadores-sociales-y-operadores-de-justicia>.

¹⁵⁹ Amnesty International, *Americas: The situation of State Protection Mechanisms for Human Rights Defenders* (Index: AMR 01/8912/2018), October 2018, <https://www.amnesty.org/download/Documents/AMR0189122018ENGLISH.PDF>.

¹⁶⁰ Amnesty International, "Honduras: Half-truths for Berta Cáceres and her family" (News, 29 November 2018), <https://www.amnesty.org/es/latest/news/2018/11/honduras-half-truths-for-bertha-caceres-and-her-family/>.

¹⁶¹ The latest available World Health Organization homicide figures for Honduras in 2015 stand at 85.7 per 100,000, far above an epidemic level (10 per 100,000). World Health Organization, *Homicide: WHO 2015 Global Health Estimates (2015 update)*, <http://apps.who.int/violence-info/homicide/>.

¹⁶² *The New York Times ES*, "Un informe revela nombres y hechos relacionados con asesinatos cometidos por la policía en Honduras", 15 April 2016, <http://www.nytimes.com/es/2016/04/15/un-informe-revelanombres-y-hechos-relacionados-con-asesinatos-cometidos-por-la-policia-en-honduras/>.

the needs of the population.¹⁶³ In 2015, months-long protests swept the country demanding the resignation of President Juan Orlando Hernández and an end to impunity and corruption.¹⁶⁴ In late 2017, another wave of protests emerged in response to the President's re-election, amid accusations of electoral fraud. Honduran security forces used excessive force to repress protests, leading to the killing and wounding of dozens of protesters and passers-by,¹⁶⁵ as well as possible extrajudicial executions, arbitrary detentions and ill-treatment.

HRDs working to defend human rights related to land, territory and the environment face a particularly dire situation.¹⁶⁶ In 2017, Global Witness designated the country as the deadliest in the world for environmental activists, 120 of whom were killed between 2010 and 2017.¹⁶⁷ LGBTI defenders in Honduras face multiple and intersecting forms of discrimination as HRDs and LGBTI people,¹⁶⁸ and are subject to killings and repeated threats.¹⁶⁹ HRDs and journalists in Honduras likewise face increased risks for reporting on human rights violations, facing harassment and smear campaigns.¹⁷⁰

6.2 ASSESSMENT OF ACTION BY THE EU AND EU MEMBER STATES

EU-Honduras relations are mainly framed by EU development assistance to the country. Honduras is a signatory to an Association Agreement with the EU and high-level interactions mainly occur in the context of the EU's relationship with the Community of Latin American and Caribbean States (CELAC). Given that the CELAC format does not formally address human rights and Honduras lacks a formal bilateral human rights dialogue with the EU, there is no readily apparent high-level or formal venue for the EU to address human rights concerns regularly with the Honduran authorities. Still, EU diplomats report regular interactions with the Honduran authorities on the human rights situation at local level.

Few EU member states have a physical presence in the country. Along with the EU delegation, France, Germany and Spain are present in the capital Tegucigalpa, while other member states cover the country from embassies elsewhere in the region.

As the country is not a major strategic partner in the region, diplomats told Amnesty International that the EU has more space to focus on the promotion of human rights in Honduras. Yet this view seems to disregard potential tensions between EU engagement on human rights and EU-based interests in extractive industry or industrial development projects in the country.¹⁷¹ This tension presents a serious challenge for the EU in a country where many attacks on HRDs happen in the context of exploration and exploitation of natural resources by privately owned foreign companies, including European ones.

As early as 2010, the EU adopted a local strategy for HRDs that laid out the situation of Honduran HRDs, existing support mechanisms and possible courses of action for diplomats to support their work.¹⁷²

¹⁶³ IACHR, *Situation of Human Rights in Honduras*, (OEA/Ser.LN/II.) Doc. 42/15, 31 December 2015, para. 216, <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf>.

¹⁶⁴ *The Guardian*, "Our Central American spring: protesters demand an end to decades of corruption", 14 August 2015, <https://www.theguardian.com/world/2015/aug/14/honduras-guatemala-protests-government-corruption>.

¹⁶⁵ Amnesty International, *Protest Prohibited, Use of Force and arbitrary detentions to suppress dissent* (Index: AMR 37/8289/2018), June 2018, <https://www.amnesty.org/download/Documents/AMR3782892018ENGLISH.PDF>; OHCHR, *Human Rights Violations in the context of the 2017 elections in Honduras*, March 2018, https://www.ohchr.org/Documents/Countries/HN/2017ReportElectionsHRViolations_Honduras_EN.pdf.

¹⁶⁶ Amnesty International, *We are defending the land with our blood*.

¹⁶⁷ Global Witness, *Honduras: The Deadliest Country in the World for Environmental Activism*, 31 January 2017, <https://www.globalwitness.org/pt/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>.

¹⁶⁸ Front Line Defenders, *LGBTI defenders in Honduras: doubly at risk*, 3 February 2016, <https://www.frontlinedefenders.org/en/statement-report/lgbti-defenders-honduras-doubly-risk>.

¹⁶⁹ Among others, Front Line Defenders reported the killings of the following Honduran LGBTI defenders: Paola Barraza in 2016, <https://www.frontlinedefenders.org/en/case/case-history-paola-barraza>; René Martínez in 2016, <https://www.frontlinedefenders.org/en/case/case-history-rene-martinez>; Gloria Carolina Hernández Vásquez in 2015, <https://www.frontlinedefenders.org/en/case/case-history-gloria-carolina-hernandez-vasquez>. Front Line Defenders reports assassination attempts of the following Honduran LGBTI defenders: David Valle in July 2017, <https://www.frontlinedefenders.org/en/case/attempted-murder-david-valle>; Jlo Córdoba in October 2016, <https://www.frontlinedefenders.org/en/case/assassination-attempt-against-jlo-cordoba>; Jlo Córdoba and Juan José Zambrano in March 2016, <https://www.frontlinedefenders.org/en/case/case-history-juan-jose-zambrano>; Francisco Mencia in October 2015, <https://www.frontlinedefenders.org/en/case/case-history-francisco-mencia>.

¹⁷⁰ Amnesty International, "Honduras: Authorities must guarantee the safety of defenders and journalists targeted in smear campaigns" (News, 28 September 2018), <https://www.amnesty.org/en/latest/news/2018/09/honduras-autoridades-deben-garantizar-la-seguridad-de-defensores/>.

¹⁷¹ See, for example: *The Guardian*, "Backers of Honduran dam opposed by murdered activist withdraw funding", 4 June 2017, <https://www.theguardian.com/world/2017/jun/04/honduras-dam-activist-bertha-caceres>.

¹⁷² *Estrategia local de la Unión Europea para Defensores de los Derechos Humanos en Honduras*, http://eeas.europa.eu/archives/delegations/honduras/documents/estrategia_local_derechos_humanos_es.pdf.

In 2015, the EU funded the drafting of the National Protection Law¹⁷³ and the establishment of the Directorate General to provide protection measures to HRDs within the then Ministry of Human Rights, Justice, Governance and Decentralization. While this effort represented a positive step towards ensuring the safety and protection of HRDs, many challenges remain in practice.¹⁷⁴ HRDs assert that the Protection System (*Sistema de Protección*) still does not function adequately and lacks sufficient independence and autonomy to act meaningfully. Nonetheless, the system is still seen as necessary as it recognizes the risks faced by HRDs and the resulting need for protection.

Currently, the EU's local engagement with HRDs is shaped by the non-public Human Rights and Democracy Country Strategy (HRDCS) and a National Strategy for Human Rights and Democracy in Honduras, both covering 2016-2020.¹⁷⁵ Neither strategy is exclusively dedicated to supporting HRDs, but both place work on HRDs within a wider context of EU activities on human rights and rule of law in Honduras.

The National Strategy for Human Rights and Democracy is the operational document laying out the EU's key areas of engagement on human rights as agreed at local level by the EU delegation and EU member state embassies on the ground. The strategy reflects the EU's view of the main human rights challenges in Honduras: the polarization of society; low levels of trust between civil society and the government; and state failure to meet its obligations to protect HRDs, which reinforces mistrust of the national protection mechanism and other national human rights institutions.

In response, the EU strategy sets objectives to:

- build bridges between civil society and government by maintaining a dialogue with civil society as well as with the government, and by providing electoral observation;
- protect HRDs, including by providing funding to ensure the full and effective implementation of the National System of Protection for Human Rights Defenders, Journalists and Justice Operators;
- support the rights of LGBTI individuals and promote gender equality; and
- strengthen the rule of law and democracy and support the fight against impunity and corruption.

The EU's CSO Roadmap¹⁷⁶ reinforces these objectives by promoting and protecting the space for civil society as one of its priorities, through monitoring of state protection measures for HRDs, engaging in dialogue on human rights with the authorities and facilitating a dialogue on human rights between civil society and the government. From 2012 to 2017, the Programme for the Support of Human Rights in Honduras (Programa de Apoyo a los Derechos Humanos – PADH) likewise worked towards these objectives, including through the drafting of the 2015 Protection Law.¹⁷⁷

The EU delegation to Honduras publicly shares the work of HRDs on social media or through other channels. Pictures of EU representatives meeting HRDs in their offices¹⁷⁸ and films presenting their day-to-day work,¹⁷⁹ have the potential to both validate HRDs' activities and underscore their importance.

Diplomats also highlighted how the EU delegation worked to create a more enabling environment for HRDs, for example by participating in the march marking International Day Against Homophobia, flying the rainbow flag at the EU delegation and through social media posts¹⁸⁰ – in addition to multiple public statements on the LGBTI community and HRDs working on LGBTI rights.¹⁸¹

¹⁷³ European Parliament, "Answer given by HR/VP Mogherini on behalf of the European Commission", 17 June 2016, http://www.europarl.europa.eu/doceo/document/E-8-2016-003227-ASW_EN.html?redirect.

¹⁷⁴ Amnesty International, *Americas: The situation of State Protection Mechanisms for Human Rights Defenders*.

¹⁷⁵ Delegation of the EU to Honduras, *Estrategia Nacional de Derechos Humanos y Democracia, 2016-2020*, 9 June 2017, https://eeas.europa.eu/delegations/honduras/27950/estrategia-nacional-de-derechos-humanos-y-democracia-2016-2020_en.

¹⁷⁶ EEAS, *Hoja de ruta de la ue para el compromiso con la sociedad civil, 2016-2018*, https://eeas.europa.eu/sites/eeas/files/1_hdr_honduras_plan_de_accion_final_due_apr_19_2017_0.pdf.

¹⁷⁷ Delegation of the EU to Honduras, "El Gobierno de Honduras y la Unión Europea suscriben Memorando de Entendimiento para continuar fortaleciendo el sistema de protección de los derechos humanos en el país", 14 June 2012, http://eeas.europa.eu/archives/delegations/honduras/press_corner/all_news/news/2012/20120612_es.htm.

¹⁷⁸ See, for example: UE en Honduras Facebook, 20 August 2018, https://es-la.facebook.com/DelegacionDeLaUnionEuropeaEnHonduras/posts/1839715159440670?_tn_=-UC-R, or @UEenHonduras Twitter account, 10 May 2018, https://twitter.com/Eurojusticia_hn/status/994620996584968192.

¹⁷⁹ See, for example, 15 October 2018, https://es-la.facebook.com/DelegacionDeLaUnionEuropeaEnHonduras/posts/1907463265999192?_tn_=-R.

¹⁸⁰ See @UEenHonduras tweets from 2019 (<https://twitter.com/UEenHonduras/status/1129391203726909440>; <https://twitter.com/UEenHonduras/status/1129579085305405440>; <https://twitter.com/UEenHonduras/status/1129558416198983680>); from 2018 (<https://twitter.com/UEenHonduras/status/997160630888161280>; <https://twitter.com/UEenHonduras/status/997160181397106688>; <https://twitter.com/UEenHonduras/status/997159850256863233>); and from 2017, <https://twitter.com/UEenHonduras/status/864900877668241410>.

¹⁸¹ EEAS, "Statement by the Spokesperson on the killing of Human rights' defender René Martínez in Honduras", 5 June 2016, https://eeas.europa.eu/delegations/honduras/5046/statement-spokesperson-killing-human-rights-defender-rene-martinez-honduras_en.

Honduran HRDs interviewed for this report acknowledged the effectiveness of such actions. One said:

[T]heir presence and the importance given to [the LGBTI] group has had an impact especially on how the government tackles this issue... Visibility [of the LGBTI community] came partly from the importance given by the EU and its member states to this topic.

In a similar spirit, the EU delegation funded a human rights awareness campaign called “More Human Rights Equals Peace” (+Derechos Humanos=Paz)¹⁸² in 2015 and created the Carlos Escaleras award for Honduran HRDs through a project funded by the EIDHR.¹⁸³

These ways of working were tested by the murder of the HRD Berta Cáceres in March 2016. The EU reacted immediately, with a local statement calling for a prompt investigation and for the perpetrators to be brought to justice.¹⁸⁴ A week later, the HR/VP spokesperson likewise called for an investigation and justice, as well as protection for Gustavo Castro Soto, a Mexican HRD who witnessed the murder.¹⁸⁵ The Spanish Ministry of Foreign Affairs also released a press communiqué condemning the killing and calling for a transparent investigation and a fair trial of those responsible.¹⁸⁶

In separate visits to Honduras in 2016, both the EU Special Representative for human rights¹⁸⁷ and the Spanish Minister of Foreign Affairs publicly repeated these messages and raised the case with the government.¹⁸⁸ In 2018, during a visit to Honduras, the Spanish Vice Minister for Latin America met Berta Cáceres’ daughter and visited the office of COPINH to pay homage to the Indigenous activist.¹⁸⁹ Coupled with practical efforts, these sustained and joined-up messages by the EU and its member states represent good practice for other cases where HRDs are attacked, killed or forcibly disappeared.

In the aftermath of the killing, the EU and member state missions closely followed the investigation and monitored the trial of the alleged perpetrators.¹⁹⁰ HRDs interviewed for this report felt that concerted international attention ensured that the investigation did not stall. HRDs also noted how international monitoring of their situation and safety contributed to the security of other COPINH members following Berta Cáceres’ murder.

At the time of Berta Cáceres’ killing, FMO (Dutch Development Bank) and Finnfund (Finnish Fund for Industrial Cooperation) were providing financial support to DESA (Desarrollos Energéticos S.A.), the company responsible for the Agua Zarca hydroelectric dam project which COPINH, Berta Cáceres’ organization, had objected to, and to which the killing was linked. FMO and Finnfund later decided to end their funding in order “to reduce international and local tensions in the area”. They pointed to the need for voluntary dialogue among local communities on the future of the area and development options there, as well as for a “credible international human rights institution [to] monitor the situation on the ground before any dialogue is initiated so as to ensure that participants can feel free to speak their minds without fear of retaliation from anyone”.¹⁹¹ COPINH welcomed this decision, but they and other NGOs also raised continued concerns about free, prior

Delegation of the EU to Honduras, “La UE expresa su preocupación con situación difícil de la comunidad LGBTI en Honduras”, 17 February 2016, http://eeas.europa.eu/archives/delegations/honduras/press_corner/all_news/news/2016/20160217_es.htm; Delegation of the EU to Honduras, “Nota de prensa sobre la situación de derechos humanos y la comunidad LGBTIQ en Honduras”, 28 September 2015, http://eeas.europa.eu/archives/delegations/honduras/press_corner/all_news/news/2015/20150929_es.htm.

¹⁸² *El Heraldo*, “Lanzan campaña de derechos humanos en Honduras”, 10 December 2018, <https://www.elheraldo.hn/pais/909997-466/lanzan-campa%C3%B1a-de-derechos-humanos-en-honduras>.

¹⁸³ Diakonia, “Pase lo que pase voy a seguir en esta lucha”, 20 October 2017, <https://www.diakonia.se/es/noticias/premio-carlos-escaleras/>.

¹⁸⁴ Delegation of the EU to Honduras, “Declaración Local: Unión Europea lamenta muerte de Defensora de Derechos Humanos Berta Cáceres”, 2 March 2016, http://eeas.europa.eu/archives/delegations/honduras/press_corner/all_news/news/2016/20160303_es.htm#.

¹⁸⁵ EEAS, “Statement of the Spokesperson on the follow up of the death of Berta Cáceres in Honduras”, 12 March 2016, https://eeas.europa.eu/delegations/honduras/2824/statement-spokesperson-follow-death-bertha-caceres-honduras_en.

¹⁸⁶ Ministry of Foreign Affairs of Spain, “Official Statement 063, Honduran human rights defender murdered”, 7 March 2016, http://www.exteriores.gob.es/Portal/en/SalaDePrensa/Comunicados/Paginas/2016_COMUNICADOS/20160307_COMU063.aspx.

¹⁸⁷ @SJLambrinidis, 3 June 2016, Twitter, <https://twitter.com/SJLambrinidis/status/738872578425683968>.

¹⁸⁸ *WRadio*, “García-Margallo reitera condena de España al asesinato de Berta Cáceres”, 16 March 2018, <http://www.wradio.com.co/noticias/internacional/garciamargallo-reitera-condena-de-espana-al-asesinato-de-bertha-caceres/20160316/nota/3086175.aspx>.

¹⁸⁹ *EuropaPress*, “García Casas se reúne con el presidente hondureño y con la hija de Berta Cáceres en su viaje a Honduras”, 18 April 2018, <https://www.europapress.es/internacional/noticia-garcia-casas-reune-presidente-hondureno-hija-bertha-caceres-viaje-honduras-20180418112611.html>.

¹⁹⁰ EEAS, “Statement by the Spokesperson on the trial of those accused of the murder of Honduran Human Rights Defender Berta Cáceres”, 28 November 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/54301/statement-spokesperson-trial-those-accused-murder-honduran-human-rights-defender-bertha-caceres_en.

¹⁹¹ “FMO and Finnfund finalize Exit Agua Zarca”, 6 July 2017, <https://www.fmo.nl/news-detail/21a7c615-a32b-471c-9378-60317196daf6/fmo-and-finnfund-finalize-exit-agua-zarca>, https://www.finnfund.fi/en/news/fmo-jand-finnfund-finalize-exit-agua_carca/.

and informed consent in consultations about the project, ongoing violence and attacks on dam opponents and continued impunity for crimes committed in this context.¹⁹²

6.3 EU EFFORTS TO IMPLEMENT ITS HRD GUIDELINES

CLOSED-DOOR DIPLOMACY

The EU lacks a formal human rights dialogue with Honduras, but EU diplomats told Amnesty International that the EU delegation raises human rights concerns in its regular interactions with the government. Diplomats said that individual HRD cases are raised both in these exchanges with the Honduran authorities and through formal demarches to the Foreign Minister, Public Prosecutor or President of the Supreme Court.

Until its recent decline, these efforts were complemented by the *grupo enlace*, where the EU and its member states interacted with justice officials and other relevant government counterparts. In addition, the EU and its member states are part of the G16, a group of donors established during the response to Hurricane Mitch in 1998, which continues work to date. The G16 meets the Honduran Human Rights Minister and discusses HRD cases. It also took a joint public position on the killing of two civil society leaders in 2016.¹⁹³

While the direct outcomes of such closed-door diplomacy are challenging to track by their very nature, both the EU's stated human right priorities for Honduras and all visible evidence of its closed-door diplomacy resonate with key concerns of civil society around issues such as LGBTI rights and impunity for attacks on HRDs.¹⁹⁴

PUBLIC ACTION

From January 2014 to the time of writing in late April 2019, the EU delegation and member states made 12 public statements on Honduras, including local statements about the overall human rights situation in the country,¹⁹⁵ specific groups at risk,¹⁹⁶ and individual HRD cases. In some cases, local statements were followed by statements from the spokesperson of the HRVP at headquarters level.¹⁹⁷ Of the 12 statements:

- 11 referred to the killing of HRDs or activists;
- 11 called for investigations and for justice to be done in these cases;
- 11 referred to the names of individuals and eight used the term “human rights defender”;
- 11 made additional recommendations, including strengthening efforts to protect HRDs through the national mechanism or following up on UPR recommendations accepted by the government;
- Seven referred to other groups of concern (LGBTI persons, women, children, persons of African descent, persons with disabilities); and
- Three statements about other defenders referred to the high-profile case of Berta Cáceres.

¹⁹² “Letter to FMO and Finnfund about exit from Agua Zarca Project in Honduras”, 3 August 2017,

https://justassociates.org/sites/justassociates.org/files/sign_on_letter_to_fmo_and_finnfund_about_agua_zarca_project.pdf.

¹⁹³ “Comunicado Conjunto de Prensa: G-16 lamenta el asesinato del presidente del Movimiento Unificado Campesino del Aguán (MUCA) José Ángel Flores y del líder campesino Silmer Dionisio George”, 26 October 2016,

http://eeas.europa.eu/archives/delegations/honduras/press_corner/all_news/news/2016/20161026_es.htm.

¹⁹⁴ CONADEH (ombudsperson), “Prevalen en la impunidad acciones de violencia contra miembros de la diversidad sexual”, 17 May 2018, <http://conadeh.hn/prevalen-en-la-impunidad-acciones-de-violencia-contra-miembros-de-la-diversidad-sexual/>; Secretaría de derechos humanos, “SEDH promueve igualdad y la no discriminación de la comunidad LGBTI”, 15 August 2018,

<https://www.sedh.gob.hn/noticias/92-sedh-promueve-igualdad-y-la-no-discriminacion-de-la-comunidad-lgbti/>; *Proceso Digital*, “Conadeh pide avanzar en reconocimiento de derechos de personas LGBTI”, 3 November 2018, <http://www.proceso.hn/nacionales/9-nacionales/conadeh-pide-avanzar-en-reconocimiento-de-derechos-de-personas-lgbti.html>.

¹⁹⁵ See, for example, Delegation of the EU to Honduras, “Declaración Local sobre la situación en Honduras”, https://eeas.europa.eu/delegations/honduras_es/39615/Declaraci%C3%B3n%20Local%20sobre%20la%20situaci%C3%B3n%20en%20Honduras.

¹⁹⁶ See, for example: Delegation of the EU to Honduras, “Nota de prensa sobre la situación de derechos humanos y la comunidad LGBTIQ en Honduras”, 28 September 2015,

http://eeas.europa.eu/archives/delegations/honduras/press_corner/all_news/news/2015/20150929_es.htm.

¹⁹⁷ For example, in the cases of Berta Cáceres and René Martínez. See Appendix III for a full list of EU public statements on Honduras.

EU statements mainly respond to the killing of individual HRDs, rather than acting preventively to highlight cases of HRDs at risk. Consequently, they represent a missed opportunity for preventive action. Nine of the statements were issued in 2016 at the time of the killings of Berta Cáceres and other HRDs.



 ↑ *Acción Global "Justicia para Berta Cáceres"/Global Action "Justice for Berta Cáceres", mobilization before the Embassy of Honduras in Mexico City, 15/06/2016. © Amnesty International*

Still, EU statements consistently foreground individuals' names, use the term "human rights defender" and include explicit recommendations and forward-looking elements. Practically all statements call for investigation, justice and a strengthening of HRD protection in country. In addition, EU statements regularly link individual cases of murdered HRDs with concerns about other HRDs still at risk and/or human rights issues facing other vulnerable groups.

When LGBTI rights defender René Martínez was killed in 2016, a spokesperson statement at Brussels level called for "thorough investigations [to be] conducted as soon as possible to bring the perpetrators to justice" and for "[u]rgent and decisive steps to protect human rights defenders in Honduras [...] so that impunity and violence come to an end".¹⁹⁸ This statement also explicitly referred to the high-profile case of Berta Cáceres. Shortly thereafter, the visiting EU Special Representative for human rights was quoted in an EU local statement stating that the "only way to end the violence is to effectively combat impunity"¹⁹⁹ – a stance that received much attention in the Honduran press.²⁰⁰

No statements on HRDs or civil society were issued in 2013, 2014 and 2017, coinciding with general elections in November 2013 and November 2017. Both elections were monitored by EU election observation missions (EOM), including with a view to civil and political rights and the safety of activists.²⁰¹ The 2017 EU EOM report

¹⁹⁸ EEAS, "Statement by the Spokesperson on the killing of Human rights' defender René Martínez in Honduras", 5 June 2016, https://eeas.europa.eu/delegations/honduras/5046/statement-spokesperson-killing-human-rights-defender-rene-martinez-honduras_en.

¹⁹⁹ Delegation of the EU to Honduras, "Unión Europea lamenta asesinato de defensor de Derechos Humanos y líder de la comunidad LGBTI, René Martínez", 8 June 2016, http://eeas.europa.eu/archives/delegations/honduras/press_corner/all_news/news/2016/20160608_es.htm.

²⁰⁰ See, for example, *Europapress*, "Brutalmente asesinado el líder de la comunidad LGBTI en Honduras", 5 June 2016, <https://www.europapress.es/internacional/noticia-brutalmente-asesinado-lider-comunidad-lgbti-honduras-20160605144029.html>; *Proceso Digital*, "Unión Europea lamenta asesinato de líder hondureño de comunidad LGBTI", 3 June 2016, <http://proceso.hn/caliente/12-caliente/union-europea-lamenta-asesinato-de-lider-hondureno-de-comunidad-lgbti.html>.

²⁰¹ See for 2013: Delegation of the EU to Honduras, "República de Honduras: La Unión Europea observará las elecciones", 4 October 2013, http://eeas.europa.eu/archives/delegations/honduras/press_corner/all_news/news/2013/20131004_es.htm; "Declaración por la Alta

issued recommendations on the need to reinforce and ensure sufficient capacity for the national protection mechanism and to extend its protections to journalists, with a view to preserving the right to freedom of expression.²⁰² This suggests a potential avenue for good practice in Honduras and elsewhere – to explore how EU EOMs can boost the important work of HRDs during an election and pro-actively reinforce longer term EU work on their behalf.

The EU head of delegation also made at least one public declaration in support of HRDs and against the delegitimization of their work.²⁰³

In interviews with Amnesty International, both EU diplomats and HRDs concurred that public statements are crucial to support HRDs and their work, while lowering the levels of threat they face. One HRD stated:

[I]t has been this support that stopped some actions of the Honduran government, because they care about the EU's opinion. This advocacy work has helped to mitigate [risks to HRDs].

Others suggested that the EU's public interventions reinforce dialogue between the government and civil society and help to smooth over moments of crisis.

Still, HRDs remained concerned that EU statements tend to be issued after killings, rather than when defenders alert them of acute threats, risks or unjust charges they face due to their human rights activities. HRDs likewise highlighted the crucial importance of practical follow up on statements. One said:

"[O]ften, recommendations to Honduras are put forward but there is no follow up and they are forgotten. With impunity cases, even if there is international pressure, one part of the observation [of the situation of HRDs] is the follow up [that is done on it].

Regular contact between HRDs and EU diplomats is crucial in ensuring that EU public positioning stays in step with the evolving situation of HRDs, even if exchanges may not always result in a strong statement by the EU. One stated:

[W]e pushed for a more robust public statement in the post-election context and held meetings with the EU delegation and member state embassies to make this happen. In the end, there was a local statement²⁰⁴ but it was weaker than expected and they did not talk explicitly about threats against defenders.

In particular, Honduran HRDs asserted that it was much harder to get the EU to take action on lower-profile cases of Indigenous HRDs or other defenders at risk for their work on land and territory than on the high-profile case of Berta Cáceres. While EU diplomats expressed concern that the situation of HRDs in remote areas was often difficult to verify, this could be resolved through deeper and more consistent exchanges with HRDs, coupled with outreach to HRDs in remote or rural areas.

TRIAL MONITORING

The EU delegation and member state embassies share the responsibility of trial monitoring in Honduras, under the coordination of the EU delegation. According to COPINH, the trial of the alleged killers of Berta Cáceres received particular attention, although some HRDs reported that the EU delegation and member states mainly respond positively to requests to monitor trials of other individuals and organizations in the capital.

While some instances of EU member states monitoring trials outside of the capital have been reported, more efforts in this regard, or more visibility of ongoing efforts, are needed.

Representante de la UE, Catherine Ashton en relación a las elecciones generales en Honduras el 24 de noviembre 2013", 27 November 2013, http://eeas.europa.eu/archives/delegations/honduras/press_corner/all_news/news/2013/20131127_1_es.htm; Honduras: Final Report: General Elections 2013, http://eeas.europa.eu/archives/eueom/missions/2013/honduras/pdf/final-report-eueom-honduras-2013_en.pdf. See for 2017: EEAS, "Statement by the Spokesperson of the EU High Representative on the situation in Honduras: 'We expect parties to express their concerns peacefully, using the legal mechanisms available to them'", 5 December 2017, https://eeas.europa.eu/delegations/honduras/36791/statement-spokesperson-eu-high-representative-situation-honduras-we-expect-parties-express_en; "EU EOM Honduras 2017 Preliminary Statement: Well-organized elections follow campaign marked by unequal resources", 29 November 2017, https://eeas.europa.eu/delegations/honduras/36396/eu-eom-honduras-2017-preliminary-statement-well-organised-elections-follow-campaign-marked_en; Honduras: Final Report: General Elections 2017, <https://eeas.europa.eu/sites/eeas/files/373045796-eu-eom-honduras-2017-final-report.pdf>.

²⁰² Honduras: Final Report: General Elections 2013, p. 41, <https://eeas.europa.eu/sites/eeas/files/373045796-eu-eom-honduras-2017-final-report.pdf>.

²⁰³ See, for example, *Conexihon*, "Se reactiva campaña de desprestigio a defensores y defensoras de DDHH", 30 January 2018, <http://www.conexihon.hn/index.php/dh/226-se-reactiva-campana-de-desprestigio-a-defensores-y-defensoras-de-ddhh>.

²⁰⁴ Delegation of the EU to Honduras, "Declaración Local sobre la situación en Honduras", 8 February 2018, https://eeas.europa.eu/delegations/honduras_es/39615/Declaraci%C3%B3n%20Local%20sobre%20la%20situaci%C3%B3n%20en%20Honduras.

To date, the EU has failed to issue follow-up statements on trial observation, missing an opportunity to underline violations of fair trial guarantees and other shortcomings in the proceedings.

ENGAGEMENT WITH HRDS

On a practical level, the EU delegation and member state missions established the *grupo enlace*²⁰⁵ to coordinate their actions on human rights, initially following the 2009 coup and, up until recently, to carry forward the 2010 Honduras-specific local strategy on HRDs. In an innovative good practice, a wide range of actors participated in the *grupo enlace* to strengthen links between the government and civil society. HRDs, civil society representatives, representatives of the Attorney General, the government and the EU attended these exchanges, allowing HRDs access to a wide range of counterparts and recognition for their work in the eyes of the state and the diplomatic community. According to EU diplomats interviewed for this report, the EU's next human rights programme for Honduras from 2020 onward envisages building on the *grupo enlace* by expanding links between the national authorities, civil society and businesses.

Unfortunately, following a change in staff at the EU delegation, the *grupo enlace* has lost momentum. Meetings have become less frequent, with quarterly meetings dropping to two meetings in 2018. So far, up to late April, no meeting had taken place in 2019. The *grupo enlace* has also become less diverse. It used to be facilitated by Espacio ACI (Asociación de Cooperación Internacional), which coordinated international NGOs in Honduras. At present, the EU delegation convenes it, and one civil society interviewee observed that HRDs attending are usually those already in touch with the delegation. This interviewee also mentioned that the most recent meetings no longer end with agreement on a list of commitments, as was previously the case.

In addition to meetings with HRDs at the *grupo enlace*, with EU ambassadors and in the framework of the G16 donor group, the EU delegation says it has an open-door policy for HRDs and human rights NGOs to set up meetings with EU diplomats. Similar policies were reported for the German and Spanish embassies. International NGOs also organize training or workshops that bring together HRDs and diplomats for networking and exchange.

Speaking with Amnesty International, both diplomats and HRDs agreed that publicizing visits of diplomats or high-level officials to human rights organizations and HRDs' offices can be particularly valuable to raise the profile of HRDs, legitimize their activities and lower the risks they face due to their work.

Such public action is especially important in Honduras due to smear campaigns in social media targeting HRDs and their work.²⁰⁶ The EU delegation reported specifically working to counter such campaigns through its public channels. The EU head of delegation posed for pictures during meetings with HRDs²⁰⁷ and stated his support to them in times of crisis. The Spanish Vice Minister for Latin America made a show of support by tweeting a picture of his meeting with COPINH, at which he reported discussing the situation of Honduran HRDs and progress in the trial of Berta Cáceres' killers.²⁰⁸ During his 2016 visit, the EU Special Representative for human rights met several HRDs and LGBTI organizations, publicizing the exchanges on Twitter.²⁰⁹

Honduran HRDs said the EU has generally responded positively to requests for visits with HRDs at risk or for the EU to ask the authorities for information on protective measures. In situations of imminent risk, the EU delegation has occasionally physically accompanied individuals at risk.

Still, challenges remain. As most contact takes place in Tegucigalpa, outreach to HRDs based outside of the capital requires additional effort. Due to staff capacity and infrastructural limitations, EU diplomats reported that they could not travel often to remote areas where defenders face heightened challenges, especially in northern Honduras. HRDs regretted that diplomats' visits to regions are also often too short to allow for in-depth discussion with HRDs and the local population. Similarly, HRDs based in remote areas cannot make full use of open-door policies at embassies or take full advantage of the potential for EU action. One HRD outside the capital said: "we are not aware of any [EU] reports on Honduras, they do events in Tegucigalpa, but there is not enough coverage from media."

²⁰⁵ Delegation of the EU to Honduras, *Estrategia Nacional de Derechos Humanos y Democracia, 2016-2020*, point 1.

²⁰⁶ See, for example, Amnesty International, "Honduras: Authorities must guarantee the safety of defenders and journalists targeted in smear campaigns"; Honduras: *Urgent Action: Increasing smear campaign against defenders* (Index: AMR 375/613/2017), 2 February 2017, <https://www.amnesty.org/download/Documents/AMR3756132017ENGLISH.pdf>; Amnesty International, "Honduras/Guatemala: Attacks on the rise in world's deadliest countries for environmental activists" (News, 2 September 2016), <https://www.amnesty.org.nz/hondurasguatemala-attacks-rise-world%E2%80%99s-deadliest-countries-environmental-activists>.

²⁰⁷ Defensoresenlinea.com, "COFADEH renueva su compromiso por la defensa y promoción de los derechos humanos", 31 August 2016, <http://defensoresenlinea.com/cofاده-renewa-su-compromiso-por-la-defensa-y-promocion-de-los-derechos-humanos/>.

²⁰⁸ @GarciaCasasF, 16 April 2018, Twitter, <https://twitter.com/GarciaCasasF/status/985879454609231872>.

²⁰⁹ See, for example: @SJLambrinidis, 3 June 2016, Twitter, <https://twitter.com/SJLambrinidis/status/738874374455885825>; 4 June 2016, Twitter, <https://twitter.com/SJLambrinidis/status/739110206437609472>.

One solution is for EU diplomats to visit HRDs based outside Tegucigalpa by combining HRD meetings with visits to cooperation projects in remote areas. For example, the Spanish Vice Minister for Latin America used such an opportunity to hold meetings with HRDs from the North Coast in the city of San Pedro Sula and to travel to La Esperanza to visit the office of COPINH.

The overall visibility of the EU Guidelines on HRDs leaves room for improvement in Honduras. Most HRDs interviewed for this report were familiar with the EU Guidelines, but mainly from training sessions provided by international NGOs and the personal commitment of individual delegation staff. One HRD believed the Guidelines were unknown outside larger cities in Honduras:

I think that defenders who are in the main cities such as Tegucigalpa, San Pedro Sula or El Progreso have access to this information, but this is not the case for those in rural areas. The EU representatives do not inform HRDs about the Guidelines. There is a lack of information about how EU diplomatic missions work and the existing mechanisms for defenders.

ENABLING ENVIRONMENT

One of the EU's three funding priorities for Honduras over 2014-2020 is the promotion of the rule of law, including by setting up a national system to promote and protect human rights. €40 million has been allocated to this priority for the six-year period, channeled through the government budget.²¹⁰ The 2012-2017 PADH programme likewise supported several systemic measures designed to improve the national human rights system.²¹¹

Since 2013, the EU has also funded EuroJusticia, a €31 million project designed to reform and strengthen the justice system in Honduras.²¹² One of the project's key objectives is to improve access to justice for marginalized groups. However, the project's implementation through the Ministry of Public Security (which controls the police) and the Attorney General's office has drawn criticism from local HRDs, who do not perceive these entities as reliable partners due to their failure effectively to investigate crimes against HRDs and other human rights violations.²¹³

The EU has been a committed donor to the IACHR, although its contributions have significantly varied over time.²¹⁴ Continued EU support for the IACHR will be a politically and practically important backup to national protection efforts in Honduras and in the region more widely, in particular where the IACHR can provide HRDs with visibility and protection when the state fails to do so.

In Honduras and elsewhere, there is room for reflection and analysis on how the EU can best use its influence to balance systemic support to a national human rights system or the National Protection System for HRDs with meaningful, practical action and critical engagement with the authorities when state actors themselves are behind attacks on HRDs.

FINANCING, TRAINING AND CAPACITY BUILDING

The EIDHR is the principal source of EU funding for HRDs in Honduras and supports seven projects by local and international NGOs at the time of writing. EIDHR support targets WHRDs for capacity building, promotion of local women's networks, improved protection of WHRDs in areas of major socio-environmental conflict and assistance to women land rights defenders.

The EU's stated priorities in providing emergency funding through the EIDHR or the EU's Protect Defenders mechanism are:

²¹⁰ 2014-2020 EU Multiannual Indicative Programme for Honduras, https://eeas.europa.eu/sites/eeas/files/2014-2020_multiannual-indicative-programme_honduras_en_0.pdf.

²¹¹ These include: the implementation of the Human Rights National Policy and Action Plan; the reinforcement of the Public Prosecutor's Office, the Vice Ministry for Human Rights and the National Committee for the Prevention Against Torture; the creation of a new Directorate for the Protection of Human Rights Defenders in the Vice Ministry for Human Rights; the creation of the Human Rights Observatory and the Monitoring System for Recommendations to Honduras (Sistema de Monitoreo de Recomendaciones de Honduras – SIMOREH) following up on international (UN and Organization of American States OAS) human rights recommendations towards Honduras; and the provision of training in special investigation capacities for human rights violations to staff of the Public Prosecutor's Office.

²¹² European Commission, International Cooperation and Development, *Promoting rapid and accessible justice in Honduras (EuroJusticia)*, https://ec.europa.eu/europeaid/projects/promoting-rapid-and-accessible-justice-honduras-eurojusticia-0_en.

²¹³ Amnesty International, *Americas: The situation of State Protection Mechanisms for Human Rights Defenders*.

²¹⁴ IACHR, *Annual Report 2017*, Chapter VI, <http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.6-en.pdf>; Organization of American States, *Specific Funds Contributions to IACHR 2011-2016*, <https://www.oas.org/es/cidh/mandato/finanzas/RecursosFinancieros-2011-2016.pdf>.

- HRDs at risk, specifically in cases where IACHR protection measures need to be strengthened;
- LGBTI defenders and organizations, through measures such as enforcing the security infrastructure of offices; and
- HRDs requiring legal support in response to criminalization of their work.

The EU further supports the organization of training sessions and workshops, including workshops on the EU Guidelines on HRDs and a regional workshop for civil society on the Guiding Principles for Business and Human Rights within the context of its regional project on extractive industries and human rights in Central America.²¹⁵

In her statement on behalf of the EU on the occasion of the International Day for the World's Indigenous People in August 2018, the HR/VP announced that the EU will dedicate €5 million to HRDs and organizations working on land grabbing, climate change and Indigenous peoples' rights, although it is as yet unclear if and how these funds might be allocated to HRDs working on issues related to the land and territory in Honduras.²¹⁶

RELOCATION AND VISA SUPPORT

The EU's Protect Defenders mechanism and EIDHR emergency funding provide resources for emergency relocation and rest and respite leave for HRDs at risk. Some Honduran HRDs confirmed receiving EU assistance for relocation in country, but resources available through these mechanisms are limited and many HRDs are unable to access them at times of need. HRDs further highlighted the lack of information about the EU relocation funding available through the EU delegation.

In some instances, CSOs provided substantiating research and verification of HRD cases to the EU delegation, allowing the EU and its member states to decide on preventive measures for HRDs at risk, such as relocation to a different area or outside of the country.

HRDs further welcomed the recent creation of a shelter city programme for individuals at risk from the Central American region in Costa Rica with Dutch government support.²¹⁷

ENGAGEMENT AT REGIONAL AND INTERNATIONAL FORA

The EU delegation and EU member state missions in Honduras are known to work closely with regional and international organizations and their respective human rights bodies. The *grupo enlace* has often included the OHCHR representative for Honduras, while UN and Organization of American States (OAS) representatives in Honduras are part of the G16 group. The EU engages with relevant UN Special Procedures, such as the Special Rapporteur on Indigenous Peoples and the Special Rapporteur on the situation of HRDs, as well as with the IACHR, on their visits to Honduras. The EU delegation also supports follow up on the UPR recommendations accepted by Honduras in May 2015 by funding the establishment and maintenance of a tool to track UPR commitments and their implementation.²¹⁸

As little evidence was found of EU support to Honduran HRDs accessing regional and international human rights bodies outside of the country, work in this area should either be stepped up or made more visible to ensure that Honduran HRDs are aware of this possibility.

VERTICAL AND HORIZONTAL COORDINATION

Despite significant efforts towards coordination, Honduran HRDs perceived a lack of a systematic approach to human rights and HRDs among EU diplomatic staff in Honduras. Speaking with Amnesty International, Honduran HRDs pointed out how much EU human rights work in Honduras seemed dependent on individuals and was thus vulnerable to regular staff rotations, rather than being systemic, systematic and strategic. As one HRD said in 2018:

²¹⁵ UE en Honduras Facebook, 16 October 2018, <https://www.facebook.com/353373548074846/posts/1908316075913911/>.

²¹⁶ "Declaration by the High Representative on behalf of the EU on the occasion of the International Day for the World's Indigenous Peoples", 8 August 2018, <https://www.consilium.europa.eu/en/press/press-releases/2018/08/08/declaration-by-the-high-representative-on-behalf-of-the-eu-on-the-occasion-of-the-international-day-for-the-world-s-indigenous-peoples/>.

²¹⁷ "Costa Rica becomes third international Shelter City for human rights defenders", 7 February 2018, <https://sheltercity.nl/en/costa-rica-becomes-third-international-shelter-city-for-human-rights-defenders/>.

²¹⁸ *Sistema de Monitoreo de Recomendaciones de Honduras*, <https://simoreh.sedh.gob.hn/buscador/home>.

Before, they used to be our allies to protect the right to defend human rights, and the one with most commitment was the EU ambassador. Our communication used to be fluid and speedy. Now we feel helpless because we do not know the new ambassadors, and we need to recreate synergies and communication channels to support individuals at risk for the work they do as defenders.

HRDs also perceive the EU and its member states as having divergent positions between their support of HRDs and other interests, in particular business activities and development projects in Honduras. In the words of one HRD:

We heard discourse coming from some embassy representatives saying that [land rights] organizations and communities are against development, and this is a very widespread narrative. They emphasize that development is important and therefore these projects are important.

Both HRDs and diplomats agreed there is a need for greater vigilance and more open exchange about EU member state-backed trade or business agreements and development projects, and the impact they may have in Honduras, and specifically on HRDs – and that Honduran HRDs have a crucial role to play in that debate.

6.4 CONCLUSIONS AND RECOMMENDATIONS

In Honduras, several good EU practices of support to HRDs have emerged in a situation of high risk where the EU and its member states have significant leverage. These include:

- statements on killings of HRDs with explicit calls for justice, better HRD protection and attention to other individuals and groups at risk;
- multiple levels of coordination with HRDs through the *grupo enlace* and the G16;
- public communication aimed at countering smear campaigns; and
- links between the EU EOM and long-standing work on HRD protection.

Still, challenges for EU engagement on HRDs in Honduras remain, including:

- Conducting meaningful outreach to HRDs in remote or rural areas;
- Developing strategies to extend work on emblematic HRD cases to benefit other HRDs and groups at risk;
- Reinforcing work to address specific groups and their needs, in particular Indigenous HRDs, HRDs working on territory, land and environment and those working on business and human rights;
- Ensuing EU systemic support to the national human rights system is matched by meaningful critical engagement where there is state responsibility for human rights violations against HRDs; and
- Balancing EU and member state commitments on HRDs with interests in development projects or business, where these may have an adverse human rights impact.



TO IMPROVE IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN HONDURAS, THE EU AND MEMBER STATES SHOULD:

- **Pro-actively issue statements addressing cases of HRDs at risk**, including: those in pre-trial detention or criminalized for their activities; those working on human rights related to the land, environmental protection and Indigenous rights; and those who do not have a high profile.
- **Ensure consistent human rights monitoring of EU-funded police, military and judicial investigation bodies** in Honduras to ensure they respect and protect human rights.
- **Fully use EU and member state support to the national human rights system and HRD protection mechanism to critically engage with the Honduran authorities on individual HRD cases.** Likewise, act to ensure that the national protection mechanism for HRDs is adequately resourced, supported and fully backed politically to function meaningfully.
- **Reinvigorate the quarterly meetings of the *grupo enlace***, ensuring regular, inclusive and action-oriented exchanges with Honduran HRDs and civil society. In close consultation with all involved, build on proposed initiatives of expanding the *grupo enlace* to link up HRDs (and civil society more widely) with government, international diplomats and business actors.
- **Ensure due diligence, as set out in the UN Guiding Principles on Business and Human Rights**, so that the human rights of individuals and communities are respected in the context of European activities and projects related to the exploration and exploitation of natural resources.
- **Step up work to link Honduran HRDs with regional and international human rights mechanisms and/or** to make this work more visible to HRDs.

7. IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN RUSSIA



The EU's human rights policy in Russia has long had to contend with divergent EU member state positions and political considerations related to Russia's perceived strategic and economic importance to Europe. The suspension of the political framework for EU-Russia dialogue following the 2014 annexation of Crimea and the increasingly tense EU-Russia relations characterized by occasional diplomatic and security flare ups, have presented a further obstacle to the EU's HRD policy.

Despite these challenges, the EU has taken some important steps in recent years towards enhancing its support and protection of Russian HRDs. Adopting a more vocal, flexible and at times better coordinated approach, some notable good practices have emerged. Consultation with HRDs has proven particularly important in developing a number of innovative and tailor-made initiatives.

Yet more needs to be done to ensure that such good practices become part of an overall and sustained shift in EU policy. As Russian HRDs face increasing restrictions, a more consistent EU policy that systematizes consultation with HRDs and seeks to enhance the visibility and impact of its actions can provide additional support to HRDs, which may be crucial in overcoming some of the challenges they face.

7.1 BACKGROUND AND MAIN CHALLENGES FACED BY HRDS

Russia saw the emergence of a diverse civil society landscape following the collapse of the Soviet Union. Groups working on human rights became increasingly well-established in the mid-1990s, alongside Russia's broader commitments to uphold human rights.²¹⁹ Russia's 1993 constitution guarantees a wide range of human rights, including the right to freedom of association, while the Human Rights Ombudsman (1997) and the Presidential Council for Civil Society and Human Rights (2004) were established to guarantee their protection. Russia is also a party to several regional and international human rights treaties, including the European Convention on Human Rights, as a member of the Council of Europe.

However, during Vladimir Putin's second presidential term (2004-2008), the situation for Russian HRDs gradually deteriorated as the government began tightening its regulatory control over civil society. In 2006, amendments to the NGO Law²²⁰ enhanced the authorities' powers of scrutiny over the funding and activities of Russian and foreign NGOs.²²¹ This trend accelerated in the wake of Putin's return as president in 2012, following months of anti-government protests regarding suspected electoral fraud. Since then, NGOs, human rights defenders, opposition movements, media outlets and journalists have been targeted and have seen their rights curtailed.

Russia has taken a leading role in the global crackdown on HRDs, combining legislative restrictions against civil society with targeted prosecutions, substantial delegitimization campaigns and a related effort to promote pro-government organizations.²²² In many ways, Russia's efforts to restrict civil society have had a knock-on effect as other countries went on to adopt similar anti-NGO laws, both in the region and beyond.²²³

Referencing "national security threats by foreign governments", Russia's 2012 Law on Foreign Agents (LFA) compelled Russian NGOs to register as "organizations performing the functions of foreign agents" if they receive foreign funding and engage in what the authorities vaguely define as "political activities".²²⁴ This law and the accompanying delegitimization campaigns tarnished the image of HRDs and had a chilling effect on civil society organizations in Russia.²²⁵ Since then, many organizations have been forced to shut down or to stop accepting foreign funding, reducing their activities.

The LFA heralded a series of other legislative restrictions that further eroded the space for civil society between 2012 and 2018. In 2013, the Russian authorities adopted a law that outlaws the "propaganda of homosexuality among minors" and targets the work of LGBTI HRDs by brandishing rhetoric about "traditional values" and "child protection".²²⁶ The law had a negative effect on LGBTI NGOs' work, limiting their possibilities for constructive dialogue with education and health care professionals and with the authorities. The law also led to censorship and self-censorship in the media and social media based on fear fuelled by the case of an activist who was heavily fined for posting links to LGBTI-related stories on social media.²²⁷

In 2015, the "undesirable organizations law" empowered the Prosecutor General to ban, without any judicial proceeding, foreign and international organizations deemed "undesirable". This law had a particularly negative impact on donor organizations, forcing many to cease operations in Russia, in turn further limiting the funding opportunities for Russian NGOs.²²⁸ It also bars foreign-registered organizations and is increasingly being used to penalize Russian NGOs and civil society activists. In January 2019, the Russian authorities for the first time expanded the use of this law to open a criminal case against Anastasia Shevchenko, coordinator of the Otkrytaya Rossiya (Open Russia) movement.²²⁹ She was charged with "repeated participation in the activities

²¹⁹ Civil Rights Defenders, *Never Give Up: Russian Human Rights Defenders keep on swimming under the ice*, March 2018, <https://crd.org/wp-content/uploads/2018/03/never-give-up-human-rights-defenders-keep-swimming-under-the-ice-1.pdf>.

²²⁰ For English and Russian texts of this legislation, see: International Centre for Not-for-Profit Law, "Russian President Vladimir Putin signs new NGO law", 19 January 2006, <http://www.icnl.org/news/2006/19-Jan.html>.

²²¹ Amnesty International UK, "Russia: Putin must amend NGOs law" (Press release, 6 July 2006), <https://www.amnesty.org.uk/press-releases/russia-putin-must-amend-ngos-law>.

²²² Carnegie Endowment for International Peace, *Delegitimization and Division in Russia*, 18 May 2017, <https://carnegieendowment.org/2017/05/18/delegitimization-and-division-in-russia-pub-69958>.

²²³ Amnesty International, *Laws Designed to Silence* p. 22; Free Russia Foundation, *Human Rights First, Russia's Bad Example*, February 2016, http://www.humanrightsfirst.org/sites/default/files/Russias_Bad_Example.pdf.

²²⁴ *2012 Law on Foreign Agents*, <https://rg.ru/2012/07/23/nko-dok.html>.

²²⁵ Amnesty International, *Russia: Agents of the people – four years of 'foreign agents' law in Russia: Consequences for the society* (Index: EUR 46/5147/2016), 18 November 2016, <https://www.amnesty.org/en/documents/eur46/5147/2016/en/>.

²²⁶ Amnesty International, "Russia's anti-gay 'propaganda law' assault on freedom of expression" (News, 25 January 2013), <https://www.amnesty.org/en/latest/news/2013/01/russia-anti-gay-propaganda-law-assault-on-freedom-expression/>.

²²⁷ Amnesty International, "Russia: Homophobic legislation used to persecute activist who shared LGBTI articles on Facebook" (News, 18 October 2017), <https://www.amnesty.org/en/latest/news/2017/10/russia-homophobic-legislation-used-to-persecute-activist-who-shared-lgbti-articles-on-facebook/>.

²²⁸ *The Guardian*, "American NGO to withdraw from Russia after being put on 'patriotic stop list'", 22 July 2015, <https://www.theguardian.com/world/2015/jul/22/american-ngo-macarthur-foundation-withdraw-russia-patriotic-stop-list>.

²²⁹ Amnesty International, "Russia: First criminal case under 'undesirable organizations' law marks a new level of repression" (News: 21 January 2019), <https://www.amnesty.org/en/latest/news/2019/01/russia-the-first-criminal-case-under-the-undesirable-organizations-law->

of an undesirable organization”, a criminal offence under Article 284.1 of the Criminal Code. Until then, cooperation with an “undesirable organization” had been punished as an administrative offence.

In late 2017, the Russian authorities introduced amendments to the media law that allowed for the branding of foreign-based media outlets as “foreign agents”.

These repressive measures have been accompanied by the targeted harassment and intimidation of HRDs, including through unfounded criminal prosecutions,²³⁰ arbitrary detentions and unprecedented smear campaigns against NGOs and civil society activists. HRDs continue to be demonized in national and regional media as well as through coordinated social media campaigns. To date, NGO litigation efforts to combat smear campaigns against them have been rejected repeatedly by the courts.²³¹

HRDs in Russia also face regular physical attacks²³² and harassment that are rarely, if ever, effectively investigated.²³³ This is illustrated by the absence of effective investigation into the 2009 abduction and murder of prominent HRD Natalia Estemirova.²³⁴ Due to this hostile climate, some Russian HRDs have been forced to, at least temporarily, flee their places of residence or the country, such as Nadezhda Kutepova in 2015,²³⁵ Elena Milashyna in 2017²³⁶ and Irina Biriukova in 2018.²³⁷ Nonetheless, the overwhelming majority of HRDs remain in the country and continue to do their work despite the threats they face.



Natalia Estemirova at an Amnesty International staff meeting, at the International Secretariat in London, 31 July 2008. ©Amnesty International

[marks-a-new-level-of-repression/](#).

²³⁰ See, for example, Amnesty International, “Russia: Chechen human rights defender must be released as unfair trial looms” (News, 6 July 2018), <https://www.amnesty.org/en/latest/news/2018/07/russia-chechen-human-rights-defender-must-be-released-as-unfair-trial-looms/>.

²³¹ See for example Planeta Nadezhd case, *The Moscow Times*, “Suck it up , Foreign Agent”, 10 March 2017, <https://themoscowtimes.com/articles/suck-it-up-foreign-agent-57397> and International Memorial, “Court comes out with a verdict on Memorial vs. REN TV case”, <https://www.memo.ru/en-us/memorial/departments/intermemorial/news/92>.

²³² See, for example, Amnesty International, “Russia: Human rights defender badly beaten in another brutal attack” (News, 28 March 2018), <https://www.amnesty.org/en/latest/news/2018/03/russia-human-rights-defender-badly-beaten-in-another-brutal-attack/>.

²³³ See, for example, the cases of Rudomakha (Amnesty International, “Andrey Rudomakha, Sochi”, 8 June 2018, <https://www.amnesty.org/en/latest/campaigns/2018/06/andrey-rudomakha-human-rights-defender-in-russia/>); Benyash (Caucasian Knot, “Defence of Mikhail Benyash claims inaction of investigators”, 23 October 2018, <https://www.eng.kavkaz-uzel.eu/articles/44830/>); and Datsiev (Human Rights Watch, *Russia: Events of 2018*, <https://www.hrw.org/world-report/2019/country-chapters/russia>).

²³⁴ Amnesty International, *Deadly but Preventable Attacks: Killings and Enforced Disappearances of Those who Defend Human Rights* p.32 and 38.

²³⁵ *The Guardian*, “Human rights activist forced to flee Russia following TV ‘witch-hunt’”, 20 October 2015, <https://www.theguardian.com/world/2015/oct/20/russia-activist-flee-nuclear-tv-witch-hunt>.

²³⁶ *The Washington Post*, “She broke the story of Chechnya’s anti-gay purge. Now, she says she has to flee Russia”, 15 April 2017, https://www.washingtonpost.com/news/worldviews/wp/2017/04/15/she-broke-the-story-of-chechnyas-anti-gay-purge-now-she-says-she-has-to-flee-russia/?noredirect=on&utm_term=.661f2c7ea121.

²³⁷ Amnesty International, “Russia: Lawyer covering torture case flees country after threats” (News, 23 July 2018), <https://www.amnesty.org/en/latest/news/2018/07/russia-lawyer-covering-torture-case-flees-country-after-threats/>.

HRDs themselves have said that women HRDs feel more at risk due to their families and children being targeted because of their work. They note that since a large proportion of the Russian human rights community is female, any overall repression of civil society is likely to affect WHRDs disproportionately. Organizations working with any type of minorities – sexual or ethnic – also feel at increased risk; in particular, LGBTI organizations are subject to legal restrictions under both the LFA and the “homosexual propaganda” law and are at increased risk of attacks, harassment, intimidation and discrimination. In the words of one HRD:

No matter what thematic issue an independent NGO is working on, when the NGO's interests cross the interests of the state, this thematic issue will become problematic and might lead to punitive measures.

Beyond serving as an example for other repressive governments, Russia has also taken the lead alongside China in seeking to thwart UN action to promote and protect HRDs, which, it argues, threaten its national sovereignty or undermine “traditional values”. This has included attempts to curtail funding to UN human rights programmes, to block UN discussions on human rights²³⁸ and to question the established definition of HRDs as defined in UN resolutions.²³⁹

Some of these challenges are recognized by EU diplomats, who have expressed concern about the shrinking space for Russian civil society, the situation of LGBTI organizations, journalists’ ability to report freely, declining freedom of religion and disinformation campaigns against HRDs, human rights NGOs and indeed any individuals questioning the actions of the state.

7.2 ASSESSMENT OF ACTION BY THE EU AND EU MEMBER STATES

The establishment of an EU-Russia Partnership and Cooperation Agreement in 1997 and the increasing institutionalization of EU-Russia relations in the early 2000s, offered a promising political framework for cooperation and regular channels of discussion on human rights. The 1997 agreement was based on the principle of respect for democracy and human rights and was later complemented by a series of sectoral dialogues, including a human rights consultation and dialogues on justice, freedom and security.

In 2003, the EU and Russia agreed to reinforce their relations by creating four common spaces of cooperation in the fields of the economy and environment; freedom, security and justice; external security and research; and education and cultural exchange.²⁴⁰ Roadmaps were elaborated to set specific objectives for both parties to enhance their cooperation, while recurring dialogues were established to monitor progress. In 2008, the EU and Russia began negotiations for a new agreement that envisioned the possible establishment of an EU-Russia free trade area and visa-free travel. For the EU, enhancing cooperation on justice, freedom and security was a key component in the development of a strategic partnership with Russia.²⁴¹ Channels such as the visa liberalization dialogue, offered the EU further political space to address human rights concerns.

However, the suspension of this framework of cooperation following Russia’s 2014 annexation of Crimea has prevented the EU from using these channels to support and protect HRDs. Since 2014, the EU-Russia relationship has significantly cooled, with the EU introducing sanctions, including asset freezes, visa bans for selected individuals and entities and restrictions on economic exchanges with Crimea and Sevastopol.²⁴² While regular exchanges between the EU and its Russian counterparts continue at different levels, contacts at the highest political level have become less frequent. Standing political dialogues, including the EU-Russia human rights consultations, have been indefinitely suspended. This means the consultations the EU organized with HRDs ahead of these meetings have also been put on hold.

Despite this, the EU has since 2014 progressively adopted a more vocal policy in support of HRDs and has put more emphasis on the situation of HRDs in its relations with Russia.²⁴³ In 2010, the EU-Russia political dialogue and human rights consultations (held on a bi-yearly basis between 2005 and 2013) were criticized

²³⁸ *Radio Free Europe*, “Russia Blocks UN Meeting On Human Rights In Syria, Prompting Outcry”, 20 March 2018, <https://www.rferl.org/a/russia-blocks-un-meeting-human-rights-syria-prompting-outcry-zeitid-29110593.html>.

²³⁹ *Foreign Policy*, “At the U.N., China and Russia Score Win in War on Human Rights”, 26 March 2018, <https://foreignpolicy.com/2018/03/26/at-the-u-n-china-and-russia-score-win-in-war-on-human-rights/>.

²⁴⁰ EEAS, *The European Union and the Russian Federation*, 21 November 2017, https://eeas.europa.eu/headquarters/headquarters-homepage/35939/european-union-and-russian-federation_en.

²⁴¹ Commission of the European Communities, *A strategy on the external dimension of the area of freedom, security and justice*, 12 December 2005,

[http://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com\(2005\)0491/com_com\(2005\)0491_en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com(2005)0491/com_com(2005)0491_en.pdf).

²⁴² EEAS, *The EU non-recognition policy for Crimea and Sevastopol: Fact Sheet*, 12 December 2017,

https://eeas.europa.eu/headquarters/headquarters-homepage/37464/eu-non-recognition-policy-crimea-and-sevastopol-fact-sheet_en.

²⁴³ For trends in EU public stances on HRDs in Russia, see “Public action” section in Chapter 6.3 below.

by NGOs as a “mere diplomatic exercise” that was not used effectively to raise concern about HRDs.²⁴⁴ This illustrates that while structured dialogue can be an important channel through which to raise human rights concerns, it is not the only tool available to the EU, nor is the mere fact of holding a dialogue a guarantee that it will be used effectively in support of HRDs.

Today, the EU Guidelines on HRDs appear to enjoy a significant degree of political support and ownership within the EU institutions, and in 2017 and 2018 were reinforced by clear commitments to further strengthen the capacity of Russian civil society and HRDs. Increasing support to civil society and HRDs is considered a key component not only of the EU’s human rights policy,²⁴⁵ but also of its broader political approach towards Russia. This is reflected in the EU’s five guiding principles on EU-Russia relations,²⁴⁶ adopted in March 2016. One of the five principles is the EU’s commitment to promote people-to-people contacts and increase its support to Russian civil society. This explicitly includes human rights defenders, as was underlined following the April 2018 Foreign Affairs Council.²⁴⁷

In recent years, the EU’s HRD policy in Russia has come to combine financial assistance efforts with more public political support for HRDs. This is reflected in the claims by the EU and its member states to raise the situation of individual HRDs through: high-level exchanges (sometimes reflected in accompanying public messages); strong and more regular public statements in support of HRDs; the more frequent and comprehensive trial observation activities; and the occasional engagement of officials with HRDs during high-level visits. Where the EU’s engagement has been consistent, high-level and well-coordinated between the EU and key EU member states, these efforts have had a direct impact on individual HRDs.



 ↑ Valentina Cherevatenko, the founder and chair of the Russian NGO Women of the Don Union. @Amnesty International

²⁴⁴ International Federation for Human Rights (FIDH), *Assessment of the EU-Russia Human Rights Consultations: “A good and constructive atmosphere” and 8 human rights defenders assassinated*, October 2010, <https://www.fidh.org/IMG/pdf/assessment.pdf> and Human Rights Watch, *EU-Russia Human Rights Consultations Human Rights Watch Recommendations - March 2008*, 7 May 2008, <https://www.hrw.org/news/2008/05/07/eu-russia-human-rights-consultations>.

²⁴⁵ EEAS, *EU Annual Report on Human Rights and Democracy in the World 2017*, https://eeas.europa.eu/sites/eeas/files/human_rights_report.pdf.

²⁴⁶ “Remarks by HR/VP Federica Mogherini at the press conference following the Foreign Affairs Council”, 14 March 2016, https://eeas.europa.eu/headquarters/headquarters-homepage/5490/remarks-by-high-representativevice-president-federica-mogherini-at-the-press-conference-following-the-foreign-affairs-council_en.

²⁴⁷ “Remarks by HR/VP Federica Mogherini at the press conference following the Foreign Affairs Council”, 16 April 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/42996/remarks-hrvp-mogherini-press-conference-following-foreign-affairs-council_en.

One example is the EU's engagement in the case of Valentina Cherevatenko, the first head of an NGO to be criminally prosecuted for allegedly violating the LFA. When the charges against her were dropped in 2017, it was widely attributed to the international attention her case received. Particularly important was the fact that EU statements²⁴⁸ and efforts by the EU ambassador to raise her case with the Russian Foreign Minister were complemented by EU member state actions. These included statements,²⁴⁹ trial monitoring, the raising of her case by high-level French and German officials and the Ambassador of Sweden writing to Valentina Cherevatenko to offer help.

The longstanding divergences in member state positioning on Russia have not prevented the EU from mobilizing the different tools at its disposal in pursuit of an effective HRD policy. Indeed, the complexity of EU structures allows for a degree of flexibility. For example, a lack of local statements by the EU delegation in Moscow has been compensated by statements by the spokesperson of the HR/VP in support of HRDs, which have, in some cases, been replicated by key EU member states.

Nonetheless, discord continues to hinder the EU from mobilizing all foreign policy instruments at its disposal to support HRDs, including local statements and Foreign Affairs Council conclusions. This lack of unity weakens the EU's efforts to support HRDs and undermines the consistency of its messaging at different levels of policy-making.

According to EU officials, some important steps have been taken to tailor the EU's support to the specific realities and challenges faced by Russian HRDs. As is the case in other countries, the EU has developed country-specific HRD guidelines that seek to guide the EU and its member states' actions towards Russian HRDs and that have been endorsed both at local level and at Council of the EU Working Party level.²⁵⁰ Although non-public, EU dialogue with civil society actors has facilitated the identification of the challenges these guidelines are supposed to overcome.

Consultation with relevant stakeholders has also contributed to the development of a few other innovative initiatives and approaches to supporting HRDs. These have included the elaboration of non-public EU guidelines that, according to diplomats, aim to streamline and facilitate the provision of visas for Russian HRDs.

A separate but also potentially innovative initiative is the EU's decision to establish a Russian-language website which, according to some diplomats, can be used to counter misinformation and smear campaigns against Russian HRDs. If used effectively for this purpose, it could offer an important tool to promote positive narratives regarding the work of HRDs and to respond to their increasing demonization in Russian media.

While recent improvements in the EU's policy towards Russian HRDs offer a good basis to build on, more remains to be done to ensure that good practices become part of a sustained and systematic policy shift. Indeed, although public messaging on HRDs has become more frequent, inconsistencies remain in the strength and level at which it is adopted and the individual cases that are addressed. EU statements are primarily reactive rather than preventive, often failing to offer protection to HRDs facing imminent threats and only occasionally replicated by EU member states at national level.

Moreover, there remains much scope to improve the visibility and impact of EU actions, be it through the more active dissemination of statements or by ensuring that trial observation efforts and meetings with HRDs reach the media and the general public. While engagement with HRDs has proven important, the EU's consultation of HRDs is not systematic, particularly outside of large urban centres, and HRDs' expertise is rarely drawn upon ahead of EU meetings with Russian officials. Indeed, EU dialogue with Russian officials remains opaque and is only occasionally complemented by clear public messaging on HRDs.

Finally, against the backdrop of Russia's increasingly assertive efforts to roll back international human rights standards, as recently seen at UN and other multilateral fora, the EU and like-minded partners will need to step up their defence of the international human rights framework. Bolstering support to HRDs and civil society space will be an important component of such efforts. However, these steps will need to fall within a broader, consistent and long-term strategy that is not conditional on favourable geopolitical considerations. The EU's

²⁴⁸ EU statements were made both by the spokesperson of the HR/VP – “Statement on the criminal charges brought against Russian human rights defender Valentina Cherevatenko”, 2 June 2017, https://eeas.europa.eu/delegations/russia/27417/statement-criminal-charges-brought-against-russian-human-rights-defender-valentina_en – and by the EU delegation to the OSCE, “EU Statement on Recent Human Rights Developments in the Russian Federation”, 3 June 2016, <https://www.osce.org/pc/252396?download=true>.

²⁴⁹ See German Federal Foreign Office, “Russia Coordinator Erler on charges brought against Valentina Cherevatenko”, 3 June 2017, <https://www.auswaertiges-amt.de/de/newsroom/170603-erler-tscherewatenko/290386> and “Human Rights Commissioner concerned at prosecution of Valentina Cherevatenko”, 30 June 2016, <https://www.auswaertiges-amt.de/en/newsroom/news/160630-mrhh-b-tscherewatenko/281830>; the statement by the French Ministry of Foreign Affairs, “Russia – Human rights - Situation of Ms. Cherevatenko”, 6 June 2017, <https://www.diplomatie.gouv.fr/en/country-files/russia/events/article/russia-human-rights-situation-of-ms-cherevatenko-06-06-17>; and the efforts by the French Permanent to the OSCE to further disseminate an EU statement on its website: “Déclaration de l'UE au conseil permanent du 8 juin 2017”, 8 June 2017, <https://osce.delegfrance.org/Declaration-de-l-UE-au-CP-du-8-juin-2017>.

²⁵⁰ Officially known as *Guidelines on Practical Actions by the EU and the member states to support Russian HRDs and civil society*.

unconditional support to Russian HRDs, regardless of future political or economic developments, will therefore be crucial to upholding the credibility of the EU's human rights policy.

7.3 EU EFFORTS TO IMPLEMENT ITS HRD GUIDELINES

CLOSED-DOOR DIPLOMACY

Since the suspension of the EU's standing political dialogue with Russia, bilateral engagement has primarily taken place at heads of state level, with EU member states maintaining more frequent contact. Nonetheless, the HR/VP also has several meetings with the Russian Foreign Minister throughout the year,²⁵¹ while EU representatives hold dialogues with other Russian ministers and frequently engage with Russia's Human Rights Ombudsman and the Presidential Council on Human Rights.²⁵² At least once a year, EU ambassadors also meet the Russian Foreign Minister²⁵³ and regional governors during visits to the regions.²⁵⁴ While more limited than before 2014, these meetings offer ample opportunities to raise issues concerning HRDs.

In such meetings, the EU claims to systematically raise concern about the shrinking space for civil society and to inquire about individual cases of HRDs. EU and member state diplomats interviewed for this report confirmed their commitment to upholding this policy. However, the nature of closed-door diplomacy makes it difficult to determine the exact level and frequency of such engagement. While a few public statements and other public messaging around meetings with Russian officials confirm that this occurs on some occasions, these have remained relatively rare.²⁵⁵

A positive example of such efforts was the statement by Finland's Foreign Minister who, during a joint press conference, confirmed that he had raised the case of Yuri Dmitriev with Russia's Foreign Minister, Sergey Lavrov, in February 2019.²⁵⁶

On the other hand, during meetings with their Russian counterparts, the EU and in particular its member states, more often communicate publicly on issues related to security cooperation, economic opportunities and social and cultural exchanges.²⁵⁷ The relatively greater attention given to these issues in public communications risks suggesting that they are also more prominently raised in private meetings.

Given that HRDs are rarely consulted ahead of meetings with Russian officials or briefed about their outcome, an important step to increase the transparency of EU actions could be to ensure that meetings are accompanied by statements that raise concerns about HRDs. This could also increase the effectiveness of EU actions as the more successful cases of closed-door diplomacy have often combined a mix of actions, including both private and public efforts.

²⁵¹ This includes at least four meetings on [18 February](#), [24 April](#), [11 July](#) and [19 September](#) 2017, and at least three meetings on [6 July](#), [25 September](#) and [6 December](#) 2018.

²⁵² Based on interviews with EU diplomats and public statements. See, for example: "Remarks by HR/VP Mogherini at the joint press conference with Foreign Minister of the Russian Federation Sergey Lavrov", 24 April 2017, <https://eeas.europa.eu/delegations/russia/24982/remarks-hrvp-mogherini-joint-press-conference-foreign-minister-russian-federation-sergey-en>; Delegation of the EU to Russia, "Duma hearing on Human Rights situation in the EU – Head of the EU Delegation participated in the hearing", 14 May 2012, http://eeas.europa.eu/archives/delegations/russia/press_corner/all_news/news/2012/20120514_en.htm.

²⁵³ See press release "Foreign Minister Sergey Lavrov meets EU Ambassador to Russia Markus Ederer", 29 June 2018, <https://russiaeu.ru/en/news/foreign-minister-sergey-lavrov-meets-eu-ambassador-russia-markus-ederer>.

²⁵⁴ Delegation of the EU to Russia, "Meeting with the Governor of Tomsk Region", 16 May 2018, https://eeas.europa.eu/delegations/russia_en/44940/Meeting%20with%20the%20Governor%20of%20Tomsk%20Region.

²⁵⁵ See, for example, "Remarks by High Representative/Vice-President Federica Mogherini following a meeting with Foreign Minister of the Russian Federation, Sergey Lavrov", 11 July 2017, <https://eeas.europa.eu/delegations/russia/29710/remarks-high-representativevice-president-federica-mogherini-following-meeting-foreign-en>, or the meeting between French President Macron and President Putin in Versailles on 29 May 2017, where President Macron affirmed he had raised concerns about the repression of Russian NGOs with President Putin, <https://www.facebook.com/groups/150412991995455/permalink/521270241576393/> and the full press conference: YouTube, France24 English, 'Putin in France: President Macron and Russian Leader hold press conference', 29 May 2017, https://www.youtube.com/watch?v=VgTE4B_mg7w&fbclid=IwAR2akw8WUaGPOT2QyFAqK6WYzwZ-72xtBjHfCsXabGS4YFvFp1gqz04hlw.

²⁵⁶ Urgent Response Center, [Министры иностранных дел России и Финляндии обсудили дело Юрия Дмитриева](https://www.facebook.com/urgent.response.center/photos/a.314633071988339/2037870899664539/?type=3&theater), YouTube, Ruptly, 'Lavrov and Finnish counterpart Soini hold joint press statement in Moscow', 12 February 2019, <https://www.youtube.com/watch?v=VwFgek0oaxM>.

²⁵⁷ See, for example, the German embassy's communications around the Ambassador's visit to Krasnodar in April 2019 (https://twitter.com/germania_online/status/1116624424881364992), or the French ambassador's communications around the development of tourism in the North Caucasus in February 2019 (<https://twitter.com/SylvieBermann/status/1097465330685882368>), or the EU's communications around the HR/VP's meeting with Foreign Minister Lavrov in February 2019 ("High Representative/Vice-President Federica Mogherini met with Russian Foreign Minister Sergey Lavrov", 15 February 2019, <https://eeas.europa.eu/delegations/ecuador/58229/high-representativevice-president-federica-mogherini-met-russian-foreign-minister-sergey-en>).

In Russia, closed-door diplomacy is most effective when it is sustained, takes place at a high level and features coordinated and complementary EU and member state action. The involvement of EU member states is particularly key in this context, given the greater importance the Russian authorities accord to bilateral relations with EU member states.

Nonetheless, further steps can be taken to increase the effectiveness and impact of closed-door interventions, including by enhancing the use of preventive outreach, for example to prevent a physical attack on HRDs facing threats, and by broadening the targets of the EU's closed-door efforts to authorities at all levels. In addition to the Ministry of Foreign Affairs, this could include regional authorities and/or law enforcement bodies who may be able to prevent physical attacks against HRDs and with whom they could inquire about the progress of investigations related to HRDs.

PUBLIC ACTION

Between January 2014 and April 2019, at least 40 official EU statements²⁵⁸ addressing the situation of HRDs and/or the clampdown on NGOs in Russia were issued by the HR/VP, her spokesperson or by the EU delegation to the UN HRC in Geneva. The EU issued between five and 10 statements annually through these channels.

By contrast to other countries analysed in this report, there is also a large body of EU statements issued at regional fora such as the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe. Between January 2014 and April 2019, the EU delegations to the OSCE in Vienna and the Council of Europe in Strasbourg issued a total of at least 54 statements addressing the situation of HRDs and/or the clampdown on NGOs in Russia. Taking these into account, the total number of EU statements issued between January 2014 and April 2019 increases to at least 94 statements, with between 12 and 27 statements published annually.

Overall, there was a rise in the number of EU statements addressing the situation of HRDs and/or the clampdown on NGOs in Russia between 2014 and 2018,²⁵⁹ despite the suspension of structured dialogues in 2014 and increasingly tense EU-Russia relations during this period.²⁶⁰ Between 2016 and April 2019, there was also an increase in the proportion of statements that adopted strong language in support of HRDs.²⁶¹

EU statements have predominantly been used to express concern about restrictive legislative developments and the broader crackdown on NGOs in Russia. Nonetheless, at least 37 of the 94 statements issued since 2014 focus on or refer to the situation of individual HRDs. This practice of naming HRDs in statements has become more common since 2016.²⁶²

²⁵⁸ These figures relate only to official EU statements and therefore do not take into account other forms of public communications by the EU, such as speeches by the HR/VP at the European Parliament (of which at least two address HRDs or civil society in Russia, see for example [speech of 17 April 2018](#) and [12 March 2019](#)), Foreign Affairs Council Conclusions (while none were issued on Russia during the reporting period, the EU does address HRDs and the right to freedom of association in Russia in its *Council Conclusions on the EU's priorities at UN human rights fora*, see [conclusions of 18 February 2019](#) and [26 February 2018](#)), or other EU communication on social media. Moreover, these figures do not take into account other EU statements that address the broader human rights situation in Russia such as the crackdown on demonstrations and LGBTI persons, but do not specifically refer to HRDs or the clampdown on NGOs.

The EU also issued several statements on Russia's imprisonment of Ukrainian citizens, including critics and human rights defenders from Russian-occupied and illegally annexed Crimea. This includes at least eight statements and declarations by the HR/VP or her spokesperson related to HRDs and issued between January 2014 and April 2019, including statements delivered at the Council of Europe's Committee of Ministers. However, given the politically specific nature of these cases and that according to international law Crimea remains part of Ukraine, such statements are not included in this report's count of EU statements on HRDs in Russia.

This report's count of EU statements is based on statements that were published and readily available on the EEAS and/or EU delegation websites at the time of writing. While more statements may have been delivered orally in specific settings such as the Council of Europe, all statements that remain unpublished are neither visible nor accessible to HRDs and states, and thus could not be counted for the purposes of this report.

²⁵⁹ The total number of statements addressing HRDs and/or the clampdown on NGOs in Russia issued by the HR/VP, her spokesperson or by the EU delegations to the UN HRC, the OSCE or the Council of Europe has evolved as follows over the years: 12 in 2014, 15 in 2015, 15 in 2016, 20 in 2017, 27 in 2018 and five by end of April 2019.

²⁶⁰ These dialogues, particularly the EU-Russia human rights consultations, provided the EU with a further platform to voice concerns about HRDs through the statements that accompanied the dialogues. Nonetheless, their suspension in 2014 did not lead to an overall reduction in EU statements on HRDs.

²⁶¹ Strong language was defined based on the following criteria: Does a statement address individual HRDs? When appropriate, does it call for the release of HRDs, for charges to be dropped or for attention to due process concerns? Does it celebrate the importance of civil society or the work of HRDs? Does it make explicit calls on the Russian authorities, for example to abandon a specific practice or law? The percentage of statements relating to civil society and HRDs that include such language has steadily increased over the years as follows: 27% in 2016, 35% in 2017 and 54% in 2018.

²⁶² The number of statements addressing individual HRDs which were issued by the HR/VP, her spokesperson or by the EU delegations to the UN HRC, the OSCE or the Council of Europe has evolved as follows over the years: three in 2014, two in 2015, four in 2016, six in 2017, 17 in 2018 and five by end of April 2019. The increase in 2018 and 2019 is partially explained by the EU's sustained and vocal attention to the case of Oyub Titiev and his colleagues at Memorial.

In cases where HRDs face prosecution, these statements are often made before the court has issued a sentence²⁶³ and, at times, also highlight the shortcomings of the judicial proceedings HRDs face. Of 25 statements specifically relating to HRDs facing prosecution and/or detention and issued by the HR/VP, her spokesperson or the EU delegations to the HRC, the OSCE and the Council of Europe since 2014:

- 14 statements called on the authorities to release and/or drop charges against HRDs; and
- 11 statements questioned the legitimacy of the charges against HRDs and/or raised due process concerns.

More generally, the EU has used statements to express concern about the broader context in which HRDs operate, support their work and promote an enabling environment for civil society in Russia. Of the 94 EU statements issued by the HR/VP, her spokesperson or the EU delegations to the HRC, OSCE and the Council of Europe since 2014:

- 51 expressed concern about restrictive legislation against NGOs. These included 34 with explicit calls varying from 23 urging the authorities to live up to or align their legislation with Russia's international commitments, three urging the authorities not to implement legislation, seven calling on the authorities to abandon, suspend or reconsider the practice of stigmatizing or branding NGOs as foreign agents, two calling on the authorities to remove restrictions on civil society and one calling on the authorities to remove a specific NGO from the list of undesirable organizations.
- 28 celebrated civil society and the work of HRDs. These included statements announcing human rights prizes, marking anniversaries and describing the work of HRDs and civil society as "courageous", "legitimate", "peaceful", "widely appreciated", "invaluable" and "to the benefit of Russian society".
- 33 addressed cases of violence or threats against HRDs. These included 16 calling for the perpetrators to be brought to justice, four calling on the authorities to condemn threats and/or violence against HRDs and six reminding the authorities of their responsibility to protect HRDs.

Beyond official statements, the EU delegation's official Twitter (@EUinRussia) and Facebook accounts have also been used to communicate about EU activities and issue statements in support of HRDs. This has included tweeting to publicize EU trial observation,²⁶⁴ to call for the release of imprisoned HRDs²⁶⁵ and to publicize meetings with HRDs or visits to human rights organizations.²⁶⁶

In the absence of local EU statements, the EU delegation's Twitter account offers an important way to communicate the EU's human rights concerns. This, together with the use of spokesperson statements, helps the EU to ensure that possible discord among member states and the need for unanimity does not paralyse its HRD policy in Russia.

These efforts have been reinforced when EU messages are echoed by EU member states,²⁶⁷ including high-level EU member state representatives. This was notably the case of the German Human Rights Commissioner, who, in January 2019, replicated an EU statement a year after the detention of Oyub Titiev;²⁶⁸ of the Swedish Foreign Minister, who, in January 2018, called for the rights of Oyub Titiev to be respected;²⁶⁹ and of the UK Minister for Europe, who, in January 2018, echoed the EU's concerns following Oyub Titiev's arrest.²⁷⁰

The EU's public response to the detention and sentencing of Oyub Titiev is particularly noteworthy. In March 2019, shortly after Oyub Titiev's sentencing, the spokesperson of the HR/VP issued a strongly worded statement that called for his immediate and unconditional release. It also mentioned that the evidence against

²⁶³ See, for example, "OSCE Permanent Council: EU Statement on the Rule of Law and Human Rights Defenders in the Russian Federation", 10 July 2018, https://eeas.europa.eu/delegations/russia_ga/48194/OSCE%20Permanent%20Council:%20EU%20Statement%20on%20the%20Rule%20of%20Law%20and%20Human%20Rights%20Defenders%20in%20the%20Russian%20Federation.

²⁶⁴ See, for example, trial observation on the case of the NGO Man and Law, @EUinRussia, 13 August 2018, Twitter, <https://twitter.com/EUinRussia/status/1029041475752022017>; trial observation in the case of Memorial, 9 August 2018, <https://twitter.com/EUinRussia/status/1027572814612717568> and 13 September 2018, <https://twitter.com/EUinRussia/status/1040255500171071489>.

²⁶⁵ See, for example: @EUinRussia call for the release of Lev Ponomarev, 10 December 2018, Twitter, <https://twitter.com/EUinRussia/status/1072049565065510913>.

²⁶⁶ See: @EUinRussia, 2 April 2019, Twitter, <https://twitter.com/EUinRussia/status/1113107157195636736>.

²⁶⁷ See the joint German-French statement following the award of the Franco-German prize to Oyub Titiev, "Statement by Foreign Ministers Maas and Le Drian on the award of the Franco-German prize in 2018", 21 November 2018, <https://www.auswaertiges-amt.de/en/newsroom/news/franco-german-prize-for-human-rights/2162932>.

²⁶⁸ German Federal Foreign Office, "Human Rights Commissioner Kofler on the detention of Oyub Titiev", 10 January 2019, <https://www.auswaertiges-amt.de/en/newsroom/news/kofler-titjew/2176662>.

²⁶⁹ @margotwallstrom, 11 January 2018, Twitter, <https://twitter.com/margotwallstrom/status/951442913069805568>.

²⁷⁰ UK Foreign and Commonwealth Office, "Minister for Europe's statement on human rights in Russia following the arrest of Oyub Titiev", 18 January 2018, <https://www.gov.uk/government/news/minister-for-europe-statement-on-human-rights-in-russia>.

him appeared to have been fabricated, and underlined that the EU considered his trial to have been unfair.²⁷¹ This statement was replicated at various levels of policymaking, including by the German Human Rights Commissioner,²⁷² the EU delegation's Russian language Twitter²⁷³ and Facebook accounts,²⁷⁴ the Twitter accounts of the German,²⁷⁵ French,²⁷⁶ Lithuanian²⁷⁷ and UK²⁷⁸ foreign affairs ministries, as well as that of the Dutch Human Rights Ambassador.²⁷⁹ All these factors contributed to the statement being widely covered in both English and Russian language media.²⁸⁰

As the cases of Oyub Titiev and Valentina Cherevatenko illustrate, when EU public action is consistent, high-level and well-coordinated between different levels of policy making, it can have a direct impact on the situation of individual HRDs. The value of public action was confirmed by HRDs and diplomats alike. As one HRD stated:

Public reaction [raises] the price for the Russian authorities to continue doing what they are doing, as... it carries reputational damage, necessity to explain themselves and necessity to provide some grounds for why it is happening.

While the above-mentioned figures illustrate that the EU has been vocal in expressing its support for HRDs in Russia, they also reveal that some of these good practices are not yet systematically applied across all statements and communications. For example, EU statements are not used as frequently as they could be to celebrate the work of HRDs (28 of 94 statements). Given the stigmatization campaigns Russian HRDs face, EU statements that offer a positive counter-narrative and underline the importance of their work are particularly important. This can be done by referencing the reports and findings of local NGOs in order to reinforce their credibility²⁸¹ or through interviews and op-eds in Russian-speaking media that highlight their contribution through personal stories. Despite the EU delegation's regular communications with Russian media, such interviews are rarely used to communicate about the situation of HRDs.²⁸²

One positive example was the interview given by Sweden's Foreign Minister, Margot Wallström, following a meeting of the Barents Euro-Arctic Council in October 2017. She criticized the LFA as an obstacle to EU-Russia cooperation and highlighted the valuable work of local NGOs she had met on the margins of the meeting.²⁸³

Further inconsistencies exist with regard to the level at which EU statements are adopted. Of the 94 statements recorded since January 2014, the EU issued:

- 51 from the EU delegation to the OSCE;
- 22 from the spokesperson of the HR/VP, including statements delivered at the Council of Europe's Committee of Ministers;
- 15 from the EU delegation to the UN HRC;

²⁷¹ EEAS, "Statement by the Spokesperson on the sentencing of Oyub Titiev, Director of the Memorial Human Rights Centre, Russian Federation", 18 March 2019, https://eeas.europa.eu/delegations/russia/59819/statement-spokesperson-sentencing-oyub-titiev-director-memorial-human-rights-centre-russian_en.

²⁷² German Federal Foreign Office, "Human Rights Commissioner Kofler on the conviction of Oyub Titiev", 18 March 2019, <https://www.auswaertiges-amt.de/en/newsroom/news/kofler-oyub-titiev/2200452>.

²⁷³ @EUinRussia, 18 March 2019, Twitter, <https://twitter.com/EUinRussia/status/1107914677957394432>.

²⁷⁴ European Union in Russia Facebook profile, 19 March 2019, <https://www.facebook.com/EUinRussia/photos/a.10150323106535652/10161590689480652/?type=3&theater>.

²⁷⁵ @germania_online, 18 March 2019, Twitter, https://twitter.com/germania_online/status/1107692139029377027.

²⁷⁶ @FranceenRussia, 18 March 2019, Twitter, <https://twitter.com/FranceEnRussie/status/1107879328455581697>.

²⁷⁷ @LithuaniaMFA, 18 March 2019, Twitter, <https://twitter.com/LithuaniaMFA/status/1107705340622188544>.

²⁷⁸ @Jeremy_Hunt, 19 March 2019, Twitter, https://twitter.com/Jeremy_Hunt/status/1108005809546543104.

²⁷⁹ @MarietS, 19 March 2019, <https://twitter.com/MarietS/status/1107972851909443584>.

²⁸⁰ See, for example: *Znak*, 19 March 2019, https://www.znak.com/2019-03-19/evrosoyuz_potreboval_nemedlenno_i_bezogovorochno_osvobodit_oyuba_titieva; *Meduza*, 18 March 2019, <https://meduza.io/news/2019/03/18/evrosoyuz-potreboval-nezamedlitelno-i-bezogovorochno-osvobodit-oyuba-titieva>; *Svoboda*, 19 March 2019, <https://www.svoboda.org/a/29829389.html>; *Interfax*, 18 March 2019, <https://www.interfax.ru/world/654729>.

²⁸¹ As the EU has done by referring to reports of international NGOs. See, for example: EEAS, "Statement by the Spokesperson on the persecution, torture and killing of LGBTI persons in Chechnya", 18 January 2019, https://eeas.europa.eu/headquarters/headquarters-homepage/56744/statement-spokesperson-persecution-torture-and-killing-lgbti-persons-chechnya_en.

²⁸² See, for example, the interviews given by the Head of the EU delegation: *Govoritmoskva*, 5 April 2017, <https://govoritmoskva.ru/interviews/1691/>; *Caspian Energy Newspaper*, "EU has a substantial interest in unlocking the maritime route between the Southern Caucasus and Central Asia, - EU Ambassador to RF Vygaudas Ušackas", 29 April 2016, <http://caspienergy.net/en/ambassador-en/33586-eu-has-a-substantial-interest-in-unlocking-the-maritime-route-between-the-southern-caucasus-and-central-asia-eu-ambassador-to-rf-vygaudas-usackas>; and Delegation of the EU to Russia, *Speeches and interviews*, http://eeas.europa.eu/archives/delegations/russia/press_corner/speeches_and_interviews/index_en.htm.

²⁸³ *7x7 Journal*, "Head of Swedish Ministry of Foreign Affairs Margot Wallström: Cooperation with Russia is productive, considering the problems in our relationship", 20 October 2017, <https://7x7-journal.ru/item/99785>.

- Three from the EU delegation to the Council of Europe²⁸⁴; and
- Three from the HR/VP in the form of remarks.

While recognizing the specificities of the different levels at which the EU can issue statements and the added value of each of these levels,²⁸⁵ it is striking that only three statements were issued by the HR/VP in the form of remarks,²⁸⁶ while no official statement was made by the EU delegation to Moscow. This inconsistency likely results from a lack of consensus among EU member states and, although partially compensated for by spokesperson statements and the EU delegation's social media communications in Moscow, this gap undermines the strength and consistency of EU messaging. Taken together with the lack of Foreign Affairs Council Conclusions on Russia, this means that official statements in support of HRDs and civil society are not being made locally and are only rarely made at the highest levels of decision-making. Nonetheless, it is often such statements that are the most likely to have impact and be reported in the local press. Moreover, communications via the EU delegation's Twitter account – while important – have often been descriptive in nature and lacked substantive calls on the authorities.²⁸⁷

Depending on the level at which EU statements are issued, there are also some discrepancies in the strength of the language adopted. Indeed, statements issued by the EU delegations to the OSCE or the Council of Europe have often been more explicit in their calls on the authorities than those adopted by the spokesperson of the HR/VP.²⁸⁸ Despite the different nature of EU statements depending on the fora at which they are delivered,²⁸⁹ more could be done to ensure that the strong language adopted by the EU delegations to the OSCE and the Council of Europe is consistently replicated at all levels of policymaking.

It is also important to note that EU communications addressing the situation of individual HRDs have primarily focused on high-profile cases. While it is important to address emblematic cases, more could be done to broaden the range of individual HRDs addressed in EU statements and to ensure that statements are not merely reactive but also preventive when HRDs face imminent risks or have received threats. This is particularly important given the protection public attention can give individual HRDs.

Finally, the EU needs to pay more attention to enhancing the visibility, reach and impact of its public actions, including by consistently translating EU communications into Russian. Since 2014, the EU has translated at least 14 of its 94 official statements referring to the situation of HRDs or civil society. While translation has become more frequent since 2016, more could be done to systematize this practice. This also applies to the EU and its member states' global reports on human rights, which periodically review the human rights situation in Russia but do not publish the country reviews in Russian.

The further dissemination of EU statements or their replication through member states' own statements also remains exceptional, even though it can greatly enhance the impact and visibility of EU statements. Similarly, EU communications via social media are not always as visible or widely disseminated on popular social media as they could be.

TRIAL MONITORING

Trial monitoring activities are carried out by the EU delegation and EU member state embassies and are coordinated by the EU delegation.

²⁸⁴ This figure is based on the statements that were published and readily available on the EEAS and/or the EU delegation to the Council of Europe's website at the time of writing, see: Delegation of the EU to the Council of Europe, *Council of Europe Press Material*, https://eeas.europa.eu/delegations/council-europe/search/site_en?f%5B0%5D=sm_specific_content_type%3Aeeas_press%3Aall&f%5B1%5D=im_field_eeas_organisation%3A51 and EEAS, *Archive (Delegation of the EU to the Council of Europe)*, http://eeas.europa.eu/archives/delegations/council_europe/press_corner/all_news/index_en.htm. While more statements may have been delivered, all statements that remain unpublished could not be considered for the purposes of this report.

²⁸⁵ For example, statements issued by the EU delegation to the OSCE, the HRC or the Council of Europe are negotiated by all 28 member states and therefore represent the joint position of all EU member states.

²⁸⁶ "Remarks by HR/VP Mogherini at the press conference following the Foreign Affairs Council", 16 April 2018, https://eeas.europa.eu/delegations/russia/42996/remarks-hrvp-mogherini-press-conference-following-foreign-affairs-council_en; "Remarks by the High Representative/Vice-President Federica Mogherini following a meeting with Foreign Minister of the Russian Federation, Sergey Lavrov", 11 July 2017, https://eeas.europa.eu/delegations/russia/29710/remarks-high-representativevice-president-federica-mogherini-following-meeting-foreign_en; "Remarks by High Representative/Vice-President Federica Mogherini at the press conference following the Foreign Affairs Council", 14 March 2016, https://eeas.europa.eu/headquarters/headquarters-homepage/5490_en.

²⁸⁷ See, for example, @EUinRussia, 13 August 2018, Twitter, <https://twitter.com/EUinRussia/status/1029041475752022017>.

²⁸⁸ See, for example, the statement on the charges brought against Valentina Cherevatenko issued by the [EU delegation to the Council of Europe](#) on 14 June 2017 compared to a statement on the same topic issued by the [spokesperson](#) on 2 June 2017. The spokesperson statement does not call for the charges against her to be dropped.

²⁸⁹ For example, depending on the fora at which a statement is delivered, some statements allow the EU to elaborate its concerns in more detail than others.

Since 2016, the EU has monitored a minimum of between five and seven HRD and/or NGO trials annually²⁹⁰ and taken steps to ensure a more comprehensive approach to these activities. This has included steps to ensure more consistent and sustained monitoring of individual cases throughout various stages of their proceedings²⁹¹ by seeking to establish a system of responsibility sharing among member states in some HRD cases²⁹² and by extending trial observation activities beyond large urban centres.

Some EU member states with consulates in the regions have sent their consular staff to trials in these regions, while in other cases EU and member state embassy staff have travelled to attend trials of HRDs in regions including Chechnya, Murmansk and Tambov.

The EU's efforts to monitor Oyub Titiev's hearings have been particularly noteworthy. On 25 June 2018, the Dutch and German embassies sent diplomats to monitor his hearing in Grozny, Chechnya. This was the first time diplomats were sent to the North Caucasus, an effort coordinated by the EU delegation. Since then, there have been at least five trips by diplomats from EU member states and the EU delegation. Representatives of the EU, France and Germany together with other non-EU countries also attended Oyub Titiev's sentencing hearing in March 2019.

This example illustrates the importance of effective responsibility sharing between the EU and its member states as it allows diplomatic services to overcome staff and resource limitations.

Other measures that could be taken to improve the impact of trial observation include more consistently following up on and publicizing these activities through public statements and social media. While on some occasions the EU has issued statements expressing due process concerns following trial monitoring,²⁹³ these have rarely explicitly referred to the EU's trial monitoring efforts or the irregularities that have been observed. Similarly, while it is positive that the EU has used social media to increase the visibility of its trial observation activities,²⁹⁴ this is not yet being done systematically nor has it been used to underline irregularities observed during the proceedings.

One positive example is the statement issued by the EU delegation to the OSCE following the sentencing of Oyub Titiev in March 2019.²⁹⁵ In this statement, the EU states that the trial observation of diplomats, among other things, leads the EU to believe that Oyub Titiev did not receive a fair trial. By communicating about its observations, the EU can ensure that it is not lending credibility to flawed proceedings and that its concerns regarding violations of the right to fair trial are substantiated.²⁹⁶ This is all the more important given that officials in Russia have pointed to the presence of international diplomats to legitimize proceedings, as the spokesperson of Ramzan Kadyrov attempted to do during Oyub Titiev's trial.²⁹⁷

In the first four months of 2019, the EU's trial monitoring efforts have focused primarily on the case of Oyub Titiev. Though an important case, it is crucial that EU trial observation efforts do not benefit solely high-profile cases. Indeed, there are several emblematic cases of HRDs that, according to Amnesty International's findings, have not been monitored by the EU or its member states in 2019.²⁹⁸ To ensure the most effective allocation of

²⁹⁰ Amnesty International is aware of the following trial observation activities by the EU and/or member states: 2019: 1 HRD (Oyub Titiev); 2018: 6 HRDs/NGOs (Oyub Titiev, Ali Feruz, Svetlana Gannushkina, Oleg Orlov, the NGO Man and Law, Ponomarev); 2017: 5 HRDs/NGOs (Ali Feruz, SOVA Centre, Memorial, Tatiana Kotlyar, Ildar Dadin); 2016: 7 HRDs/NGOs (Sergei Alekseenko, Levada Center, Memorial, Yekaterina Vologzheninova, Sakharov Center, Planeta Nadezhd, Valentina Cherevatenko). In addition, Amnesty International is aware of EU efforts to monitor trials of Ukrainian citizens and HRDs detained in Russia, including that of Emir Kuku in 2018.

²⁹¹ In particular, seeking to attend hearings throughout the proceedings, rather than one-off appearances. See, for example, the case of Oyub Titiev.

²⁹² Primarily in the case of Oyub Titiev.

²⁹³ See, for example: EEAS, "Statement on the cases of Russian human rights defenders Oyub Titiev and Yuri Dmitriev", 27 June 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/47471/statement-cases-russian-human-rights-defenders-oyub-titiev-and-yuri-dmitriev_en.

²⁹⁴ See, for example: Trial observation on the case of the NGO Man and Law, 13 August 2018, <https://twitter.com/EUinRussia/status/1029041475752022017>; trial observation in the case of Memorial, 9 August 2018, <https://twitter.com/EUinRussia/status/1027572814612717568> and 13 September 2018, <https://twitter.com/EUinRussia/status/1040255500171071489>.

²⁹⁵ Delegation of the EU to the OSCE, "OSCE Permanent Council No. 1221, EU statement on the sentencing of Mr Oyub Titiev of Memorial Human Rights Centre in the Russian Federation", 28 March 2019, https://eeas.europa.eu/sites/eeas/files/pc_no_1221_eu_statement_on_the_sentencing_of_mr_oyub_titiev_of_memorial_human_rights_centre.pdf.

²⁹⁶ For example, following Oyub Titiev's sentence hearing in March 2019, the spokesperson of Ramzan Kadyrov claimed that the EU's concerns about Oyub Titiev's trial "were based on emotions and had no real ground". In such a context, reference to the EU's trial observation activities helps to substantiate concerns. See *Rambler*, "Власти Чечни отреагировали на призыв ЕС «немедленно освободить» Титиева", 19 March 2019, <https://news.rambler.ru/other/41891836-vlasti-chechni-otreagirovali-na-prizyv-es-nemedlenno-osvobodit-titieva/>.

²⁹⁷ In February 2019, the spokesperson of Ramzan Kadyrov stated that "[a]t each court hearing on the" Titiyev case "there is a Russian and foreign press, diplomats, and experts with a lot of judicial practice and well-known lawyers." He argued that this pointed to the objective nature of the proceedings. See *Tass*, "Пресс-секретарь Кадырова прокомментировал резолюцию Европарламента", 14 February 2019, <https://tass.ru/obschestvo/6118331>.

²⁹⁸ These include the cases of Mikhail Benyash, Igor Kochetkov, Anastasia Shevchenko and Tatiana Kotlyar.

the EU's limited staff and resource capacity, the EU and its member states should elaborate a list of priority cases for trial monitoring, as has been done in other countries analysed in this report.

ENGAGEMENT WITH HRDS

In its HRD Guidelines, the EU has committed to consult HRDs, a practice that is crucial to developing and enhancing the effectiveness of its actions in support of HRDs. Indeed, on some occasions the EU has taken advantage of its engagement with civil society to help tailor its support to the specific needs of Russian HRDs. This has included when it developed and revised its Russia-specific HRD guidelines, which seek to guide the EU and member state actions towards HRDs in the country.

Consulting HRDs and NGOs before undertaking actions on their behalf is also crucial to ensuring that EU action is consented to, effectively tailored and takes into account possible benefits and drawbacks of the action. A positive example was the EU's decision to consult Amnesty International before issuing a statement on the temporary closure of its office in 2016.²⁹⁹

In the absence of a structured dialogue, the EU should also consult HRDs ahead of its meetings with Russian officials and ensure HRDs are adequately briefed about the outcome of these meetings. This should especially be the case ahead of meetings with the Russian Foreign Minister, the Chairman of the Presidential Council for Civil Society and Human Rights, the Russian Human Rights Commissioner and any meetings with regional governors. Indeed, the contents of these meetings are often opaque, and the EU does not appear to take the opportunity to consider the concerns of HRDs in this context.

EU engagement with HRDs, particularly when publicized, can increase their legitimacy and help to counter the stigmatization they face. A good example was when, during a joint press conference in April 2017, the HR/VP underlined that she had met HRDs prior to her meeting with the Russian Foreign Minister Sergey Lavrov.³⁰⁰ Similarly, the awarding of the Franco-German Prize for Human Rights and the Rule of Law to journalist Elena Milashina and subsequently to Oyub Titiev,³⁰¹ as well as other efforts such as inviting HRDs to events organized at or by the EU delegation and embassies of EU countries, can further legitimize the work of HRDs and enhance their safety. For example, on 11 December 2018, the EU delegation in Moscow organized a joint event with International Memorial to mark the 70th anniversary of the Universal Declaration of Human Rights.³⁰²

During his visit to Russia in May 2018, French President Emmanuel Macron also met the head of Memorial, Alexander Cherkasov, a meeting which was publicized in the press.³⁰³ The EU could expand its efforts to offer visible recognition by publicizing these meetings through social media as it has previously done during the EU delegation's visit to the Public Verdict Foundation in October 2018,³⁰⁴ and the visit of EU officials to the NGO Man and Law in Yoshkar-Ola in August 2018.³⁰⁵

At the same time, EU engagement with NGOs and HRDs based in more remote areas remains limited. Finland has an explicit policy of engaging with HRDs outside of the capital and urban centres, through its consulates.³⁰⁶ On some occasions, EU and member state missions also seek to meet HRDs during diplomatic visits to the regions. Amnesty International is aware of at least three occasions in 2017 and five in 2018 when EU and/or member state missions met HRDs during visits outside of Moscow. This occurred during individual visits coordinated by the Dutch, German, Swedish and EU delegations as well as during a visit coordinated between the EU delegation and 18 heads of EU member state missions. For example, in August 2018, the Swedish embassy reported meeting civil society groups during visits to the regions around football's 2018 World Cup.

²⁹⁹ EEAS, "Statement by the Spokesperson on the closure of the Moscow Office of Amnesty International", 3 November 2016, https://eeas.europa.eu/delegations/uganda/13916/statement-by-the-spokesperson-on-the-closure-of-the-moscow-office-of-amnesty-international_ko.

³⁰⁰ "Remarks by HR/VP Mogherini at the joint press conference with Russia's Foreign Minister, Sergey Lavrov".

³⁰¹ *France Diplomatie*, "Prix franco-allemand des droits de l'Homme et de l'État de droit", 4 December 2017, [https://www.diplomatie.gouv.fr/fr/dossiers-pays/Allemagne/relations-bilaterales/prix-franco-allemand-des-droits-de-l-homme-et-de-l-etat-de-droit/article/les-15-laureats-du-prix-franco-allemand-des-droits-de-l-homme-2017](https://www.diplomatie.gouv.fr/fr/dossiers-pays/Allemagne/rerelations-bilaterales/prix-franco-allemand-des-droits-de-l-homme-et-de-l-etat-de-droit/article/les-15-laureats-du-prix-franco-allemand-des-droits-de-l-homme-2017).

³⁰² See Delegation of the EU to Russia, "The EU Delegation to the Russian Federation and International Memorial jointly mark the 70th anniversary of the Universal Declaration of the Human Rights", 4 December 2018, https://eeas.europa.eu/delegations/russia/54804/eu-delegation-russian-federation-and-international-memorial-jointly-mark-70th-anniversary_en.

³⁰³ *Reuters*, "Macron meets in Russia with head of rights group, Solzhenitsyn's widow", 25 May 2018, <https://uk.reuters.com/article/uk-russia-france-rights/macron-meets-in-russia-with-head-of-rights-group-solzhenitsyns-widow-idUKKCN1IQ054>.

³⁰⁴ European Union in Russia Facebook profile, 2 October 2018,

[https://www.facebook.com/EUinRussia/posts/10160964399890652?_xts__\[0\]=68.ARDSX0s61AQuGFM1DgZ6AE97AsMkUoCrIOnubmErOHwoyCd8mvgHZHc29dTzDd8d1ELT-6UF8DQZLSTRn37A92kSEZ9ZGpXdf9h5pjtWuPMVKUb1kBgqLFZCKMte9WpEUSOGacdGg6OXZBixa65JlwYg79Qi-tQxvZ27REHNBCtx5HkuY1SAs9KqkcwbJnZ307azwsr2Hj0ioCX2cPaZ-4NhXA&_tn=-H-R](https://www.facebook.com/EUinRussia/posts/10160964399890652?_xts__[0]=68.ARDSX0s61AQuGFM1DgZ6AE97AsMkUoCrIOnubmErOHwoyCd8mvgHZHc29dTzDd8d1ELT-6UF8DQZLSTRn37A92kSEZ9ZGpXdf9h5pjtWuPMVKUb1kBgqLFZCKMte9WpEUSOGacdGg6OXZBixa65JlwYg79Qi-tQxvZ27REHNBCtx5HkuY1SAs9KqkcwbJnZ307azwsr2Hj0ioCX2cPaZ-4NhXA&_tn=-H-R).

³⁰⁵ @EUinRussia, 13 August 2018, Twitter, <https://twitter.com/EUinRussia/status/1029041475752022017>.

³⁰⁶ Finland does this through its consulate in Murmansk.

HRDs have reported that these visits give moral support and encouragement to NGO staff who often have less contact with European diplomats than HRDs based in Moscow.

However, more could be done to ensure EU and member state visits to the regions are more systematically used to reach out to HRDs. The EU and its member state missions organize several individual visits to the regions every year and at least one visit of the heads of EU missions to meet regional governors annually. Given the difficulties diplomats cited in maintaining outreach with HRDs in the regions, such visits should systematically include meetings with local HRDs as part of the official agenda and – provided the participants agree – should be publicized. The EU should also consider increasing the participation of HRDs from remote areas in EU events and consultations taking place in Moscow or in Europe.

ENABLING ENVIRONMENT

In the absence of structured dialogue on human rights and justice, EU efforts to promote an enabling environment have been more limited.

In this context, some diplomats claim that the East StratComm Task Force platform can promote an enabling environment. Indeed, as it uses a Russian-language website,³⁰⁷ some diplomats claim that the platform can be used to counter misinformation and smear campaigns against Russian civil society actors.

If used effectively, a platform that aims to counter smear campaigns against HRDs and promotes positive narratives about their work can be an important mechanism to support and protect HRDs. However, the extent to which this platform has been used for this purpose is not clear. Between January 2017 and April 2019, Amnesty International recorded only six articles related to the situation of HRDs and/or the crackdown on civil society in Russia.³⁰⁸ It is also unclear whether this platform has the necessary legitimacy and reach to effectively counter the magnitude of the smear campaigns being propagated on both traditional and social media in Russia. This raises questions about whether the EU has the necessary tools to confront the type of challenges HRDs face in the 21st century. The HRDs interviewed felt that EU interventions on such systemic challenges faced by Russian civil society have been limited.

FINANCING, TRAINING AND CAPACITY BUILDING

Since the 1990s, the EU has been a steady and consistent funder of Russian civil society and has come to play a particularly important role following the withdrawal of the leading US-funded donor organizations in 2015. This withdrawal came in reaction to the 2015 law on undesirable organizations and left an estimated shortfall of at least US\$20 million (around €18 million).³⁰⁹

Today, EU emergency funding to HRDs is primarily provided through the EIDHR and the EU's Protect Defenders mechanism. In order to respond to the restrictive environment in Russia, EU funding has become increasingly tailored to the specific challenges Russian HRDs face. This has included funding to boost the safety features of working spaces of HRDs and to build organizational capacity.

The EU and its member states have also sought to provide more flexible funding to Russian HRDs as illustrated by the 2014 decision to include Russia in the programmes of the European Endowment for Democracy. This mechanism allows for swift and flexible funding, including to groups that are not formally registered, and seeks to minimize bureaucracy.³¹⁰ Certain EU member states, such as the Netherlands and Sweden, also provide short-term financial assistance to HRDs.

Nonetheless, funding to HRDs has predominantly been project funding or support for specific activities rather than much-needed core funding. Moreover, HRDs said they felt that EU funding rules exclude many smaller groups who need smaller grants and more flexible funding.³¹¹ Overall, HRDs also said they felt that EU and member state funding to civil society fell short of the needs of Russian civil society.

Beyond financial assistance, measures to promote networking between EU diplomats and HRDs as well as between HRDs themselves were widely appreciated. Such activities have allowed organizations to build their capacity and acquire new skills while fostering networks among CSOs in Russia and internationally.

³⁰⁷ *EU vs Disinfo*, <https://euvsdisinfo.eu/>.

³⁰⁸ *EU vs Disinfo*, articles of [26 January 2017](#), [18 December 2017](#), [30 January 2018](#), [4 June 2018](#), [17 September 2018](#) and [1 October 2018](#).

³⁰⁹ Barbara von Ow-Freytag, 'Filling the Void. Why the EU Must Step Up Support for Russian Civil Society', *Wilfred Martens Centre for European Studies*, April 2018, p. 8, https://www.martenscentre.eu/sites/default/files/publication-files/eu-support-russian-civil-society_0.pdf.

³¹⁰ 'Filling the Void. Why the EU Must Step Up Support for Russian Civil Society', p. 8.

³¹¹ 'Filling the Void. Why the EU Must Step Up Support for Russian Civil Society', pp. 18-19.

HRDs also expressed the need for further support in networking, including with journalists, and capacity building to facilitate their engagement with UN mechanisms.

RELOCATION AND VISA SUPPORT

HRDs and diplomats alike recognize that the ability to receive facilitated access to multiple-entry Schengen visas is one of the most tangible risk prevention measures available to HRDs. Defenders particularly stressed the importance of being able to leave the country temporarily at short notice, both for security and networking purposes (such as attending international conferences).

Recognizing the value of visa support to Russian HRDs, the EU has sought to provide HRDs with better information on the procedures to follow when applying for multiple-entry Schengen visas. The EU is said to have taken steps to streamline and facilitate the provision of Schengen visas for Russian HRDs through the development of guidelines for European embassies and consulates. These non-public guidelines reportedly aim to advise consular officers in embassies on how to implement already existing visa regulations by facilitating the issuing of multiple-entry visas with long-term validity to Russian HRDs.

Nonetheless, the experiences of HRDs with obtaining Schengen visas remain mixed, with procedures varying between different embassies or consulates. The most frequently cited problem given by HRDs was the apparent disconnect between the political and consular staff within embassies. This resulted in diplomats charged with issuing visas not being aware of the HRDs' work or related risks. Moreover, some embassies have outsourced the granting of visas to commercial firms, which will likely widen the gap between European embassies and HRDs while also increasing the costs of obtaining a visa.

As one HRD told Amnesty International:

In my everyday life and in the everyday life of the majority of my colleagues the only kind of support that would be relevant for us is [long-term] visa support... We tried to apply for this visa support but in vain... it's different officers who are responsible for visa issues and for political issues. So, when we apply for a visa and do not inform the relevant political officer, or do not receive his/her "sanction", or receive it too late, or in the wrong way, nothing happens.

LGBTI defenders facing risks also reported problems with having their same-sex partners recognized as family members when applying for visas.

With regard to urgent funding for temporary relocation or rest and respite leave, defenders shared mixed experiences. One individual reported having received the urgent support requested from Protect Defenders only nine months later, when the assistance was no longer required. Others reported never receiving visas for relocation programmes. One stated that a three-month shelter programme was too long for them to consider applying for it.

ENGAGEMENT AT REGIONAL AND INTERNATIONAL FORA

EU embassies reported holding meetings with NGOs ahead of UN human rights processes such as the UPR. In these meetings, European diplomats sought to gather recommendations from NGOs and ensure that the civil society perspective was adequately reflected in their interventions. However, Russian HRDs believed that the EU's response to Russia's subsequent answers on the UPR was too lenient.

EU officials further reported having contact with the Council of Europe and organizing ad hoc debriefings on relevant issues. In the absence of structured political dialogues, the EU reported that many of its human rights discussions with Russia are also conducted at the level of the OSCE – the weekly meetings in Vienna provide an opportunity to raise HRD cases directly in the presence of the Russian delegation.

7.4 CONCLUSIONS AND RECOMMENDATIONS

Despite the numerous challenges related to engagement with Russia on human rights, the EU has in recent years made some headway in improving its support to Russian HRDs. Adopting a more vocal, flexible and coordinated approach, the EU's HRD policy in Russia offers some important examples of how to engage with HRDs in a context where bilateral dialogue has been reduced and divergent member state positions risk undermining EU action.

Nonetheless, challenges remain. The EU will need to ensure that some of the good practices observed set the scene for a wider policy shift. Among other things, this shift in policy should systematize the consultation of HRDs, ensure the consistency of public messaging across different individual cases and at the different levels of EU decision-making and enhance the visibility and impact of EU actions to support HRDs.

Moreover, the experience in Russia also opens areas for further thinking:

- How could the EU and its member states better equip themselves to counter coordinated stigmatization campaigns against HRDs both online and offline?
- How to bring about systemic change in a hostile climate with a limited framework of cooperation, rather than change on a case-by-case basis?
- How to deal with Russia's challenge to established human rights norms at the international and multilateral levels?



TO IMPROVE IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN RUSSIA, THE EU AND ITS MEMBER STATES SHOULD:

- **Ensure consistent and strong public messaging in support of HRDs at all levels of decision-making**, including by ensuring that robust messages in Council of Europe and OSCE statements are maintained and replicated in other EU and member state communications, by pursuing Foreign Affairs Council Conclusions and local statements and by increasing the number of statements issued at the highest levels. This would entail more frequent statements on behalf of the HRVP, heads of state and Ministers of Foreign Affairs. The EU should also continue to seek alternative avenues through which to express this support, such as tweets and op-eds by the head of the EU delegation and inviting HRDs to Foreign Affairs Council meetings.
- **Enhance the visibility and dissemination of EU public messaging on Russian HRDs**, including by ensuring that such communications are high level, further disseminated by EU member states and channelled through popular social media platforms in Russia such as Facebook and Telegram.
- **Ensure timely and visible responses to attacks on HRDs**. The EU and its member states should respond through a mix of measures, including public and closed-door diplomacy, as well as by providing practical support to HRDs, their organization and their family. The speed of the EU response is paramount for its effectiveness (for example, statements should be issued shortly after an incident or a trial when the press is reporting on a case), as is the coordination of action between different EU bodies and member states.
- **Raise concern about HRDs and individual cases** in the meetings of EU and member state officials with the Russian Foreign Minister, the Chairman of the Presidential Council for Civil Society and Human Rights, the Russian Human Rights Commissioner and during the EU ambassadors' meetings with regional governors. The EU should also increase the transparency of closed-door meetings by consulting and debriefing HRDs on the outcomes of these meetings and accompanying these meetings with statements that both reaffirm the EU's support for HRDs and specify what key issues and cases were raised during the meeting.
- **Improve the impact of trial monitoring efforts by systematizing follow up and increasing visibility**. Use public statements, media interviews, social media and participation of high-profile individuals to publicize the EU's trial monitoring activities, raise due process concerns and call for the release of the HRDs in question.
- **Make increased and more flexible funding available to CSOs and HRDs**. The current levels of funding made available through the EIDHR, the CSO fund and the European Endowment for Democracy are not sufficient to meet the needs of Russian civil society, which has been additionally weakened by the withdrawal of major US donors from the country. The facilitation of the provision of EU funding, in particular core rather than project-based funding, will be important to strengthen civil society's resilience.

8. IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN SAUDI ARABIA



The severe crackdown on civil society in Saudi Arabia, especially since 2011 and more acutely since May 2018, has not been matched by a clear or resolute EU strategy to ensure the support and protection of HRDs. The policies of the EU and its member states have instead been characterized by restraint and a lack of creativity to overcome the obstacles associated with supporting HRDs in an already severely restricted environment. While some positive practices have been adopted in the past four years, these have often failed to improve the situation of individual HRDs due to a lack of ownership and follow up on the part of the EU and its member states.

Given Saudi Arabia's economic and geostrategic importance to Europe, maintaining a close partnership with the Kingdom is often given precedence over the EU's human rights concerns. This highlights a glaring inconsistency in the EU's policy that risks seriously undermining the credibility of the EU's global human rights policy.

Although very limited, some examples have shown that when a coordinated approach is adopted and when the variety of tools at the EU's disposal are used to support individual cases, the EU and its member states are able to achieve impact.

8.1 BACKGROUND AND MAIN CHALLENGES FACED BY HRDS

In the 1990s, the Saudi Arabian authorities began taking slow, incremental steps towards reform, while civil society actors became progressively more vocal about addressing human rights abuses in the country.³¹² This was illustrated by the Kingdom's decision to adopt a Basic Law of Governance in 1992 and the country's first Law on Criminal Procedure in 2001, and to ratify certain international human rights treaties, including the Convention on the Elimination of all Forms of Discrimination against Women in September 2000.³¹³

These steps brought about an enhanced level of international monitoring which, together with the spread of the internet and social media in Saudi Arabia, gradually opened up spaces for civic engagement³¹⁴ and empowered local actors, varying from unaffiliated clerics to HRDs.³¹⁵ Today, Saudi Arabia has one of the highest levels of internet penetration in the Middle East, with more than 91% of the population considered active internet users and more than 25 million active social media accounts.³¹⁶ These platforms have proven crucial in facilitating the dissemination of information, public discussion and debate.

Amid this modest opening of civil society space, a number of independent human rights organizations were formed that sought to monitor and document ongoing violations as well as to engage with the government to promote human rights reforms. Some of these actors sought to register their NGOs, but without success. In 2004, the authorities licensed the National Society for Human Rights, making it the first such organization to achieve legal status, though it relied heavily on government funding and operated within a restricted ambit. Meanwhile, independent human rights organizations such as the Saudi Civil and Political Rights Associations (ACPRA) – created in 2009 – had to operate without a licence or legal status. In 2005, Saudi Arabia founded a national Human Rights Commission and government representatives announced ambitious reform pledges following the 2009 UPR.³¹⁷

However, this short-lived shift in policy was overturned in 2011, when in response to the Arab uprisings, the authorities began a ruthless crackdown on the rights to freedom of expression, association and peaceful assembly. Saudi Arabia reaffirmed its long-standing ban on all forms of peaceful gatherings and demonstrations. It also began to target the country's most prominent independent activists and reformists in a bid to silence all forms of criticism and human rights scrutiny.³¹⁸

ACPRA was the first organization to be targeted and was singled out for the most severe treatment. ACPRA's founders included long-standing activists and public figures, whose distinctly Islamic concept of human rights presented a profound challenge to the legitimacy of the authorities' interpretations of human rights in Islam. In 2013, the authorities ordered the disbanding of ACPRA.³¹⁹ The same year, they forcibly closed down all independent human rights organizations and ordered them to shut down their websites and any online presence.³²⁰

In November 2015, a new law on associations was passed which, while providing a legislative framework for the foundation, administration and supervision of CSOs, also restricted the permissible purposes for establishing an association and excluded human rights as one of these purposes. Different provisions in the law also granted wide discretionary powers to the Ministry of Social Affairs, which include the power to deny

³¹² The International Center for Not-For-Profit Law, *Civic Freedom Monitor: Saudi Arabia*, updated 7 January 2019, <http://www.icnl.org/research/monitor/saudiarabia.html>.

³¹³ Full status of ratification of international treaties is available on the OHCHR website: <https://indicators.ohchr.org/>.

³¹⁴ Chatham House, *Civil Society in Saudi Arabia: The Power and Challenges of Association*, March 2015, https://www.chathamhouse.org/sites/default/files/field/field_document/20150331SaudiCivil.pdf.

³¹⁵ Raed Abdulaziz Alhargan, 'Saudi Arabia: Civil Rights and Local Actors', *Middle East Policy Council* Volume XIX, Spring, Number 1, ND, <https://www.mepec.org/saudi-arabia-civil-rights-and-local-actors>.

³¹⁶ Global Media Insight, "Saudi Arabia Social Media Statistics 2018", 28 March 2018, <https://www.globalmediainsight.com/blog/saudi-arabia-social-media-statistics/>.

³¹⁷ Amnesty International, *Saudi Arabia's ACPRA: How the Kingdom silences its human rights activists* (Index: MDE 23/025/2014), 10 October 2014, <https://www.amnesty.org/download/Documents/8000/mde230252014en.pdf>.

³¹⁸ Amnesty International, *Saudi Arabia: Repression in the name of security* (Index: MDE 23/016/2011), 1 December 2011, <https://www.amnesty.org/download/Documents/32000/mde230162011en.pdf>.

³¹⁹ Amnesty International, *Saudi Arabia's ACPRA: How the Kingdom silences its human rights activists*.

³²⁰ Amnesty International, *Saudi Arabia: Is this what is to be expected of a UN Human Rights Council member* (Index: MDE 23/1054/2015), 24 February 2015, <https://www.amnesty.org/en/documents/mde23/1054/2015/en/>.

licences to new organizations and to disband them if they are deemed to “harm national unity”.³²¹ Three years after the introduction of the law, no activists have been able to register a human rights organization.

Since 2014, the authorities have expanded the scope of their repression by systematically resorting to the counter-terrorism law to prosecute human rights defenders and to retry others who had already been sentenced to, and in some cases had served, long prison terms under other laws. The 2017 counter-terrorism law, and the 2014 law it replaced, include an overly vague definition of “terrorism” criminalizing the peaceful exercise of the right to freedom of expression.³²²

The authorities have also systematically resorted to the 2007 anti-cyber-crime law to punish HRDs, particularly article 6. This law states that the “production, preparation, transmission or storage of material impinging on public order, religious values, public morals and privacy, through the information network or computers” is a crime punishable by up to five years’ imprisonment and a fine. Courts have repeatedly invoked this article in judgements when convicting and sentencing government critics and human rights defenders for peacefully exercising their rights to freedom of expression and association.³²³

As a result, most Saudi HRDs have been threatened into silence, imprisoned or forced to flee the country. Many have been subjected to arbitrary travel bans and have endured intimidation and harassment by security forces,³²⁴ particularly by the Ministry of Interior’s General Directorate of Investigations, before being prosecuted and given harsh sentences.³²⁵

Others have been sentenced after grossly unfair trials by the Specialized Criminal Court (SCC), a special security and counter-terrorism court that operates with an overly broad jurisdiction and vaguely worded procedures.³²⁶ The SCC has frequently conducted trials wholly or mostly in secret sessions, with the families of the defendants, the media and other observers excluded from the court. HRDs and peaceful protesters have been tried and sentenced without access to lawyers, sometimes even with their lawyers barred from the court. The SCC has sentenced HRDs to prison for vague offences that criminalize the peaceful exercise of human rights, such as “destabilizing security and spreading chaos”, “inciting public opinion against the authorities”, “breaking allegiance to the ruler” and “setting up an unlicensed organization”.

This systematic repression of human rights has intensified since the appointment of Mohammed bin Salman as Crown Prince in June 2017. While previously the authorities had been reticent to detain WHRDs for prolonged periods,³²⁷ giving them a wider margin of manoeuvre, the arrests of several WHRDs in May 2018 signalled a shift in this policy. As documented by Amnesty International, on 13 March 2019, 11 women activists were brought to trial before the Criminal Court in Riyadh. Several WHRDs were charged for their human rights work and contact with international organizations, foreign media and other activists.³²⁸ Some were charged with promoting women’s rights and calling for the end of the male guardianship system. Between

³²¹ The International Center for Not-for-profit Law, *Civic Freedom Monitor: Saudi Arabia*.

³²² Amnesty International, “Saudi Arabia: New terrorism law is latest tool to crush peaceful expression” (News, 3 February 2014), <https://www.amnesty.org/en/latest/news/2014/02/saudi-arabia-new-terrorism-law-one-more-tool-crush-peaceful-protest/>.

³²³ See, for example, the cases of Abdulaziz al-Shubaily, Alaa Brinji and Issa al-Hamid: Amnesty International, *Saudi Arabian Human Rights Defender imprisoned: Abdulaziz al-Shubaily* (Index: MDE 23/7161/2017), 29 September 2017, <https://www.amnesty.org/download/Documents/MDE2371612017ENGLISH.pdf>; *Saudi Arabia: Five years in prison for Twitter posts: Alaa Brinji* (Index: MDE 23/3744/2016), 31 March 2016, <https://www.amnesty.org/download/Documents/MDE2337442016ENGLISH.pdf>; and *Saudi Arabia: Issa al-Hamid sentenced to 9 years in prison* (Index: MDE 23/4111/2016), 2 June 2016, <https://www.amnesty.org/download/Documents/MDE2341112016ENGLISH.pdf>.

³²⁴ Amnesty International, “Saudi Arabia: Two more women human rights activists arrested in unrelenting crackdown”, (News, 1 August 2018), <https://www.amnesty.org/en/latest/news/2018/08/saudi-arabia-two-more-women-human-rights-activists-arrested-in-unrelenting-crackdown/>.

³²⁵ See, for example, Amnesty International, *Saudi Arabia: Further information – medical care granted to Waleed Abu Al-Khar* (Index: MDE 23/4253/2016), 14 June 2016, <https://www.amnesty.org/download/Documents/MDE2342532016ENGLISH.pdf>; *Saudi Arabian activist detained after deportation: Mohammad al-Otaibi* (Index: MDE 23/6391/2017) <https://www.amnesty.org/download/Documents/MDE2363912017ENGLISH.pdf> and *Saudi Arabian Human Rights Defender imprisoned: Abdulaziz al-Shubaily*.

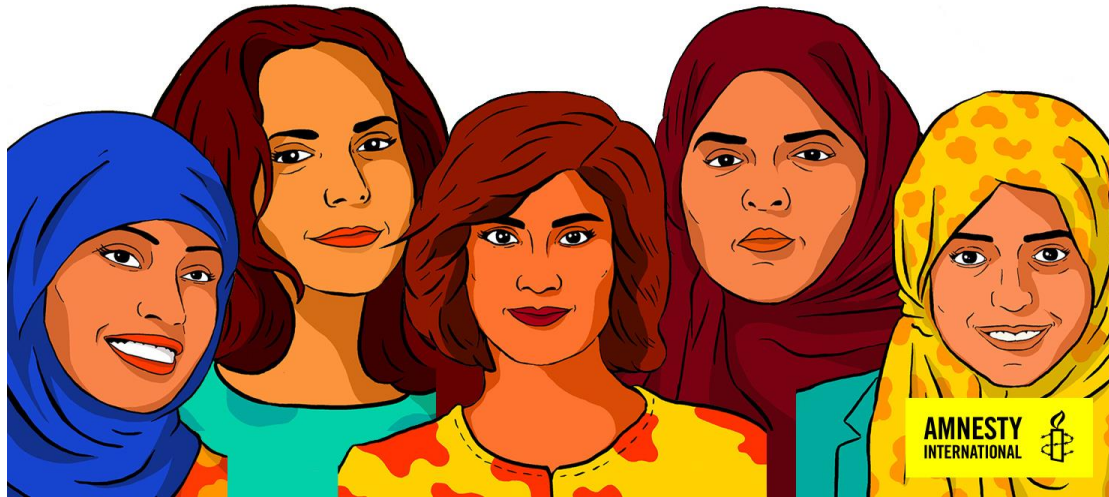
³²⁶ In September 2017, Abdulaziz al-Shubaily, a human rights defender and founding member of ACPRA, was detained and began serving his sentence of eight years’ imprisonment to be followed by an eight-year travel ban and a ban from writing on social media for “inciting public opinion against the rulers of this country and signing statements that were published online that call on people to demonstrate”. HRDs Essam Koshak and Issa al-Nukheifi were tried before the SCC on charges related to their online activism. See *Amnesty International Annual Report 2017/2018 on Saudi Arabia*, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/saudi-arabia/report-saudi-arabia/>.

³²⁷ While some of the WHRDs detained since May 2018 had previously been arrested, they were never detained for more than three months. The longest period that Loujain al-Hathloul was detained prior to 2018 was 73 days in 2015, Amnesty International, “Saudi Arabia detains rights activist who defied women’s driving ban” (News, 5 June 2017), <https://www.amnesty.org/en/latest/news/2017/06/saudi-arabia-detains-rights-activist-who-defied-womens-driving-ban/>.

³²⁸ Amnesty International, *Saudi Arabia: Further information – women activists on trial* (Index: MDE 23/0057/2019), 18 March 2019, <https://www.amnesty.org/download/Documents/MDE2300572019ENGLISH.pdf>.

March and April 2019, eight women, including Aziza al-Yousef and Iman al-Nafjan, were temporarily released.³²⁹

As of April 2019, several of the targeted WHRDs remained in detention, including Loujain al-Hathloul, while other WHRDs arbitrarily arrested since July 2018 also remained in detention without charge or trial. These included prominent WHRDs Samar Badawi and Nassima al-Sada, who had been outspoken in campaigning against the driving ban for women and the male guardianship system.³³⁰ In April 2019, the authorities launched a new wave of arrests targeting at least 14 individuals, including journalists, writers, academics and family members of WHRDs.³³¹



 ↑ *Loujain al-Hathloul, Iman al-Nafjan, Aziza al-Youssef, Samar Badawi and Nassima al-Sada are women human rights defenders who have campaigned for women's rights to drive and against the guardianship system in Saudi Arabia. @Amnesty International*

In addition to travel and social media bans, HRDs in Saudi Arabia have faced public smear campaigns spearheaded by the Saudi Arabian authorities and government-aligned media. For instance, shortly after the arrest of WHRDs in May 2018, official statements in state-led media branded them as “traitors” seeking to undermine the country’s stability and social fabric through their contact with foreign entities.³³² A related hashtag was released on Twitter describing them as “Agents of Embassies”.

The murder of Jamal Khashoggi in a Saudi consulate in Turkey in October 2018 sent shockwaves through the community of Saudi Arabian HRDs, eroding the notion that they could find a safe haven abroad.³³³ Months earlier, HRD Loujain al-Hathloul had been rendered to Saudi Arabia from the United Arab Emirates (UAE) and still remains in detention.³³⁴

HRDs also report torture and other ill-treatment in detention. This was the case for at least 10 HRDs arrested in May 2018, including WHRD Loujain al-Hathloul.³³⁵ In January 2019, Amnesty International reported the incommunicado detention of these women following their arrest and the alleged torture and ill-treatment, including sexual abuse, to which they were subjected. Moreover, courts in Saudi Arabia continue to sentence HRDs to corporal punishment, which contravenes the absolute prohibition of torture and other ill-treatment.

³²⁹ Amnesty International, “Saudi Arabia: Provisional release of three women activists a positive step, but bogus charges must be dropped” (News, 28 March 2019), <https://www.amnesty.org/en/latest/news/2019/03/saudi-arabia-provisional-release-of-three-women-activists-a-positive-step-but-bogus-charges-must-be-dropped/>.

³³⁰ Amnesty International, “Saudi Arabia’s ‘year of shame’: Crackdown on critics and rights’ activists continues” (News, 14 May 2019), <https://www.amnesty.org/en/latest/news/2019/05/saudi-arabias-year-of-shame-crackdown-on-critics-and-rights-activists-continues/>.

³³¹ Amnesty International, “Saudi Arabia: New wave of arrests and travel bans latest assault on freedom of expression” (News, 5 April 2019), <https://www.amnesty.org/en/latest/news/2019/04/saudi-arabia-new-wave-of-arrests-and-travel-bans-latest-assault-on-freedom-of-expression/>.

³³² Amnesty International, “Saudi Arabia: Chilling smear campaign against women’s rights defenders” (News, 19 May 2018), <https://www.amnesty.org/en/latest/news/2018/05/saudi-arabia-chilling-smear-campaign-tries-to-discredit-loujain-al-hathloul-and-other-detained-womens-rights-defenders/>.

³³³ Amnesty International, “Saudi Arabia / Turkey: Alleged assassination of Jamal Khashoggi in Consulate would set abysmal new low” (News, 7 October 2018), <https://www.amnesty.org/en/latest/news/2018/10/disappearance-of-jamal-khashoggi-extremely-worrying-in-light-of-continuing-repression-in-saudi/>.

³³⁴ *The New York Times*, “She Wanted to Drive, So Saudi Arabia’s Ruler Imprisoned and Tortured Her”, 26 January 2019, <https://www.nytimes.com/2019/01/26/opinion/sunday/loujain-al-hathloul-saudi.html>.

³³⁵ Amnesty International, “Saudi Arabia: Access for independent monitors urgently needed amid more reports of torture of activists” (News, 25 January 2019), <https://www.amnesty.org/en/latest/news/2019/01/saudi-arabia-access-for-independent-monitors-urgently-needed-amid-more-reports-of-torture-of-activists/>.

Besides the case of blogger Raif Badawi, who was sentenced to 1,000 lashes in 2015, HRDs Mikhlif bin Daham al-Shammari and Omar al-Sa'id were sentenced to 200 and 300 lashes in 2014³³⁶ and 2013³³⁷ respectively.³³⁸

As a further signal of the authorities' ruthless intolerance of dissent, since 2016 Saudi Arabian prosecutors have increasingly sought the death penalty for political dissidents,³³⁹ protesters³⁴⁰ and even peaceful dissent. Between August 2018 and February 2019, the Saudi public prosecutor demanded the death sentence for at least eight individuals prosecuted for their peaceful activism, including prominent religious cleric Salman al-Awda and Shi'a activist Israa al-Ghomgham but later, as a result of international scrutiny, he is reportedly no longer seeking the death penalty for Israa al-Ghomgham. She nonetheless continues to face a lengthy prison sentence while her four co-defendants still risk the death penalty for peacefully exercising their rights to freedom of expression, association and peaceful assembly.³⁴¹ Furthermore, in April 2019, the authorities carried out a mass execution of 37 men, the majority of whom were Shi'a Muslims convicted after sham trials that violated international fair trial standards. At least 15 men, including a juvenile offender, were sentenced to death in spite of allegations that their confessions were extracted under torture.³⁴²

The reported cross-border hacking of Saudi Arabian activists' mobile devices via surveillance technology sold to governments by companies such as the NSO Group³⁴³ was a further sign of the increased targeting of HRDs in the diaspora.³⁴⁴ In August 2018, the device of an Amnesty International staff member was targeted with Pegasus, a sophisticated hacking tool that allows for an invasive form of surveillance.³⁴⁵ The staff member received a WhatsApp message containing information about an alleged protest outside the Saudi embassy in Washington, D.C., followed by a link to a website that would have installed Pegasus.

This unprecedented level of repression has successfully silenced HRDs based in Saudi Arabia and created a climate of fear among the already small human rights community and the general public inside the country. As one Saudi HRD in exile told Amnesty International:

The issue is bigger than an issue of HRDs. Anyone in society is now facing repression, even those who have supported the government previously are now under attack.

8.2 ASSESSMENT OF ACTION BY THE EU AND EU MEMBER STATES

The EU's relationship with Saudi Arabia has until recently been predominantly framed at regional level through its political dialogue with members of the Cooperation Council for Arab States of the Gulf (the GCC, composed of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE). The 1998 EU-GCC cooperation agreement aims, among other things, at strengthening stability in this strategically important region and facilitating the political and economic relations between the two groups of states.³⁴⁶ The EU and GCC hold an annual ministerial meeting and in 2016, the ministers committed to expanding relations through increased people-to-people contacts and further cooperation, including in the field of human rights.³⁴⁷

³³⁶ Columbia University, *The case of Mikhlif Al-Shammari*, November 2014, <https://globalfreedomofexpression.columbia.edu/cases/the-case-of-mikhlif-al-shammari/>.

³³⁷ Amnesty International, "Saudi Arabia: Prisoner of conscience latest to be convicted in 'counter-terror purge' of human rights NGO" (News, 19 October 2015), <https://www.amnesty.org/en/latest/news/2015/10/saudi-arabia-prisoner-of-conscience-latest-to-be-convicted-in-counter-terror-purge-of-human-rights-ngo/>.

³³⁸ Amnesty International UK, "Ten ways that Saudi Arabia violates human rights", 12 January 2018, <https://www.amnesty.org.uk/saudi-arabia-human-rights-raif-badawi-king-salman>.

³³⁹ Amnesty International, "Saudi Arabia: Mass death sentences in 'spy trial' a travesty of justice" (News, 6 December 2016), <https://www.amnesty.org/en/latest/news/2016/12/saudi-arabia-mass-death-sentences-in-spy-trial-a-travesty-of-justice/>.

³⁴⁰ Amnesty International, "Fourteen men at imminent risk of beheading as Saudi Arabia continues bloody execution spree" (News, 24 July 2017), <https://www.amnesty.org/en/latest/news/2017/07/fourteen-men-at-imminent-risk-of-beheading-as-saudi-arabia-continues-bloody-execution-sprees/>.

³⁴¹ Amnesty International, "Saudi Arabia: Authorities must drop calls to execute peaceful protesters" (News, 1 February 2019), <https://www.amnesty.org/en/latest/news/2019/02/saudi-arabia-authorities-must-drop-calls-to-execute-peaceful-protesters/>.

³⁴² Amnesty International, "Saudi Arabia: 37 put to death in shocking execution spree" (News, 23 April 2019), <https://www.amnesty.org/en/latest/news/2019/04/saudi-arabia-37-put-to-death-in-shocking-execution-sprees/>.

³⁴³ *Forbes*, "Saudi Dissidents Hit With Stealth iPhone Spyware Before Khashoggi's Murder", 21 November 2018, <https://www.forbes.com/sites/thomasbrewster/2018/11/21/exclusive-saudi-dissidents-hit-with-stealth-iphone-spyware-before-khashoggis-murder/#65857eec2e8b>.

³⁴⁴ Amnesty International, "Israel: Amnesty International engages in legal action to stop NSO Group's web of surveillance" (News, 13 May 2019), <https://www.amnesty.org/en/latest/news/2019/05/israel-amnesty-legal-action-stop-nso-group-web-of-surveillance/>.

³⁴⁵ Amnesty International, "Amnesty International staff targeted with malicious spyware" (News, 1 August 2018), <https://www.amnesty.org/en/latest/news/2018/08/staff-targeted-with-malicious-spyware/>.

³⁴⁶ European Commission, *EU-GCC Cooperation Agreement*, 1988, http://trade.ec.europa.eu/doclib/docs/2008/september/tradoc_140300.pdf.

³⁴⁷ *25th EU-GCC Joint Council and Ministerial Meeting, 2016, Co-Chairs' Statement*, 18 July 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/07/18/fac-gcc/>.

Despite the strong economic and trade relations that have long existed between several EU member states and Saudi Arabia, the EU currently lacks a bilateral treaty or agreement formalizing its relations with the Kingdom. Indeed, Saudi Arabia's relations with the EU have remained limited compared to those it has developed with individual EU member states such as France, Germany and the UK.

However, since the beginning of 2018, the Kingdom has pursued closer relations with the EU. In 2018, Saudi Arabia opened a mission in Brussels solely accredited to the EU, and its Ministry of Foreign Affairs in Riyadh also opened a new EU department dedicated to developing EU-Saudi Arabia relations.³⁴⁸ As part of these efforts, Saudi Arabia's Foreign Minister, Adel al Jubeir, held several meetings with EU officials and the European Parliament during his visits to Brussels in January and February 2018.³⁴⁹

While the EU and Saudi Arabia currently engage in political dialogue at different levels, the two parties have recently sought to institutionalize a more structured political dialogue in areas of common interest.³⁵⁰ The EU delegation in Riyadh has previously proposed the institutionalization of a human rights dialogue with Saudi Arabia mirroring those it has established with Bahrain and the UAE.³⁵¹ To date, however, no human rights dialogue exists and the main avenue through which the EU delegation raises its human rights concerns is in its exchanges with Saudi Arabia's governmental Human Rights Commission. In 2017, the EU publicly affirmed having raised cases of minors on death row and HRDs during these dialogues.³⁵²

The EU's trade relationship with Saudi Arabia and the GCC is an important one. The EU is the leading trading partner of Saudi Arabia for goods while the Kingdom is the EU's 15th largest trading partner.³⁵³ Germany, France, Italy and the UK are among the top 10 exporters to Saudi Arabia³⁵⁴ and, until 2008, the EU and GCC were engaged in negotiating a Free Trade Agreement.

In this trade relationship, European arms exports to Saudi Arabia are particularly significant. According to the EU's Twentieth Annual Report on arms exports, EU member states issued at least 588 licences for military equipment worth over €17.3 billion to Saudi Arabia in 2017.³⁵⁵ The main European exporters of conventional arms to Saudi Arabia include the UK,³⁵⁶ France,³⁵⁷ Spain³⁵⁸ and Italy.³⁵⁹ Between 2013 and 2018, Saudi Arabia accounted for nearly half of the UK's and a third of Belgium's arms exports.³⁶⁰

Against the backdrop of these economic, geostrategic and energy interests, as well as the EU's ongoing efforts to further institutionalize its relations with Saudi Arabia, human rights concerns appear to have taken a back seat. With only a few exceptions, the EU and its member states have been largely unresponsive to the situation of HRDs and the overall crackdown on dissent in the country.

Upholding a policy of silent diplomacy, the EU has generally refrained from publicly responding to the arrest, prosecution and sentencing of HRDs and has failed to effectively articulate its support and recognition for their work. The EU and its member states' aversion to public diplomacy, despite gross human rights violations against HRDs, has prevented them from using this tool to offer protection from arrest or torture and other ill-

³⁴⁸ EEAS, "HR/VP Mogherini met the Saudi Foreign Minister, Adel Al Jubeir", 15 January 2018, https://eeas.europa.eu/delegations/saudi-arabia/38264/high-representativevice-president-federica-mogherini-met-saudi-foreign-minister-adel-al-jubeir_en.

³⁴⁹ *The Parliament Magazine*, "Saudi foreign minister in EU Parliament to defend country's role in Yemen war", 22 February 2018, <https://www.theparliamentmagazine.eu/articles/news/saudi-foreign-minister-eu-parliament-defend-countrys-role-yemen-war>; EEAS, "High Representative/Vice-President Federica Mogherini met with the Saudi Foreign Minister, Adel Al Jubeir".

³⁵⁰ *Buzzfeed News*, "The EU Dropped Plans To Release A Statement Backing Canada In Its Diplomatic Fight With Saudi Arabia", 13 August 2018, <https://www.buzzfeednews.com/article/albertonardelli/saudi-arabia-canada-eu>.

³⁵¹ *EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates – Saudi Arabia*, https://eeas.europa.eu/sites/eeas/files/compiled_country_updates_annual_report_on_human_rights_and_democracy_2017_clean_0.pdf.

³⁵² *EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates – Saudi Arabia*.

³⁵³ *Saudi Gazette*, David McAllister, "EU-KSA relations and the regional context", 15 July 2018,

<http://saudigazette.com.sa/article/538968/Opinion/OP-ED/EU-KSA-relations-and-the-regional-context>.

³⁵⁴ *POLITICO*, "Europe's Saudi connections", 23 October 2018, <https://www.politico.eu/article/europe-saudi-arabia-connections-arms-sales-angela-merkel-jamal-khashoggi/>.

³⁵⁵ EUR-Lex, *Twentieth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment*, 14 December 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2018:453:FULL&from=EN>.

³⁵⁶ Between 2015 and 2018, the UK supplied and serviced up to half of the Royal Saudi Air Force fleet of in-service combat aircraft and provided refuelling systems and air-to-surface missiles worth over US\$2.94 billion in total. See Stockholm International Peace Research Institute (SIPRI), *Importer/Exporter Trend-Indicator Value (TIV) Tables*, <http://armstrade.sipri.org/armstrade/page/values.php>.

³⁵⁷ Between 2015 and 2018, France supplied Saudi Arabia with US\$549 million worth of arms including surface-to-air missiles, anti-tank missiles, armoured vehicles and artillery and radar systems. See SIPRI, *Importer/Exporter TIV Tables*.

³⁵⁸ Between 2015 and 2017, Spain provided Saudi Arabia with € 2.071 million worth of arms, including transporter aircraft. See Amnesty International, "Cuatro años de la guerra en Yemen: Cinco ONGs instalan El Contador de la Vergüenza" (News, 25 March 2019), <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/cinco-ong-piden-al-gobierno-y-a-los-partidos-politicos-que-se-comprometan-a-suspender-la-venta-de-a/>. In 2018, Spain also sent 400 precision guided munitions to Saudi Arabia. See *The Guardian*, "Spain makes U-turn on laser-guided bomb sales to Saudi Arabia", 13 September 2018, <https://www.theguardian.com/world/2018/sep/13/spain-saudi-arabia-proceed-bomb-deal-yemen-concerns>.

³⁵⁹ Between 2015 and 2018, Italy provided Saudi Arabia with US\$226 million worth of arms, including air search radars. See SIPRI, *Importer/Exporter TIV Tables*.

³⁶⁰ *POLITICO*, "Europe's Saudi connections".

treatment, or as a counter-narrative to the smear campaigns HRDs face in Saudi Arabia. Given the risks associated with the work of HRDs in Saudi Arabia, this perceived lack of support can be damaging to the EU's relationship with HRDs.

On the rare occasions since 2014 when the EU has diverged from its policy of silence, its statements have often been weak and represented a lowest common denominator outcome,³⁶¹ reflecting the divisions among EU member states.³⁶² EU statements on HRDs in Saudi Arabia have been more explicit and somewhat more frequent at the UN HRC.³⁶³ While positive, this points to an inconsistency in the EU's positioning at the different levels of decision-making and suggests that human rights concerns are considered as separate from the EU's broader political considerations.

Other EU actions to support and protect HRDs, including trial observation, have been curtailed due to a lack of ownership and strategy on behalf of the EU and its member states. Rather than actively seeking innovative ways of overcoming obstacles, the EU and its member states appear to resign themselves to a limited set of actions which often reduce their potential for impact.

However, the EU's reaction to the killing of journalist Jamal Khashoggi in October 2018³⁶⁴ may have marked a slight shift in the EU's policy towards the Kingdom. In her speech at the European Parliament, the HR/VP stressed the EU's commitment to supporting human rights activists and civil society, "regardless of geopolitical interests", while also calling for EU unity and a collective approach towards Saudi Arabia.³⁶⁵ Since then, the EU and member states have taken some important steps with regard to the WHRDs detained since May 2018, including by seeking to monitor their trials and by publicly expressing concern at the UN HRC.

The temporary release of eight women, including Aziza al-Yousef and Iman al-Nafjan, between March and April 2019 illustrates that united EU action and international scrutiny of the situation of the WHRDs has had some impact. However, the wave of arrests and executions in April 2019³⁶⁶ underlines that for scrutiny to be effective, it will have to be sustained and consistent, and address the crackdown on dissent on other fronts as well.

8.3 EU EFFORTS TO IMPLEMENT ITS HRD GUIDELINES

CLOSED-DOOR DIPLOMACY

EU efforts to raise concerns about HRDs behind closed doors are primarily ad hoc and there appears to be little evidence to support the claim that closed-door dialogue, on its own, constitutes a more constructive or effective approach. Indeed, no examples were found where this approach on its own positively influenced the situation of an individual HRD. On the contrary, it was only when private diplomacy was consistent and high-level, and used in conjunction with other tools, including public statements by both the EU and its member states, that rare positive developments were noted. This was, for example, true for Raif Badawi. His case was raised privately and publicly on numerous occasions including by the spokesperson of the HR/VP,³⁶⁷ the Dutch Human Rights Ambassador and Minister of Foreign Affairs³⁶⁸ and France's Prime Minister Manuel Valls and

³⁶¹ This leads to weak outcomes in terms of human rights, given the need for all member states to agree on a position.

³⁶² See, for example: EEAS, "Statement by the Spokesperson on the sentencing of Human Rights defenders in Saudi Arabia Mohamed Al Otaibi and Abdullah Al Atawi", 27 January 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/38830/statement-spokesperson-sentencing-human-rights-defenders-saudi-arabia_en.

³⁶³ Between January 2014 and April 2019, Amnesty International recorded a total of five official EU statements related to HRDs and/or civil society.

³⁶⁴ European Council, "Report and concluding remarks by President Donald Tusk to the European Parliament on October European Council meetings", 24 October 2018, <https://www.consilium.europa.eu/en/press/press-releases/2018/10/24/report-by-president-donald-tusk-to-the-european-parliament-on-october-european-council-meetings/>; Council of the EU, "Declaration by the High Representative on behalf of the European Union on the recent developments on the case of Saudi journalist Jamal Khashoggi", 20 October 2018, <https://www.consilium.europa.eu/en/press/press-releases/2018/10/20/declaration-by-the-high-representative-on-behalf-of-the-european-union-on-the-recent-developments-on-the-case-of-saudi-journalist-jamal-khashoggi/>.

³⁶⁵ EEAS, *Speech by HR/VP Federica Mogherini on the killing of the Saudi journalist Jamal Khashoggi*, 23 October 2018, https://eeas.europa.eu/delegations/saudi-arabia/52623/speech-hrvp-federica-mogherini-killing-saudi-journalist-jamal-khashoggi_en.

³⁶⁶ Amnesty International, "Saudi Arabia: New wave of arrests and travel bans latest assault on freedom of expression" and "Saudi Arabia: 37 put to death in shocking execution spree".

³⁶⁷ EEAS, "Statement by the Spokesperson on the verdict against activist Raif Badawi", 8 June 2015, https://eeas.europa.eu/headquarters/headquarters-homepage/3336/statement-spokesperson-verdict-against-activist-raif-badawi_en.

³⁶⁸ Ministry of Foreign Affairs of the Netherlands, *Kamerbrief over de situatie in Saoedi-Arabië, Tweede Kamer [the Dutch parliament] 2015-2016*, 14 March 2016, 32 735, nr. 152, p. 25, <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/03/14/kamerbrief-over-de-situatie-in-saoedi-arabië>.

former President François Hollande.³⁶⁹ In addition, several EU member state governments were reported to have summoned Saudi Arabia's ambassadors in their capitals to intervene on behalf of the blogger.³⁷⁰ While this outcry has not led to Raif Badawi's release, the fact that he is no longer subjected to the lashings prescribed in his sentence is in itself a tangible result.

In spite of this, all diplomats interviewed considered that silent or closed-door diplomacy is the most effective way of raising human rights concerns with the Saudi Arabian authorities.

In the absence of a formal human rights dialogue, the main avenue through which the EU raises its concerns about HRDs is the EU delegation's regular exchanges with Saudi Arabia's Human Rights Commission.³⁷¹ The power of this body is, however, restricted and it is difficult to assess the extent to which such meetings impact on individual cases or the overall situation of HRDs.

Beyond this, EU officials have affirmed that the EU delegation and EU missions in Riyadh hold formal and informal outreach to the Saudi Arabian authorities to discuss human rights. In 2015, for example, the case of human rights lawyer Waleed Abu al-Khair was raised by the EU delegation in coordination with EU member states.³⁷² In 2016, during his visit to Saudi Arabia,³⁷³ the Dutch Human Rights Ambassador publicly confirmed having raised concerns about Raif Badawi, Ashraf Fayadh and members of the disbanded human rights organization ACPRA.³⁷⁴ Beyond individual HRD cases, the EU has also affirmed that it consistently raises the broad scope and use of counter-terrorism legislation with the Saudi Arabian authorities.³⁷⁵

In response to particularly worrying developments, the EU and its member states occasionally issue demarches. Despite being a formal and diplomatically significant mechanism, demarches remain primarily reactive in nature. Moreover, the delivery of oral demarches requires the consent of the Saudi Arabian authorities, and the Ministry of Foreign Affairs can often block and delay this approach. At times, this has meant that demarches come only months after the arrest of HRDs, as was the case of the EU demarche responding to the crackdown on WHRDs in May 2018.³⁷⁶

Diplomats interviewed claimed that European officials raise human rights with their Saudi interlocutors at the highest political levels, alongside other discussions. This was notably the case of the HR/VP during the visit of Saudi Arabia's Minister of Foreign Affairs, Adel al-Jubeir, to Brussels in May 2016.³⁷⁷ Similarly, former Dutch Foreign Minister Sigrid Kaag is said to have raised the worrying treatment of HRDs during her visit to Saudi Arabia in February 2018,³⁷⁸ while Dutch Minister Bert Koenders affirmed having called for the release of Essam Koshak and other HRDs during his visit in February 2017.³⁷⁹ The current Dutch Foreign Minister, Stef Blok, is also said to have raised concerns about the arrest of WHRDs on the margins of a G20 meeting in May 2018.³⁸⁰

Despite the public statements that sometimes accompany these meetings, the way in which concerns about HRDs are raised in these exchanges is often unclear.³⁸¹ The fact that HRDs have previously reported not being consulted ahead of such meetings adds to the lack of transparency and raises questions about how tailored EU and member state interventions are.

³⁶⁹ *Le Nouvel Obs*, "Arabie saoudite: qu'est devenu Ali Mohammed al-Nimr, condamné à la décapitation?", 13 October 2015, <https://www.nouvelobs.com/monde/20151013.OBS7529/arabie-saoudite-qu-est-devenu-ali-mohammed-al-nimr-condamne-a-la-decapitation.html>.

³⁷⁰ See, for example: Ministry of Foreign Affairs of Finland, "Finland summoned the Interim Chargé d'Affaires of Saudi Arabia to the Ministry for Foreign Affairs", 20 January 2015, https://um.fi/press-releases/-/asset_publisher/ued5t2wDmr1C/content/suomi-kutsui-saudi-arabian-va-asiainhoitajan-kuultavaksi-ulkoministerioon.

³⁷¹ *EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates – Saudi Arabia*.

³⁷² Parliamentary Questions, Question reference: E-002213/2015, "Answer given by Vice-President Mogherini on behalf of the Commission", 10 May 2015, http://www.europarl.europa.eu/doceo/document/E-8-2015-002213-ASW_EN.html?redirect.

³⁷³ Tweede Kamer, 2015-2016, 32 735, nr. 152, p.25, <https://zoek.officielebekendmakingen.nl/kst-32735-152.pdf>.

³⁷⁴ Amnesty International, *Saudi Arabia's ACPRA: How the Kingdom silences its human rights activists*.

³⁷⁵ European Parliament, "Question for Written Answer, E-002172-15, Misuse of anti-terrorism laws in Saudi Arabia, answer by HR/VP Mogherini", 15 June 2015, http://www.europarl.europa.eu/doceo/document/E-8-2015-002172_EN.html.

³⁷⁶ *France24*, "After Canada-Saudi row, West confronts risk of speaking up", 14 September 2018, <https://www.france24.com/en/20180914-after-canada-saudi-row-west-confronts-risk-speaking>; and *Buzzfeed*, "The EU Dropped Plans To Release A Statement Backing Canada In Its Diplomatic Fight With Saudi Arabia".

³⁷⁷ EEAS, "Remarks by the HR/VP Federica Mogherini at the joint press conference with Mr Adel Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia", 31 May 2018, https://eeas.europa.eu/delegations/norway/5071/remarks-by-the-hrvp-federica-mogherini-at-the-joint-press-conference-with-mr-adel-al-jubeir-minister-of-foreign-affairs-of-the-kingdom-of-saudi-arabia_en.

³⁷⁸ *Nieuws.nl*, "Kaag bezoekt Midden-Oosten", 18 February 2018, <https://nieuws.nl/algemeen/20180218/kaag-bezoekt-midden-oosten/>.

³⁷⁹ Tweede Kamer, "Antwoord op vragen van het lid Sjoerdsma over de detentie en repressie van mensenrechtenverdedigers in Saoedi-Arabië", 16 June 2017, <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2017Z07816&did=2017D17362>.

³⁸⁰ Tweede Kamer, "Antwoord op vragen van het lid Karabulut over de arrestatie van tien activisten voor vrouwenrechten in Saoedi-Arabië", 13 June 2018, <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2018Z09513&did=2018D31971>.

³⁸¹ EEAS, "Remarks by the HR/VP Federica Mogherini at the joint press conference with Mr Adel Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia".

The use of private diplomacy as the sole tool in raising individual cases with Saudi Arabia not only risks reducing the impact of EU actions to protect HRDs but also creates an impression among HRDs that the EU is complacent in response to their repression. As one Saudi Arabian HRD told Amnesty International:

Continued pressure that is direct, clear and public is very important. Despite little change, it is dangerous not to continue to pressure the authorities on the repression of HRDs, and the Saudi government may be more empowered in its repression.

PUBLIC ACTION

The EU's commitment to silent diplomacy has meant that public statements regarding the situation of HRDs and/or civil society in Saudi Arabia have been few and far between, particularly relative to the crackdown on HRDs in the country. Between January 2014 and April 2019, the EU issued eight such statements: five at the level of the UN HRC and three by the spokesperson of the HR/VP. Of the statements issued by the spokesperson, two related to Raif Badawi (2015)³⁸² and one to the sentencing of Mohammed al-Otaibi and Abdullah al-Atawi (2018).³⁸³

Compared to the other countries analysed in this report, the language adopted in EU statements on Saudi Arabia has been weak. Of the eight statements issued between January 2014 and April 2019:

- Four explicitly named an individual HRD facing prosecution and/or detention;
- Three addressed the use of torture and other cruel, inhuman or degrading treatment against HRDs, including two calling on the authorities to suspend further corporal punishment of Raif Badawi;
- One expressed concern about the use of counter-terrorism legislation against HRDs; and
- One underlined the importance of respecting the right to a fair trial.

EU statements have refrained from expressing concern about the charges, the proceedings or the harsh sentences issued against HRDs and, with only two exceptions, have avoided making any explicit calls on the authorities. Indeed, no official EU statement issued since 2014 has called on the authorities to release or drop the charges against an HRD facing prosecution or detention for their non-violent activism.

Despite being one of the EU's strongest public responses to an individual case in Saudi Arabia, the spokesperson of the HR/VP's statements relating to the public flogging of Raif Badawi focused on the nature of the punishment rather than on the fact that the sentence arose from his peaceful exercise of the right to freedom of expression. Strikingly, not one statement issued by the EU and its EU member states explicitly called for Raif Badawi's release. Similarly, although the EU statement on the sentencing of Mohammed al-Otaibi and Abdullah al-Atawi did recognize these individuals as HRDs, it remained vague and underlined the EU's unwillingness to address the lack of independence of Saudi Arabia's judiciary. In fact, by stating that the EU "fully respected the prerogatives" of Saudi Arabia's judiciary, the statement could be seen to lend credibility to the flawed proceedings to which these HRDs were subjected. It is also worth noting that the statement on Mohammed al-Otaibi and Abdullah al-Atawi only came after their sentence was issued, thus limiting the impact it could have had on their situation.

Beyond the three statements issued by the spokesperson of the HR/VP, no statements in support of HRDs were issued by the HR/VP herself or by the EU delegation in Riyadh between January 2014 and April 2019. Local statements are likely to be the most appropriate tool at the EU's disposal to respond to smear campaigns against HRDs and could have been issued to celebrate the work of HRDs and offer positive alternative narratives. Of the eight EU statements issued since 2014, two made at the UN HRC did underline the importance of the work of HRDs,³⁸⁴ particularly to the Kingdom's reform process, including one statement that "paid tribute" to Raif Badawi.³⁸⁵ It is striking, however, that none of the EU's statements related to HRDs or

³⁸² EEAS, "Statement by the spokesperson on the verdict against activist Raif Badawi" and "Spokesperson statement on the carrying out of public lashing of Saudi activist Mr. Raef Badawi", 9 January 2015, https://eeas.europa.eu/headquarters/headquarters-homepage/2510/spokesperson-statement-carrying-out-public-lashing-saudi-activist-mr-raef-badawi_en.

³⁸³ EEAS, "Statement by the Spokesperson on the sentencing of Human Rights defenders in Saudi Arabia", 27 January 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/38830/statement-spokesperson-sentencing-human-rights-defenders-saudi-arabia_my.

³⁸⁴ EEAS, "HRC 39 – EU Statement: Item 2", 11 September 2018, https://eeas.europa.eu/delegations/saudi-arabia/50291/hrc-39-eu-statement-item-2-presentation-other-high-commissioner-sg-country-report-oral-update_en and "HRC 38 – EU Statement: Item 2", 19 June 2018, https://eeas.europa.eu/delegations/un-geneva/46823/hrc-38-eu-statement-item-2-presentation-other-high-commissioner-sg-country-report-oral-update_en.

³⁸⁵ EEAS, "HRC 31- High-level Segment, EU Statement", 29 February 2016,

http://eeas.europa.eu/archives/delegations/un_geneva/documents/eu_statments/human_right/20160229_hls.pdf.

civil society has been translated into Arabic. This, together with the lack of local statements, limits the reach and impact of such statements.

At the level of the EU delegation in Geneva, EU statements expressing concern about the situation of HRDs have been more explicit and somewhat more frequent than those issued in Brussels. Between January 2014 and April 2019, the EU issued two item 2 statements at the UN HRC in June³⁸⁶ and September³⁸⁷ 2018 regarding the arrests of WHRDs, and identified the situation of human rights activists in Saudi Arabia as a priority for its work at UN fora in the 2017 Foreign Affairs Council Conclusions.³⁸⁸ In its September 2018 statement, the EU expressed concern about the arrest of HRDs and reiterated “the importance of the role of HRDs and civil society groups” in the process of reform the Kingdom is pursuing. The EU also issued two item 4 statements addressing the situation of HRDs in Saudi Arabia, including one in March 2016³⁸⁹ that expressed concern about the severe punishments against HRDs in Saudi Arabia, and another in March 2019 that expressed concern about the detention, trials and allegations of torture of HRDs.³⁹⁰

In its strongest show of support to Saudi Arabian HRDs to date, EU member states unanimously endorsed an item 2 statement led by Iceland in March 2019.³⁹¹

The statement named several individual HRDs, voicing concern that they were detained “for expressing their fundamental freedoms” as well as about the use of counter-terrorism legislation against them. Although not an EU statement as such, this is the only statement supported by all EU member states that explicitly calls for the release of HRDs in Saudi Arabia and represents an important show of unity on the issue.

EU member states also addressed the situation of HRDs in Saudi Arabia’s 2018 UPR.³⁹² While positive, the stronger and more regular statements at the UN HRC point to an inconsistency in the EU and its member states’ positioning at the different levels of decision-making. Indeed, in the absence of similar statements at local and headquarters level, this might create a false dichotomy suggesting that human rights concerns are primarily addressed in Geneva while the EU’s broader political considerations are addressed separately in Brussels and Riyadh.

Statements by EU member states in support of HRDs have been equally rare, though the level of public efforts has varied between the different states. In 2014, for example, the German Ministry of Foreign Affairs issued a statement on behalf of the human rights lawyer Waleed Abu al-Khair,³⁹³ while in 2015 the Dutch,³⁹⁴ Finnish³⁹⁵ and British foreign affairs ministries³⁹⁶ issued statements regarding the case of Raif Badawi. On one occasion, the Dutch Human Rights Ambassador also translated and shared the report of his visit to Saudi Arabia in 2014 with the Saudi Arabian authorities and Saudi Arabian HRDs.³⁹⁷ In June 2017, the Dutch Ambassador to Saudi Arabia, responding to a tweet from Amnesty International Netherlands, stated that Loujain al-Hathloul’s arrest was “sad news” and that he hoped she would soon be free.³⁹⁸

Yet, between 2017 and 2018, such public statements became increasingly rare. Diplomats say they often do not respond publicly, or name individual cases or publicize support to HRDs for fear of reprisals against the HRDs should they appear to be colluding with international actors. While consultation and consent are crucial

³⁸⁶ EEAS, “HRC 38 – EU Item 2 statement on Saudi WHRDs/ women activists at HRC”, 19 June 2018, https://eeas.europa.eu/delegations/un-geneva/46823/hrc-38-eu-statement-item-2-presentation-other-high-commissioner-sg-country-report-oral-update_en.

³⁸⁷ EEAS, “HRC 39 - EU Statement: Item 2 - Presentation of other High Commissioner / SG country report / oral update”, 11 September 2018, https://eeas.europa.eu/delegations/saudi-arabia/50291/hrc-39-eu-statement-item-2-presentation-other-high-commissioner-sg-country-report-oral-update_en.

³⁸⁸ Council of the EU, *Council Conclusions on EU Priorities at UN Human Rights Fora in 2017*, 27 February 2017, <http://data.consilium.europa.eu/doc/document/ST-5689-2017-INIT/en/pdf>.

³⁸⁹ EEAS, “15 March 2016, HRC 31 – EU Statement: Item 4”, http://eeas.europa.eu/archives/delegations/un-geneva/documents/eu_statments/human_right/20160315_hrc31_item4.pdf.

³⁹⁰ EEAS, “HRC 40 – EU statement – Human Rights situation that require the Council's attention”, 12 March 2019, https://eeas.europa.eu/delegations/un-geneva/59642/hrc-40-eu-statement-human-rights-situation-require-councils-attention_en.

³⁹¹ Permanent Representation of Iceland, “Statement under agenda item 2: Interactive dialogue with the High Commissioner 40th session of the UN Human Rights Council”, 7 March 2019, <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=a2a334ec-40cc-11e9-9436-005056bc530c>.

³⁹² Including Belgium, France, Germany, Greece, Ireland, Italy, Spain and Sweden. See outcome of the review at UN HRC, *Universal Periodic Review – Saudi Arabia*, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/SAindex.aspx>.

³⁹³ German Federal Foreign Office, “Human Rights Commissioner comments on conviction of Saudi Arabian human rights lawyer”, 15 July 2014, <https://www.auswaertiges-amt.de/en/newsroom/news/140715-mrhhb/263758>.

³⁹⁴ *Parlement.com*, “Koenders keurt lijfstraf Saoedische blogger af”, 9 January 2015, https://www.parlement.com/id/vjcfmqfagnx6/nieuws/koenders_keurt_ljfstaf_saoedische.

³⁹⁵ Ministry of Foreign Affairs of Finland, “Finland summoned the Interim Chargé d’Affaires of Saudi Arabia to the Ministry for Foreign Affairs”.

³⁹⁶ *The Independent*, “Raif Badawi: Flogging case raised with Saudi ambassador”, 22 January 2015, <https://www.independent.co.uk/news/world/middle-east/raif-badawi-flogging-case-raised-with-saudi-ambassador-9996626.html>.

³⁹⁷ Amnesty International Netherlands, “Kleine stappen vooruit, nog vaak stilzwijgen op cruciale momenten”, 14 November 2014, https://www.amnesty.nl/content/uploads/2015/11/saudi-arabie_-_kleine_stappen_vooruit_nog_vaak_stilzwijgen_0.pdf?x60148.

³⁹⁸ @JoostReintjers, 6 June 2017, Twitter, <https://twitter.com/JoostReintjers/status/872094448519438336>.

before taking any action on behalf of an HRD, some HRDs have confirmed that public action can be helpful. Indeed, public action can add visibility to their cause and offer moral support from the international community, which in turn provides a degree of protection. While not always leading to their release, these efforts may result in important improvements, including in their prison conditions. It remains unclear what criteria the EU uses to issue a public response on HRDs, but this should primarily be determined based on consent and an assessment of its likely effectiveness from the perspective of the HRD.

One diplomat interviewed explained the lack of EU action by pointing to the disunity among member states and the unwillingness to risk upsetting relations with Saudi Arabia. For example, not one EU member state disseminated or replicated the 2018 EU statement on the sentencing of Mohammed al-Otaibi and Abdullah al-Atawi. Few member states are willing to take ownership for critical EU statements, while even fewer are willing to issue individual statements at national level. Indeed, the lack of local statements by the EU delegation in Riyadh and the rare statements issued from headquarters are likely related to discord among member states.

This testifies to a lack of political will on the part of both EU member states, which could issue individual statements or joint statements with a group of member states, and the EU itself, which could issue statements more strategically. Indeed, while the EU delegation in Riyadh may not be able to issue local statements, this does not prevent the spokesperson from issuing strong statements while ensuring that no individual member state has to take full responsibility. Unlike in other countries analysed in this report, the EU and member states rarely use their social media accounts to express support for HRDs in Saudi Arabia or to overcome the obstacles of disunity.

The most effective EU responses on Saudi Arabia have been those that were unified and complemented by EU member state statements. This was true in the case of the EU response to the killing of Jamal Khashoggi, which despite its strong language, did not lead to backlash against the EU or its member states.

TRIAL MONITORING

In 2013, the EU delegation was granted permission by the Saudi authorities to attend public hearings for the first time. Since then, it has sent observers to trials of certain HRDs, including trials at the SCC. This is coordinated with other European missions to ensure responsibility sharing between the EU delegation and the embassies.³⁹⁹

Between October 2015 and October 2018, the EU attended the trials of at least six HRDs,⁴⁰⁰ including several hearings of Essam Koshak, Abdulaziz al-Shubaily, Issa al-Nukheifi, Issa al-Hamid, Mohammed al-Otaibi and Abdullah al-Attawi. Prior to this, the EU observed the trials of Waleed Abu al-Khair, a human rights lawyer, and Fowzan al-Harbi of the human rights organization ACPRA. However, since the second half of 2018, the EU has publicly reported “challenges” in accessing trials,⁴⁰¹ with European diplomats denied entry to the trials of the WHRDs in March 2019.⁴⁰²

HRDs interviewed considered the presence of EU diplomats to be important and to provide them with a sense of moral support from the international community.

The EU does not appear to follow up on its trial monitoring efforts. Indeed, trial attendance is not followed by public denunciations of flawed proceedings, baseless charges or unfair verdicts against HRDs, despite ample documentation in this regard.⁴⁰³ Amnesty International found little evidence to show that the EU follows up on its attendance at hearings by addressing due process violations in its exchanges with the authorities.

While trial monitoring is important, the EU’s constrained approach in Saudi Arabia limits the impact of these actions and risks lending legitimacy to the flawed proceedings faced by HRDs in Saudi Arabian courts. Indeed,

³⁹⁹ Council of the EU, *EU Annual Report on Human Rights and Democracy in the World in 2015 – Country and Regional Issues*, 20 September 2016, https://cdn1-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/PU5MC35N7CFIzeOj_xF-HKwPNW7CLGqaOdn_XBp_9D8/mtime:1476988093/sites/eeas/files/human_rights_and_democracy_in_the_world_in_2015_-_country_and_regional_issues.pdf.

⁴⁰⁰ Amnesty International Netherlands, “Spreken is Zilver, Zwiigen blijft Fout”, October 2018, https://www.amnesty.nl/content/uploads/2018/10/Nederlandse-inzet-voor-Saudische-MRVs-181018_DEF.pdf?x93624.

⁴⁰¹ EEAS, *2018 Human Rights and Democracy in the World (country reports)*, 13 May 2019, https://eeas.europa.eu/topics/human-rights-democracy/8437/eu-annual-reports-human-rights-and-democratisation_en.

⁴⁰² Middle East Eye, “Saudi court resumes trial of ‘tortured’ women’s rights activists”, 27 March 2019, <https://www.middleeasteye.net/news/saudi-court-resumes-trial-tortured-womens-rights-activists>.

⁴⁰³ These have included the failure to guarantee the right of the defendant to be informed of reasons for arrest and detention, the right to legal counsel during proceedings and the right to cross-examine witnesses testifying against them.

at international fora, the Saudi Arabian authorities have used the presence of diplomatic missions at court hearings to argue that HRDs had a fair trial.⁴⁰⁴

More worrying still, civil society experts interviewed cited instances where European officials referred to national rather than international standards as the benchmark against which to assess the judicial proceedings faced by HRDs in Saudi Arabia. This reasoning was reflected in the Dutch Minister of Foreign Affairs' response to a 2016 parliamentary question regarding the mass execution of 43 individuals, in which he argued that the defendants were sentenced in accordance with Saudi Arabia's national judicial standards.⁴⁰⁵

European diplomats have previously cited the lack of public evidence and the use of closed proceedings as a reason for not expressing an opinion on the fairness of trials. This should not prevent the EU from assessing the proceedings they can attend, including the charges HRDs face and sentences issued against HRDs that stem solely from their human rights work. This is particularly important given that HRDs in Saudi Arabia have been sentenced for vague offences that criminalize the peaceful exercise of human rights, such as "destabilizing security and spreading chaos", "inciting public opinion against the authorities", "breaking allegiance to the ruler", and "setting up an unlicensed organization". Moreover, the absence of an independent judiciary and the fact that Saudi Arabian courts routinely fail to respect the right to due process, should provide sufficient grounds for the EU to voice its concerns. In addition, HRDs are frequently denied the right to access a lawyer. They are not informed of the reasons of their arrest or detention, and their allegations of torture and other ill-treatment are rarely if ever investigated.

In this context, it is crucial that the EU and its member states raise concerns about charges brought to criminalize the work of HRDs and about violations of the right to a fair trial. Given that HRDs do not receive fair trials, EU and member state positioning is crucial both as a follow up to their trial monitoring efforts, and also before the conclusion of the proceedings.

ENGAGEMENT WITH HRDS

EU diplomats and HRDs alike reported that, since the renewed crackdown on civil society in 2018, it has been difficult to maintain contact between international representatives and HRDs, their lawyers or family members. Indeed, any such contact is seen as potentially risky for the individuals concerned.

While the current climate for human rights work in Saudi Arabia means that communications have become particularly difficult, there is little evidence that the EU delegation's network of contacts with HRDs was extensive prior to this crackdown. Indeed, EU diplomats interviewed reported that they struggled with collecting accurate information on the situation in the country, including the names of arrested HRDs and the charges they faced.

In the absence of a structured dialogue with Saudi Arabia, Amnesty International found no evidence that the EU and its member state diplomats consulted HRDs ahead of their meetings with Saudi Arabian officials. Yet this would be crucial to ensuring a tailored approach and enhancing the effectiveness of EU actions. Civil society experts interviewed mentioned that the failure of the EU and its member states to support HRDs after their arrest seriously undermines their trust in the EU. Indeed, such incidents may be taken to indicate that communicating with the EU is not worth the risk due to the perception that HRDs would not receive support when their activities are criminalized.

RELOCATION AND VISA SUPPORT

Certain Saudi Arabian HRDs have received support from EU member state missions and governments in obtaining visas and relocating to safe locations outside of Saudi Arabia. While relocation is an important risk prevention mechanism, the case of HRD Mohammed al-Otaibi, who was deported from Qatar to Saudi Arabia after he had been granted a humanitarian visa by Norway (see above), demonstrates that this may not suffice in the Saudi Arabian context. Efforts to assist HRDs in obtaining visas may also need to be complemented by additional protective measures, such as accompanying individuals to the airport.

After Mohammed al-Otaibi was granted a humanitarian visa from Norway in 2017,⁴⁰⁶ he was detained at the airport in Qatar and forcibly returned to Saudi Arabia, where he was sentenced to 14 years in prison for

⁴⁰⁴ See, for example: "Response from the Saudi authorities to the appeal of UN Special Rapporteurs regarding the case of Mohammed al-Otaibi and Abdullah al-Attawi", 13 February 2017, p. 3, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=33388>.

⁴⁰⁵ Tweede Kamer, "Antwoord op vragen van de leden Van Bommel en Sjoerdsma over executies in Saudi-Arabië", 25 January 2016, <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2016Z00016&did=2016D01075>.

⁴⁰⁶ AFP/The Local, "Norway 'regrets' Saudi activist deportation from Qatar", 30 May 2017, <https://www.thelocal.no/20170530/qatar-prevents-saudi-activist-un-refugee-from-reaching-norway-reports>.

“forming an unlicensed organization”.⁴⁰⁷ The EU and its member states failed to complement Norway’s visa support with further protective measures and refrained from providing him with any form of political support, despite repeated warnings by Amnesty International regarding his looming deportation. To Amnesty International’s knowledge, no embassy of an EU member state met Mohammed al-Otaibi in Qatar before his deportation, nor did the EU or any member state denounce his subsequent deportation and detention in Saudi Arabia.

8.4 CONCLUSIONS AND RECOMMENDATIONS

The EU and member states lack a clear and coherent strategy to support and protect HRDs in Saudi Arabia. While an institutionalized political dialogue with Saudi Arabia remains absent, the various other tools at the EU’s disposal are either not being used or not being employed effectively to support HRDs. Indeed, the EU’s policy is characterized by restraint and a lack of ownership by both the EU and its member states.

As the crackdown on HRDs deepens in Saudi Arabia, the EU will be challenged to overcome these internal impediments and develop a tailored approach that seeks to secure space for Saudi Arabian HRDs to conduct their work.

Moreover, the experience in Saudi Arabia also opens areas for further consideration:

- How can the population’s active internet and social media presence be used to promote shared human rights values and protection for those who defend them?
- How to effectively offer alternative narratives to public smear campaigns and the demonizing rhetoric surrounding HRDs in a restricted media landscape?
- How to effectively support and protect HRDs in exile and address cross-border surveillance and harassment of HRDs abroad, including in Europe?
- How should the EU respond to third country efforts to divide and punish EU member states for criticizing human rights violations and repression of HRDs?

⁴⁰⁷ Front Line Defenders, “Mohammed al-Otaibi forcibly deported to Saudi Arabia”, 27 May 2017, <https://www.frontlinedefenders.org/en/case/mohammed-al-otaibi-forcibly-deported-saudi-arabia>.



TO IMPROVE IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN SAUDI ARABIA, THE EU AND ITS MEMBER STATES SHOULD:

- **Use the broad range of diplomatic tools at the EU's disposal, including public statements, and make regular assessments of their impact.** Silent diplomacy should not be the sole recourse. Experience shows that a combination of different tools applied at different levels of decision-making are often most effective at achieving impact. The EU and its member states should follow through on their actions, ensuring ownership and adequate follow up.
- **Ensure more systematic engagement with Saudi Arabian authorities on human rights.** Reported efforts to build on EU-Saudi political dialogue should include the establishment of a dedicated human rights dialogue. For such a dialogue to be effective, it should define clear objectives, specific benchmarks and human rights indicators to measure progress, as outlined in the EU Guidelines on human rights dialogues. The objectives of the dialogue should be guided by priorities identified in consultation with Saudi Arabian HRDs.
- **Seek to promote an enabling environment in dialogue with the Saudi Arabian authorities.** This includes by calling on the authorities to amend the Law on Associations to bring it into full conformity with international law and standards, to allow for the formation and operation of independent human rights organizations and to restrict the wide discretionary powers extended to the Ministry of Social Affairs to disband organizations deemed to be "harming national unity". The Anti-Cyber Crime Law should be significantly amended to ensure that criticism of government policy and practice, as well as other forms of protected speech, are not criminalized. The EU and its member states should also raise the misuse of the counter-terrorism law at the highest levels, including in meetings relating to security issues (for example, the Manama Dialogue), and call for the repeal or substantial reform of the law to ensure it does not criminalize freedom of expression, association or peaceful assembly.
- **Where possible, maintain close contact with HRDs and relevant stakeholders and develop safe methods of communication and consultation.** This is important for collecting up-to-date information and ensuring the provision of tailored support that does not increase risks for HRDs. In particular, HRDs and relevant stakeholders should be consulted ahead of EU meetings with Saudi Arabian officials and should be debriefed on the outcomes of these meetings to increase transparency. Safe methods of communication should be established by clearly indicating focal points that HRDs can contact, including in case of emergency.

9. CONCLUSIONS

Since the UN Declaration on HRDs was adopted over 20 years ago, HRDs across the globe have faced harassment, intimidation, ill-treatment, undue restrictions, unjust prosecution and arbitrary detention. Thousands of HRDs have been killed or forcibly disappeared by state and non-state actors, or portrayed as criminals, undesirables, “foreign agents”, “anti-nationals”, “terrorists” or threats to “development” or “traditional values”.

The global political context is also undergoing profound changes, with shifting allegiances and previously committed players increasingly disengaging from the international human rights framework. At national levels, restrictive legislation shrinking the space for civil society reflects broader political and cultural trends in which toxic narratives demonize “the other” and breed blame, hatred and fear.

This context makes it ever more timely and crucial for the EU and its member states to act for human rights and to speak out in defence of HRDs. Despite the increasingly challenging global context, the EU remains well placed to play a leading role in this regard. It has a broad range of policies and instruments that it can apply with relative flexibility and so wield significant influence through its relations with third countries and its role in multilateral fora.

9.1 CHALLENGES FOR EU ACTION

This report highlights a number of good practices in EU and member state efforts to support and protect HRDs. It also points to systemic shortcomings that regularly risk preventing the EU from translating its policy into practice. The findings of this report do not point to an outright failure to deliver on EU human rights commitments, but rather to an **inconsistent implementation of the EU’s HRD policy**. Indeed, clear disparities in EU action emerged both between and within the different countries analysed. While this report recognizes that each context presents specific challenges for EU action, HRDs faced grave human rights violations in all the countries analysed and require sustained support within and across countries, even in arguably disparate settings with varying political stakes for the EU and its member states.

Between countries, the most visible illustration of the disparities in EU action is the difference in the number and strength of EU statements on HRDs. For example, in Honduras and Saudi Arabia, the number of EU statements issued over the four-year period analysed is equivalent to the number of statements issued in China or Russia in a single year. EU statements on China regularly call for the release of HRDs in detention, while such language is not adopted for Saudi Arabia. The perceived levels of political ownership over the EU’s HRD policy also varied across the different countries.



NUMBER OF EU STATEMENTS ON HRDS AND CIVIL SOCIETY ISSUED BETWEEN JANUARY 2014 AND APRIL 2019⁴⁰⁸

China	Russia	Burundi	Honduras	Saudi Arabia
46	40*	21	12	8

* For the purposes of comparison between countries, the figure given for Russia does not take into account statements issued by the EU delegation to the OSCE and Council of Europe as they represent region-specific fora with no equivalent in the other countries analysed. Taking these statements into account, the total number of EU statements on Russia would rise to at least 94 statements.

While in China,⁴⁰⁹ Russia⁴¹⁰ and Honduras,⁴¹¹ support to HRDs is publicly endorsed as a priority in the strategy document underpinning the EU's relations with these countries or their regions, this is not the case for Burundi⁴¹² or Saudi Arabia.⁴¹³ Similarly, Russia is the only country analysed in this report for which, to Amnesty International's knowledge, the EU has elaborated country-specific HRD guidelines. While acknowledging the distinct challenges in each country situation and recognizing the need to tailor EU positioning to country-specific circumstances, unwarranted disparities in the implementation of the EU's commitments risk being perceived as arbitrary at best and politically motivated at worst. This may undermine the credibility and robustness of the EU's HRD policy at the global level.

This report also highlights important **inconsistencies between EU actions within the same country**. EU messaging on HRDs often varies depending on the level at which a statement is issued, or an action is taken. In relation to Saudi Arabia, for example, public support for HRDs is more frequent and explicit at the UN HRC than it is at headquarters, while no statements are made in support of HRDs at local level.

Similarly, there is a significant divergence between EU statements adopted after the EU-China human rights dialogue and joint statements issued at the EU-China summit shortly thereafter. EU messaging also varies depending on whether it is issued by the EEAS, the European Commission or member states, underscoring the need to further mainstream human rights across different policy areas and levels of decision-making. Across the five countries, the need for more **effective coordination and responsibility sharing**, particularly between the EU and its member states, remains a persistent challenge.

EU engagement also varies widely depending on the individual HRD in question. In Russia, for example, high-profile cases receive the lion's share of attention in EU and member state statements, while across the board, EU engagement with HRDs outside large urban centres remains limited. Several HRDs interviewed highlighted the person-dependent nature of the EU's engagement on HRDs, which they perceived as fluctuating according to staff turnover within the EU, its member state delegations and EU institutions.

These disparities suggest a **lack of overall strategy and predictability** in the EU's efforts to support HRDs. Rather than pursuing a consistent approach within and across countries, EU action appears to be contingent on a host of different and, at times arbitrary, factors ranging from the evolution in relations with the country in question to changes in EU staff.

⁴⁰⁸ As mentioned in the Methodology above, this report defines an EU public statement as any public statement with reference to HRDs, civil society, NGOs and/or restrictive laws in relation to these groups, and issued by the EU delegation, the HR/VP spokesperson, the HR/VP on behalf of the EU and member states or the EU at the UN HRC.

⁴⁰⁹ See European Commission, *Joint Communication to the European Parliament, the European Council and the Council: EU-China – A strategic outlook*, p. 2. This states: "The ability of EU and China to engage effectively on human rights will be an important measure of the quality of the bilateral relationship. The EU acknowledges China's progress in economic and social rights. However, in other respects, the human rights situation in China is deteriorating, notably in Xinjiang and regarding civil and political rights, as witnessed by the continuing crackdown on human rights lawyers and defenders."

⁴¹⁰ See the EU's five guiding principles on EU-Russia relations as outlined in the remarks by HR/VP Federica Mogherini at the press conference following the Foreign Affairs Council, 16 April 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/42996/remarks-hrvp-mogherini-press-conference-following-foreign-affairs-council_en.

⁴¹¹ See: European Commission, *Joint Communication to the European Parliament and the Council: European Union, Latin America and the Caribbean: joining forces for a common future*, 16 April 2019, https://eeas.europa.eu/sites/eeas/files/joint_communication_to_the_european_parliament_and_the_council_-_european_union_latin_america_and_the_caribbean_-_joining_forces_for_a_common_future.pdf.

⁴¹² For example, European Commission, *Joint Communication to the European Parliament and the Council for a renewed impetus of the Africa-EU Partnership*, 4 May 2017, https://eeas.europa.eu/sites/eeas/files/http_eur-lex.europa.pdf. While HRDs are mentioned in the *Council Conclusions* of 16 November 2015 (<https://www.consilium.europa.eu/en/press/press-releases/2015/11/16/council-conclusions-on-burundi/>), this is mainly descriptive rather than an explicit prioritization of EU support to HRDs in Burundi.

⁴¹³ European Commission, *EU-GCC Cooperation Agreement*.



EXAMPLES OF LANGUAGE ADOPTED IN EU STATEMENTS: CHINA AND SAUDI ARABIA

CHINA, MAY 2018 Statement by the Spokesperson on the recent conviction of Chinese human rights defender Tashi Wangchuk	SAUDI ARABIA, JANUARY 2018 Statement by the Spokesperson on the sentencing of Human Rights defenders in Saudi Arabia
<p><i>Chinese human rights defender, Mr Tashi Wangchuk, who was detained in January 2016, was convicted of inciting separatism and sentenced to five years' imprisonment by the Yushu Intermediate People's Court on 22 May 2018. Mr Tashi's rights under China's Criminal Procedure Law and international law obligations to a fair trial, to be tried without undue delay, and to mount a proper defence, were not fully respected.</i></p> <p><i>We expect the Chinese authorities to respect the right to freedom of expression of all citizens as recognised by China's Constitution and in line with China's international law obligations, including the Universal Declaration of Human Rights. China also needs to ensure that ethnic minorities enjoy equal rights, including freedom of expression and belief, as mandated by the International Convention on the Elimination of All Forms of Racial Discrimination, which China ratified in 1981.</i></p> <p><i>Tashi Wangchuk and other detained and convicted human rights defenders and lawyers including Ilham Tohti, Wang Quanzhang, Li Yuhan, Huang Qi and Yu Wensheng must be released immediately.</i></p>	<p><i>On January 25, Human Rights Defenders Mohamed Al Otaibi and Abdullah Al Atawi were sentenced to 14 and 7 years imprisonment, respectively, by the Specialized Criminal Court in Saudi Arabia.</i></p> <p><i>The European Union recalls its strong commitment to the protection, globally, of Human Rights Defenders. While fully respecting the prerogatives of the Saudi Arabia's Judiciary, the European Union underlines the importance of the respect of human rights, including the one to a fair trial, in all cases. The European Union will follow the appeal procedure closely.</i></p>


Another challenge is that EU actions are primarily reactive, often responding to escalations in abuses against HRDs rather than anticipating them, and often **lack follow up once action is taken**. For example, in countries where EU trial observation was possible, these efforts were rarely followed up with public messaging to voice concerns about the right to fair trial or due process, or to raise the profile of the HRDs in question. EU public statements were generally not used as entry points to request a meeting with the authorities or a visit to arbitrarily detained HRDs. Similarly, relocation support was not always followed up with additional protective measures to ensure the HRD could travel safely. In the absence of concerted follow up, such actions appear to be one-off initiatives and insufficiently geared towards achieving impact.

In the same vein, the **lack of visibility given to certain EU actions** risks limiting their impact for HRDs and obscures what type of support HRDs can expect from the EU. For example, when the EU raises individual HRD cases in closed-door meetings, it deserves more critical thinking, backed by specific benchmarks, about whether to publicize this fact and how that could enhance support to HRDs. Indeed, closed-door meetings in China and Russia have sometimes been publicized, increasing the transparency of EU actions and raising the profile of HRDs. Similarly, publicizing EU meetings with HRDs (with their consent) may also boost the legitimacy of HRDs and help counter stigmatization against them.

More could be done to **ensure that the EU's public actions and commitments to HRDs reach their target audience** in a strategic and results-oriented way. EU statements are often not translated into local languages. EU communications are not always shared on popular social media platforms, and the EU Guidelines on HRDs and channels of support are often not publicized in a visible way.

One key gap in this regard is the failure to publish the contact details of HRD focal points on EU delegations' websites. Despite being one of the more concrete and readily deliverable commitments in the EU's 2012

Action Plan on Human Rights and Democracy,⁴¹⁴ no specific email address was found for the human rights or HRD focal points in three of the five countries analysed. This reflects a broader problem across the EU delegations. In an informal evaluation conducted by the International Federation for Human Rights (FIDH) in 2018, only 37% of 129 EU delegation websites included the contact details of a human rights focal point.

 EU DELEGATION WEBSITES: INFORMATION AVAILABLE TO HRDS⁴¹⁵					
	Burundi	China	Honduras	Russia	Saudi Arabia
HRD Guidelines published	yes	no	no	no	no
HRD Guidelines translated into local language	no	no	no	no	no
Name of HRD focal point published	yes	no	no	no	no
HRD focal point contact details published	no	no	no	yes	yes

A lack of policy coherence is another key obstacle in the EU’s meaningful engagement for HRDs at a moment when women, LGBTI and Indigenous defenders, as well as those working on issues related to the land, territory and environment, are particularly at risk. Due to the intersectional nature of these HRDs’ work and the risks facing them, the EU Guidelines on HRDs urgently need to be joined up with other EU policies and instruments, such as the Gender Action Plan,⁴¹⁶ the Guidelines on LGBTI rights⁴¹⁷ or the Council Conclusions on Indigenous Peoples,⁴¹⁸ to be most effectively utilized.

Finally, the report identifies instances where the EU and member states adopted innovative and adaptive approaches to support HRDs. This includes providing training on digital security and crowdfunding to HRDs in Russia; taking steps to overcome obstacles to trial observation in China⁴¹⁹ and proactively using social media and other platforms to promote an enabling environment in Honduras and Russia. Such approaches are crucial to fulfilling the EU’s commitment to “adopt a proactive policy towards HRDs”⁴²⁰ and are more needed than ever in light of the mounting challenges to the EU’s more conventional forms of engagement. However, these **innovative practices do not appear to be systematized** across different countries. Moving forward, such an approach, along with cultivating good practices (see Box 2), will be essential to avoid becoming stuck in more rigid approaches and relying exclusively on conventional channels to support HRDs.

⁴¹⁴ Point 18.c. in the 2012 *EU Action Plan on Human Rights and Democracy*: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

⁴¹⁵ As of 22 May 2019.

⁴¹⁶ Council of the EU, *Gender Action Plan 2015-2020*, 26 October 2015, <https://www.consilium.europa.eu/media/24467/st13201-en15.pdf>.

⁴¹⁷ Council of the EU, *Guidelines to promote and protect the enjoyment of all human rights by LGBTI persons*, 24 June 2013, <https://eeas.europa.eu/sites/eeas/files/137584.pdf>.

⁴¹⁸ Council of the EU, *Council Conclusions on Indigenous Peoples*, 15 May 2017, <http://data.consilium.europa.eu/doc/document/ST-8814-2017-INIT/en/pdf>.

⁴¹⁹ See @tomphillipsin, 14 December 2015, Twitter, <https://twitter.com/tomphillipsin/status/676253519322726401>.

⁴²⁰ See point 10 in the *EU Guidelines on HRDs*.



GOOD PRACTICES – EU AND MEMBER STATE EFFORTS TO SUPPORT HRDS

- Providing HRDs with training on digital security and crowdfunding to help overcome a restrictive environment (Russia)
- Liaising with and providing support to HRDs in exile (Burundi)
- Social media with positive messages on HRDs (Honduras)
- Work to counter smear campaigns against HRDs through a Russian language website (Russia)
- Increasing visibility of trial observation efforts by inviting EU member state parliamentarians to monitor trials (Russia)
- Using member state consulates and diplomatic visits to conduct outreach to HRDs in remote regions (Russia, Honduras)
- Issuing visa guidelines to streamline and facilitate the provision of Schengen visas for HRDs (Russia)
- Using multilateral fora where bilateral channels are closed, e.g. the EU lead on the Burundi Commission of Inquiry at the UN HRC
- Individual efforts to mainstream and build human rights aspects into all dimension of relations, e.g. Commissioner Malmstrom’s speech referring to the importance of freedom of expression for the business environment in China.

9.2 CHALLENGES IN INTERNAL EU DEBATES

The report also identifies several recurring debates that emerged in interviews with diplomats citing the challenges for EU action on HRDs.

One debate centred on the benefits of **private diplomacy versus public messaging in support of HRDs**. In some contexts, diplomats expressed a clear preference for private diplomacy, arguing that public messaging is less effective and potentially harmful to HRDs. It will always be paramount that the EU seeks the consent of HRDs before adopting a public stance and takes into account potential risks when taking action on behalf of HRDs. Yet the findings of this report suggest that this debate is a false dichotomy. Little evidence was found to indicate that private diplomacy was more effective on its own. Indeed, where EU action had the most visible impact, it combined a mix of different instruments, including both private and public steps, as part of an integrated strategy. Across the board, HRDs underlined the crucial importance of EU and member state public statements in offering protection and support to their work. Unfortunately, it remains unclear how the EU decides to take public or private action, and the degree to which these decisions are based on an explicit set of benchmarks and a comprehensive assessment of impact and risks. Indeed, the inconsistencies between EU public communications on HRDs in Saudi Arabia and China are difficult to justify, suggesting that other considerations are at play, beyond stated EU commitments on human rights.

Another challenge diplomats often cited was the **lack of unity among EU member states**, which they argued could stymie EU action in support of HRDs. This report does document cases where a lack of unity limited the instruments the EU could use to support HRDs and led to inconsistencies at different levels of EU action or decision-making. However, its findings point to creative approaches that have been adopted to overcome these challenges. Although discord among member states is a major concern in EU relations with Russia and China,⁴²¹ this has not paralysed EU action in support of HRDs. In view of the different tools and levels at which action can be taken within the EU, these case studies illustrate how the complexity of EU structures allows for a degree of flexibility and the potential for even more thoughtful and strategic engagement on behalf of HRDs.

For example, a lack of local statements on HRDs by the EU delegation in Moscow was balanced by statements by the spokesperson, occasional statements by individual EU member states and communications via the EU delegation’s social media accounts. There is ample scope for further reflection about how the EU and its

⁴²¹ Reuters, “Greece blocks EU statement on China human rights at UN”.

member states can use this flexibility to ensure its support to HRDs. Depending on the context, the EU can employ several approaches individually or in combination. With joint EU positions, no single member state takes full responsibility, at once obscuring the engagement of each member state and potentially reducing the risk of diplomatic consequences for individual member states. Bilateral engagement and action by individual member states can complement joint EU positions. Additionally, the HR/VP and her spokesperson can use their (albeit limited) autonomy to ensure that the EU abides by its commitment to support and protect HRDs. Finally, European officials can strategically use social media, op-eds and press interviews to articulate support for HRDs.

Against the background of EU disunity on human rights in some contexts, such an interplay of different types of positioning or action enables the EU to support HRDs in a strategic manner. Undeniably, EU actions are most effective when unified, consistent and complemented by actions of individual EU member states. Specific channels cannot become an end in themselves but rather can be deployed as strategic alternatives when EU unity proves impossible.

Some diplomats viewed the **lack of formal dialogue or strained relations** with a third country as a major obstacle to the fulfilment of the EU's HRD policy. In Burundi, diplomats felt that the activation of article 96 of the Cotonou Agreement and the resulting breakdown in dialogue limited the scope for EU action in support of HRDs. Similarly, in Saudi Arabia, diplomats considered that establishing a structured human rights dialogue was a priority to address the situation of HRDs.

While human rights dialogues and regular diplomatic exchanges do offer important and specifically dedicated spaces through which to raise the situation of HRDs, this report suggests that such formal channels need not be the mainstay of EU engagement on human rights and HRDs. As the Russia case study illustrates, the suspension of standing EU-Russia dialogues, including the biannual human rights consultations in 2014, has not prevented the EU from drawing on other formal and informal channels to support HRDs. These range from raising cases of HRDs in high-level meetings, issuing statements and observing trials to less formal channels such as social media outreach and other efforts to counter smear campaigns against HRDs. Moreover, even as civil society questions the utility and impact of the EU-China human rights dialogue,⁴²² a strong body of EU public positioning on HRDs outside the dialogue further raises the question of whether such a formal arrangement is a prerequisite for engagement on human rights and HRDs.

⁴²² Amnesty International and other NGOs, "Re: The EU, China and Human Rights" (13 March 2019), "Re: 2018 EU-China Summit" and "Re: EU-China summit" (22 May 2017).

10. RECOMMENDATIONS

The findings of this report⁴²³ reveal that the EU and its member states have a body of good practices to draw upon to increase their support and protection of HRDs worldwide. However, key systemic challenges and internal debates have meant the EU and member states continue to punch below their weight in the pursuit of a coherent HRD policy.

Gaps remain in the implementation of the EU's commitments while the current policy framework falls short of addressing today's challenges. The report's findings suggest that further work will be essential to embed the range of actions, tools and instruments at the EU's disposal within a broader strategic vision of how to support and protect HRDs.



The sole way forward to confront the rapidly evolving challenges HRDs face today, will be for the EU and its member states to adopt a more strategic, visible, innovative and impact-oriented approach to protect HRDs and promote their crucial work.

This will require the EU to develop a global strategy outlining its response to the burgeoning challenges HRDs face worldwide. It will also require the EU to take this strategy forward along with individual country strategies tailored to the specific circumstances in each third country.⁴²⁴

This two-pronged approach will clarify how individual EU actions relate to broader objectives to support and protect HRDs and will go a long way to address some of the EU's key policy shortcomings. These include the need to:

- be strategic in mainstreaming HRD concerns across the EU's different policy areas and strengthening the EU's contingency planning capacities and its responsiveness to human rights crises;
- ensure the visibility of EU and member state action for HRDs, with a view to transparency, predictability and above all the impact of these actions; and
- systematize good practices and cultivate innovative and adaptable approaches for HRDs in the face of rapidly evolving challenges.

With a view to achieving a proactive policy on HRDs in the spirit of the EU Guidelines, the two sets of recommendations below are geared towards:

⁴²³ These recommendations draw on the research in this report and build on the already large body of standing recommendations by Amnesty International and other NGOs on the implementation of the EU Guidelines on HRDs. See Amnesty International's recommendations on human rights defenders to the Presidencies of Estonia, Bulgaria and Austria, 29 May 2017, https://amnestyeu.azureedge.net/wp-content/uploads/2018/10/Letter_trio_of_presidencies_on_HRD_recommendations_Estonia.pdf; Amnesty International and other NGOs, "Joint Public Statement, Intensifying the European Union's support to human rights defenders: Civil society proposals for the new EU Action Plan on Human Rights and Democracy", 12 December 2014, https://amnestyeu.azureedge.net/wp-content/uploads/2018/10/Intensifying_the_European_Union_support_to_human_rights_defenders.pdf; Amnesty International and other NGOs, "Joint statement on the EU Conclusions on the 10th anniversary of the Guidelines on human rights defenders", 13 July 2014, https://amnestyeu.azureedge.net/wp-content/uploads/2018/10/030714_JOINT_STATEMENT_ON_THE_EU_CONCLUSIONS_ON_THE_10TH_ANNIVERSARY_OF_GUIDELINES_ON_HRDs_joint_public_statement.pdf; Amnesty International, "Ten years on: the EU must reinforce its action on human rights defenders", 13 June 2014, https://amnestyeu.azureedge.net/wp-content/uploads/2018/10/B1587_HRD_Guidelines_anniversary.pdf.

⁴²⁴ See, for example, the EU's local strategy for HRDs in Afghanistan: https://eeas.europa.eu/sites/eeas/files/170115_final_eu_local_strategy_for_hrd_in_afghanistan.pdf; Nepal: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/201/201101/20110110_053euguidelinesonhrdnepal_en.pdf; and Turkey: https://www.avrupa.info.tr/sites/default/files/2016-11/EU_local_strategy_on_HRD_draft_07012011_L-EN.pdf.

- improving existing EU action to support and protect HRDs; and
- moving beyond established policies and practices to a more adaptive and innovative approach to support and protect HRDs.

10.1 IMPROVE EXISTING EU ACTION

AT THE GLOBAL LEVEL, THE EU AND ITS MEMBER STATES SHOULD:

- Issue annual Foreign Affairs Council Conclusions on EU action to promote and protect HRDs in its foreign policy. Such Council Conclusions will demonstrate the EU's political support to HRDs at the highest level and provide a strategic vision outlining how the EU and member states will support HRDs globally in light of increasing challenges to their work.
- Ensure that the Foreign Affairs Council systematically considers the situation of HRDs in discussing and issuing conclusions on situations in third countries, including by addressing the situation of HRDs in strategies on individual countries and regions.
- Proactively address EU member state disunity on human rights with a view to improving joint action on HRDs:
 - consider how to push back on third countries' efforts to divide EU and member state efforts on human rights and HRDs;
 - develop strategies on how to use divergences among member states to achieve impact through the interplay of bilateral and joint action and positioning; and
 - ensure EU and member state actions and positioning complement each other and that member states' action and positioning echo jointly agreed initiatives at EU level.
- Create working mechanisms to put mainstreaming into practice. Establish regular liaisons throughout the European institutions and between the EU and member states up to the highest political levels to ensure a mainstreamed approach on human rights and HRDs in each third country. In parallel, the Council Working Party on Human Rights (COHOM) should revisit and update its work on mainstreaming in EU foreign policy in response to evolving global challenges and with an emphasis on promoting and protecting HRDs.
- Use multilateral human rights channels to achieve impact for HRDs, including by using UPR recommendations, advocating for the ratification of key human rights treaties and moving parts of EU engagement on human rights to regional or multilateral levels to complement bilateral exchanges where country-level channels are closed.

AT THIRD COUNTRY LEVEL, THE EU AND ITS MEMBER STATES SHOULD:

- Develop results-oriented country level strategies for EU action on HRDs, ensuring that EU actions are tailored to country-specific circumstances. Among other things, these should outline steps to:
 - promote and protect individual HRDs;
 - ensure a safe and enabling overall environment; and
 - support the human rights issues raised by HRDs.
- Regularly assess the impact of EU actions in support of HRDs, based on clearly defined benchmarks, including their visibility, impact and feedback from HRDs.
- Align all EU external action in third countries with EU action to protect HRDs and promote their work. Ongoing EU work on HRDs should be taken up in all other relevant areas of EU external action in a third country, including development assistance, support to the justice sector or to police/ judicial reform, election observation missions and legal affairs dialogues. EU support to national human rights institutions and national HRD mechanisms must be balanced with sustained critical engagement with authorities in third countries.

KEY AREAS OF CONCERN:

- Reinforce EU and member state efforts on trial observation by:⁴²⁵
 - working on systematic and strategic follow up to trial observation by including denial of access or observation results in public positioning, political dialogue and other EU action;
 - increasing the overall visibility of EU and member state trial observation and its outcomes; and
 - adopting alternative courses of action to support HRDs on trial where trial observation is not possible.
- Systematize the EU and member state response to legislation that unduly restricts the work of human rights defenders. This should include explicit guidance for all EU and member state staff to identify key human rights concerns in legislation on NGOs or civil society and to engage meaningfully with third countries in response to such legislation. The EU and its member states should ensure sufficient resources are available to conduct in-depth legal analysis of the practical implications of restrictive legislation in third countries.
- Reinforce strategic thinking and concrete policies on how the EU and its member states can respond when human rights defenders face reprisals for engaging with the EU in line with commitments in the 2012 EU Strategic Framework on Human Rights and Democracy.
- Build EU and member state commitments on HRDs into job profiles of all staff members of the European External Action Service and the EU delegation, and member state representations, complementing this with monitoring and evaluation of activities on behalf of HRDs. Aim to ensure a systemic, systematic approach on HRDs, avoiding a person-dependent approach and minimizing the effects of staff rotation.
- Develop a due diligence framework to enable EU action on HRDs by objectively balancing potential impact against risks to HRDs. This should exclude any undue blockages and specious “do no harm” debates about possible adverse impact of EU action on HRDs and/or on EU relations with specific third countries.

COMMUNICATIONS AND VISIBILITY

The EU and its member states should:

- Develop a global public communication strategy on HRDs, with explicit guidance and benchmarks for:
 - key content, such as the use of the term “HRD”, the name of the concerned individual, EU recommendations on the individual case(s) and on the human rights situation in the third country;
 - the level at which statements are issued – local, spokesperson, HR/VP and/or in collaboration with like-minded states, regional and/or international organizations;
 - consistency in statements within the third country as well as across third countries – without succumbing to a lowest common denominator approach;
 - coordinating statements at local, headquarters and multilateral levels, between EU and member states, and between EU, member states and regional, international organizations or other likeminded states; and
 - steps to increase the likelihood that statements reach their target audience and achieve their desired impact, including appropriate dissemination and translation into relevant languages.
- Improve the visibility and accessibility of EU commitments and channels of support to HRDs, including the publication and translation of the EU Guidelines on HRDs as well as the availability of contacts for human rights or HRD focal points on EU delegation websites.
- Ensure adequate capacity and strategic thinking on how to boost the visibility of HRDs and EU action for HRDs through targeted social media.

⁴²⁵ See Amnesty International, *Fair Trials Manual, Second Edition* (Index: POL 30/002/2014), 9 April 2014, <https://www.amnesty.org/en/documents/POL30/002/2014/en/>.

10.2 MOVE BEYOND ESTABLISHED POLICIES AND PRACTICES

Amnesty International likewise calls on the EU and its member states to build on the EU Guidelines on HRDs and existing good practices to adopt an ambitious and innovative approach to protecting HRDs and promoting their work.

AT THE GLOBAL LEVEL, THE EU AND ITS MEMBER STATES SHOULD:

- Act to counter the current pushback to weaken the international human rights framework (including the very definition of an HRD) at multilateral level, emphasizing the universality, indivisibility and interdependence of human rights and seeking alliances with like-minded states in this regard.
- Publicly reaffirm support for HRDs in the EU's internal and external policy as well as in the EU's joint statements with third countries.⁴²⁶ The EU should explicitly recognize the legitimacy of HRDs and support their work, acknowledging their contribution to the advancement of human rights.

AT GLOBAL AND THIRD COUNTRY LEVELS:

- Increase consultation with HRDs not only at local level in third countries, but also at a higher political level in geographical European Council working groups, in the Political and Security Committee and the Foreign Affairs Council.
- Seek channels for meaningful EU action even when formal channels of dialogue close.
- Designate a point person in the European External Action Service (EEAS) to identify and propagate good practices and to cultivate innovation in the work of EEAS, EU delegations and member states on HRDs and human rights more widely.

AT THIRD COUNTRY LEVEL:

- Expand good practices to access HRDs in regions, using consulates or visits to development projects as points of entry. Explore how these and other initiatives can best achieve impact, including by providing visibility for HRDs in remote areas or by conducting trial observation.
- Explore alternative means of promoting human rights and the work of HRDs in third countries, including cultural events, marches, social media, prizes – initiatives that can lend visibility and legitimacy to HRDs and EU action on HRDs.

KEY AREAS OF CONCERN:

- Develop a concrete strategy to achieve EU impact for HRDs with intersectional concerns and facing specific challenges and risks as a result. These should include WHRDs, LGBTI defenders, Indigenous HRDs, HRDs working on land/territory/environment or business and human rights. To achieve meaningful impact for such HRDs, the EU Guidelines on HRDs must be linked with existing EU policies on women's rights, LGBTI rights, business and human rights, Indigenous peoples' rights and other policies on specifically targeted groups.
- Reinforce the EU response for HRDs in human rights crises and conflicts:
 - develop strategies to identify if and how attacks on HRDs can be an indicator of wider emerging crises;
 - adapt support to HRDs in crisis and conflict countries to meet their evolving needs;
 - boost EU and member state capacities to provide protection in these settings and to meet the high number of demands for timely relocation; and
 - ensure capacity for sustained political, financial and other support to HRDs and civil society in protracted crises.

⁴²⁶ See, for example, "Mexico and the European Union reaffirm their commitment to human rights", 26 October 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/52888/mexico-and-european-union-reaffirm-their-commitment-human-rights_en: "The EU and Mexico strongly condemned all acts of aggression against human rights defenders and journalists. Both sides underlined their firm commitment to address the threats they face and to ensure they can fulfil their work with full independence. In this context, the EU and Mexico agreed on the importance of ensuring that mechanisms to protect human rights defenders, journalists and other vulnerable persons are fully resourced, effective and reliable."

- Develop concrete strategies to protect and promote HRDs in exile and/or diaspora as a result of human rights crises or conflicts – including addressing the needs of and threats to HRDs and their families in diaspora in Europe.
- Ensure that the EU and member states are fully equipped to address the specific risks facing HRDs with dual nationality and/or HRDs facing a risk of *refoulement*.
- Allocate resources to address disinformation and online and offline smear campaigns against HRDs. This could include establishing dedicated online platforms, as well as social media and other communication strategies aimed at debunking disinformation and promoting positive counter-narratives regarding the importance of HRDs.
- Boost EU capacity to address digital surveillance targeting HRDs, at a minimum by ensuring that EU staff are equipped with up-to-date, secure channels for communication with HRDs and provided with regular digital security training.

APPENDIX I: ACRONYMS

ACP:	African, Caribbean and Pacific countries
ACPRA:	Saudi Civil and Political Rights Association
APRODH:	Association Burundaise pour la protection des Droits Humains et des personnes Détenues (Association for the Protection of Human Rights and Detainees, Burundi)
COPINH:	Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (Council of Popular and Indigenous Organizations of Honduras)
CSO:	Civil society organization
DROI:	European Parliament's Sub-Committee on Human Rights
EEAS:	European External Action Service
EIDHR:	European Instrument for Democracy and Human Rights
EOM:	election observation mission
EU:	European Union
FIDH:	Fédération internationale des ligues des droits de l'homme (International Federation for Human Rights)
FMO:	Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (Netherlands Development Finance Company)
GCC:	Gulf Cooperation Council
HRC:	United Nations Human Rights Council
HRD:	Human Rights Defender
HRDCS:	Human Rights and Democracy Country Strategy
HR/VP:	High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the European Commission
IACHR:	Inter-American Commission on Human Rights
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
LFA:	Law on Foreign Agents (Russia)
LGBTI:	lesbian, gay, bisexual, transgender or intersex
MEP:	Member of the European Parliament
MFA:	Ministry of Foreign Affairs
MP:	Member of Parliament
NGO:	non-governmental organization

OAS:	Organization of American States
OHCHR:	Office of the United Nations High Commissioner for Human Rights
OSCE:	Organization for Security and Co-operation in Europe
PADH:	Programa Andino de Derechos Humanos (Programme Supporting Human Rights, Honduras)
SCC:	Specialized Criminal Court (Saudi Arabia)
UAE:	United Arab Emirates
UK:	United Kingdom
UN:	United Nations
UNGA:	United Nations General Assembly
UPR:	Universal Periodic Review
US(A):	United States of America
WHRD:	Women Human Rights Defender

APPENDIX II: EU POLICY AND INSTRUMENTS ON HRDS

The EU's most comprehensive and tailored tool to support HRDs are the 2004 EU Guidelines on Human Rights Defenders.⁴²⁷ Revised in 2008, the current Guidelines provide a practical framework for EU and member state action on HRDs in third countries, committing EU delegations and member state embassies to:

- Appoint an HRD focal point within the EU delegations;
- Monitor the situation of HRDs, reporting to headquarters and suggesting potential action;
- Develop local implementation strategies for the HRD Guidelines, with particular attention to WHRDs;
- Coordinate closely and share information on the situation of HRDs in country between EU member state missions;
- Proactively hold consultations and meetings with HRDs;
- Provide visible recognition of HRDs and their work (visits to their offices, invitations to the delegation/embassy or to participate in events);
- Observe trials of HRDs;
- Visit HRDs in detention;
- Raise individual cases and the overall situation of HRDs with the national authorities through informal and formal channel, during visits, meetings, summits, as well as in regular political and human rights dialogues;
- Raise individual cases and the overall situation of HRDs in relevant regional and international fora and facilitate the exchange of information between UN human rights mechanisms and HRDs;
- Provide assistance such as capacity building, network building, fundraising and other training, as well as financial support to HRDs;
- Promote an enabling environment for HRDs' work by supporting national bodies for the promotion and protection of human rights; and
- Provide urgent assistance to HRDs at risk by providing emergency visas, resources for travel and temporary shelter.

⁴²⁷ The EU HRD Guidelines are supplemented by a non-public "Guidance Note for EU Missions" (2014) providing guidance for EU and member state diplomatic staff on the practical implementation of the Guidelines in third countries. This document includes key guidance on the various responsibilities of EU diplomatic staff under the Guidelines, including monitoring, reporting and assessment of the situation of HRDs, concrete activities to support and protect HRDs, promotion of respect for HRDs in relations with third countries and at multilateral fora and EU financial assistance. It includes a checklist of some EU tools and actions to address specific threats and violations facing HRDs and designates the main institution(s) in charge of the EU response in each case.

The EU's commitment to the Guidelines was renewed in 2014, with the adoption of Council Conclusions on the 10th anniversary of their adoption. The EU member states pledged to:

*[I]ntensify [the EU's] political and material support to human rights defenders and step up its efforts against all form of reprisals... The EU is particularly committed to improve its support to vulnerable and marginalised human rights defenders. The EU will intensify outreach to those operating in remote and rural areas. Particular attention is paid to women human rights defenders.*⁴²⁸

The EU also has other policies and tools to support and protect HRDs:

- The EU's 2012 Strategic Framework and Action Plan on Human Rights and Democracy commits the EU to "intensify its political and financial support for human rights defenders and step up its efforts against all forms of reprisals".⁴²⁹
- The EU's first Action Plan on Human Rights and Democracy, which operationalized the Strategic Framework, required all EU delegations to appoint dedicated focal points for HRDs. Its current 2015-2019 version lists specific actions relevant to the protection and promotion of HRDs to be implemented jointly by EU institutions and its member states, invigorating support to HRDs, including in international and regional fora, and addressing threats to civil society space.⁴³⁰
- The EU's 2016 Global Strategy, which sets out the EU's ambitions as a global actor in a dynamically changing world, recognizes the need for the EU to "reach out more to... human rights defenders, and speak out against the shrinking space for civil society including through violations of the freedoms of speech and association".⁴³¹
- Multiple EU human rights Guidelines intersect with the HRD Guidelines and/or make specific reference to HRDs, including the Guidelines on Freedom of Expression (online and offline), Freedom of Religion and Belief, LGBTI rights, violence against women and girls, and on human rights dialogues with third countries.⁴³² In addition, the Council Conclusions on Indigenous Peoples of 15 May 2017 highlight the importance of addressing threats and violence directed at Indigenous peoples and individuals as well as HRDs working on land and natural resources.⁴³³
- Non-public human rights and democracy country strategies are developed jointly by EU delegations and member state missions at local level and approved by all EU member states. These outline the EU's priorities and strategy for engagement on key human rights issues in third countries and must contain measures to address the protection of HRDs and the shrinking space for civil society.
- The EU conducts human rights dialogues with third countries, during which the role of civil society and the protection of HRDs are supposed to be a priority and included on the agenda for every dialogue.⁴³⁴ In addition, the EU may provide third countries with a list of individual cases and request a response, the release of detained persons and/or further discussion at the level of political dialogues.
- The European Instrument for Democracy and Human Rights (EIDHR) is a financial instrument managed by the Directorate-General for International Cooperation and Development of the European Commission (DG DEVCO), with dedicated HRD programming and a small grants facility providing urgent support to HRDs at risk.
- Protect Defenders is an EU HRD mechanism responding to HRDs at high risk on a 24/7 basis and led by a consortium of 12 human rights NGOs.
- EU-CSO Roadmaps are designed to coordinate EU and member state funding and streamline support to civil society around strategic priorities. The Roadmaps commit the EU to defending civil society and to building effective networks for locally driven development.

Some EU member states⁴³⁵ have their own policies designed to promote and defend the work of HRDs within their foreign policy. Both Germany and the UK implement the EU Guidelines on HRDs with the assistance of

⁴²⁸ Council of the EU, *Council conclusions on the 10th Anniversary of the EU Guidelines on Human Rights Defenders*.

⁴²⁹ Council of the EU, *EU Strategic Framework and Action Plan on Human Rights and Democracy*.

⁴³⁰ Council of the EU, *EU Action Plan on Human Rights and Democracy 2015-2019*.

⁴³¹ EEAS, *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign And Security Policy*.

⁴³² The full list of EU human rights Guidelines can be accessed on the website of the EEAS:

https://eeas.europa.eu/headquarters/headquarters-homepage_en/6987/EU%20Human%20rights%20guidelines.

⁴³³ Council of the EU, *Council Conclusions on Indigenous Peoples*.

⁴³⁴ *EU Guidelines on human rights dialogues with third countries*.

⁴³⁵ At the time of writing, these were: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

internal guidance notes distributed to their diplomatic missions. Finland⁴³⁶ and France⁴³⁷ have taken a similar approach, although their guidance notes are public.

The Netherlands has prioritized HRDs in its foreign policy on human rights since 2001. This commitment was reiterated in 2007 when the Dutch government identified the implementation of the EU Guidelines on HRDs as a cornerstone of its support to defenders. The strategy for Sweden's development cooperation in the areas of human rights, democracy and the rule of law for 2018-2022 sets an objective to contribute to the increased safety and security for actors and organizations working to uphold human rights.⁴³⁸ The Swedish Foreign Affairs Minister reports that its embassies develop country specific strategies for their work on the ground and these often include the protection, promotion and support to local HRDs. In collaboration with regional authorities and civil society organizations, Spain has a programme providing temporary shelter to HRDs in danger or in need of rest and respite. The programme is open to HRDs from any country and facilitates the granting of a visa and then a one-year temporary residency permit to HRDs.⁴³⁹

EU and member state policies and instruments on HRDs are further bolstered by their leverage with third countries through political dialogue, trade, development cooperation, economic and cultural relations as well as cooperation within regional organizations (the African Union, the Council of Europe, the OSCE, the Inter-American Commission) and at the global level at the UN.

⁴³⁶ Finnish Foreign Affairs Ministry, *Protecting and Supporting Human Rights Defenders - Public Guidelines of the Foreign Ministry of Finland on the implementation of the European Union Guidelines on Human Rights Defenders*, 27 November 2014, https://um.fi/publications/-/asset_publisher/TVOLgBmLyZvu/content/suomen-ulkoasiainhallinnon-julkiset-ohjeet-euroopan-unionin-ihmisoikeuspuolustajia-koskevien-suuntaviivojen-kaytannon-toteuttamisessa, accessed 28 November 2018.

⁴³⁷ French Foreign Affairs Ministry, *La diplomatie française soutient les défenseurs des droits de l'Homme*, 29 March 2016, https://www.diplomatie.gouv.fr/IMG/pdf/plaquette_defenseurs_droits-29-03-2016_cle891cd7.pdf.

⁴³⁸ Swedish Foreign Affairs Ministry, *Strategy for Sweden's development cooperation in the areas of human rights, democracy and the rule of law for 2018-2022*, https://www.government.se/49b9d3/contentassets/9f1870ad998f4b53a79989b90bd85f3/rk_strategi-for-sveriges-utvecklingssamarbete_eng_webb22.pdf.

⁴³⁹ Spanish Foreign Affairs Ministry, *Derechos humanos: prioridades españolas*, <http://www.exteriores.gob.es/Portal/es/PoliticaExteriorCooperacion/DerechosHumanos/Paginas/Prioridades.aspx>.

APPENDIX III: EU PUBLIC STATEMENTS

BURUNDI

EU statement at HRC 40 interactive dialogue March 2019

https://eeas.europa.eu/headquarters/headquarters-homepage/59653/hrc-40-intervention-de-lue-dialogue-interactif-avec-la-commission-denqu%C3%AAt-sur-le-burundi_en.%20accessed%2016/04/2019.

Statement by the European Union Spokesperson on the situation in Burundi; 14 Dec 2018

https://eeas.europa.eu/delegations/burundi/55656/statement-european-union-spokesperson-situation-burundi_en

HRC 39 EU statements at Interactive dialogue, 11 and 17 September 2018

https://eeas.europa.eu/delegations/burundi/50564/hrc-39-intervention-de-lue-dialogue-interactif-avec-la-commission-denqu%C3%AAt-sur-le-burundi_en

https://eeas.europa.eu/delegations/burundi/50306/hrc-39-dialogue-interactif-avec-le-haut-commissaire-aux-droits-de-lhomme-sur-la-situation-au_en

HRC 38 - Intervention de l'UE: Dialogue interactif avec la Commission d'enquête sur le Burundi, 27 June 2018

https://eeas.europa.eu/delegations/burundi/47505/hrc-38-intervention-de-lue-dialogue-interactif-avec-la-commission-denqu%C3%AAt-sur-le-burundi_en

Déclaration de la Haute Représentante Federica Mogherini au nom de l'Union Européenne sur la situation au Burundi en amont du referendum constitutionnel, 8 May 2018

<https://www.consilium.europa.eu/en/press/press-releases/2018/05/08/declaration-de-la-haute-representante-federica-mogherini-au-nom-de-l-union-europeenne-sur-la-situation-au-burundi-en-amont-du-referendum-constitutionnel/>

HRC 37 - Interactive Dialogue with the Commission of Inquiry on Burundi - EU Intervention, 13 March 2018

https://eeas.europa.eu/delegations/un-geneva/41250/hrc-37-interactive-dialogue-commission-inquiry-burundi-eu-intervention_en

36th Session of the Human Rights Council - EU Intervention: Interactive Dialogue with the Commission of Inquiry on Burundi, 19 September 2017

https://eeas.europa.eu/delegations/burundi/32369/36th-session-human-rights-council-eu-intervention-interactive-dialogue-commission-inquiry_en

HRC 35 - Intervention de l'UE: Dialogue interactif avec la Commission d'enquête sur le Burundi, 15 June 2017

https://eeas.europa.eu/delegations/pakistan/28231/hrc-35-intervention-de-lue-dialogue-interactif-avec-la-commission-denqu%C3%AAt-sur-le-burundi_en

Déclaration locale suite aux accusations de volonté de déstabilisation du Burundi, 7 June 2017

https://eeas.europa.eu/delegations/burundi/27703/d%C3%A9claration-locale-suite-aux-accusations-de-volont%C3%A9-de-d%C3%A9stabilisation-du-burundi_en

HRC34 - EU Intervention - Dialogue interactif avec la Commission d'enquête sur le Burundi, 13 March 2017

https://eeas.europa.eu/delegations/burundi/22614/hrc34-eu-intervention-dialogue-interactif-avec-la-commission-denquete-sur-le-burundi_en

Statement by the Spokesperson on the banning of Ligue Iteka in Burundi, 6 January 2017

https://eeas.europa.eu/delegations/burundi/18316/statement-spokesperson-banning-ligue-iteka-burundi_en
HRC 32 – EU statement Interactive dialogue, 29 June 2016
HRC 31 – EU statement Interactive dialogue, 22 March 2016
Déclaration locale de l'Union européenne, 26 November 2015
http://eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2015/declarationlocale261115_fr.pdf
HRC 30- EU item 4 statement, 21 September 2015
http://eeas.europa.eu/archives/delegations/un_geneva/documents/eu_statments/human_right/20150921_hrc_30_item_4.pdf
Joint statement on the human rights situation in Burundi Item 4 General Debate, 24 June 2015
http://eeas.europa.eu/archives/delegations/un_geneva/documents/eu_statments/human_right/20150624_joint_stmt_burundi.pdf
Spokesperson's statement on the situation in Burundi, 27 April 2015
https://eeas.europa.eu/delegations/burundi/3391/spokespersons-statement-situation-burundi_en
Déclaration locale de l'Union européenne sur la libération provisoire et conditionnelle du président de l'Association pour la protection des droits humains et des personnes détenues (APRODH), Pierre Claver Mbonimpa, 30 September 2014
http://www.eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2014/declaration_30092014_fr.pdf
Déclaration locale de l'Union européenne sur la situation du président de l'Association pour la protection des droits humains et des personnes détenues (APRODH), Pierre Claver Mbonimpa, et sur le cas des membres du parti Mouvement pour la Solidarité et la Démocratie, 10 September 2014
http://eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2014/declaration_10092014_fr.pdf
Déclaration du porte-parole sur la situation politique au Burundi, 10 June 2014
http://www.eeas.europa.eu/archives/docs/statements/docs/2014/140610_01_fr.pdf
Déclaration de la Délégation de l'Union européenne sur le climat politique et l'arrestation du président de l'APRODH, 21 May 2014
http://eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2014052101_fr.pdf

CHINA

The European Union and China held their 37th Human Rights Dialogue, 3 April 2019
https://eeas.europa.eu/topics/external-investment-plan/60561/european-union-and-china-held-their-37th-human-rights-dialogue_en
HRC 40 - EU Statement: Human Rights situation that require the Council's attention, 12 March 2019
https://eeas.europa.eu/headquarters/headquarters-homepage/59657/hrc-40-eu-statement-human-rights-situation-require-councils-attention_en
EU Delegation to China Statement on International Human Rights Day, 9 December 2018
https://eeas.europa.eu/delegations/china/55020/eu-delegation-statement-international-human-rights-day_en
HRC 39 - EU Statement: Item 4 - Human Rights situation that require the Council's attention, 18 September 2018
https://eeas.europa.eu/delegations/china/50640/hrc-39-eu-statement-item-4-human-rights-situation-require-councils-attention_en
EEAS, The European Union and China held their annual Human Rights Dialogue, 10 July 2018
https://eeas.europa.eu/delegations/iran/48217/european-union-and-china-held-their-annual-human-rights-dialogue_en
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DEFENDING DEFENDERS?

AN ASSESSMENT OF EU ACTION ON HUMAN RIGHTS DEFENDERS

Around the world, people are speaking up and working to defend human rights, frequently at risk to their safety, freedom or life. They are harassed and intimidated, unjustly prosecuted and imprisoned. Some are tortured, killed or forcibly disappeared.

Many states have introduced restrictive laws to silence and repress HRDs and attack the civic space in which they work. In this changing world, the European Union (EU) and its member states are increasingly called on to exercise leadership on human rights and HRDs.

This report focuses on EU and member state action for HRDs in line with their human rights commitments, above all the European Union Guidelines on Human Rights Defenders (EU Guidelines on HRDs). It provides background on the EU and HRDs, including key commitments and challenges in implementing the EU Guidelines on HRDs in Burundi, China, Honduras, Russia and Saudi Arabia.

With this report, Amnesty International aims to provide constructive analysis and practical ways forward to support the EU and its member states to adopt a more strategic, visible, innovative and impact-oriented approach to protect HRDs and promote their crucial work.