

Contribution of FIDH to the strategic review of the EU human rights policy

“ Bridges And Ladders ”

The European Union has recently developed an important number of instruments specifically dedicated to the promotion of human rights in the world. This policy has been particularly active since 1995, when the first EU-China Human rights dialogue was launched, the EIDHR was established, and the decision to systematically include human rights clause in external agreements was taken. Since then, the EU has launched dozens of Human rights dialogues, adopted eight guidelines on Human rights, signed twelve ENP Actions plans including joint priorities in the field of Human rights and developed its financial instrument for the promotion and protection of Human rights.

However, this positive development raises serious challenges, firstly in terms of implementation capacities but also in terms of coherence, mainstreaming and political back up. The EU indeed faces situations where it has developed joint instruments with third countries whose Human rights record and willingness to improve their situation is extremely poor. In these situations, international and national NGOs, have clearly identified a serious risk of boxing in Human rights in these politically limited instruments. Some cases even highlight a result where the instrumentalisation of the Human rights instruments is much stronger than the impact on the situation of Human rights in the third country.

In this complex context, FIDH identifies three key challenges to be urgently addressed by the EU in order to guarantee that its political willingness and commitment to promote and protect Human rights abroad effectively contributes to the realisation of these objectives in third countries :

- **Implementation** : making sure that the implementation of the already existing EU « toolkit » effectively contributes to the promotion of human rights abroad
- **Ladders** : restoring the primacy of human rights at all levels of EU-third countries relations
- **Bridges** : making an effective use of all components of the EU external policy to reach EU objectives of promotion and protection of human rights

FIDH's only recommendation on the establishment of the human rights component of the EEAS is that it should be effective in addressing the three above-mentioned challenges.

I- Effective implementation : making sure that the implementation of the existing human rights « toolkit » effectively contributes to the promotion of Human rights abroad

Over the past 15 years, the European Union has developed a thorough and sophisticated tool box of instruments, which have significantly contributed to and supported the human rights evolution throughout the world. These instruments were often designed in response to core violations against which the EU felt ready to engage, but also following a core opportunity that the EU and its member States' engagement with third countries offered.

The first assessment of the EU's human rights policy is thus one of an extremely sophisticated and elaborate tool box, tailored to serve the foreign policy, bringing in the human rights culture in the diplomatic inter-state language.

Over these 15 years, each instruments of the tool box have been significantly multiplied, which strongly demonstrates the progressive diffusion of the human rights culture throughout the EU's 28 diplomacies.

While overall indicators have proven the usefulness of these exercises, their application deserve an adaptation, notably because the instruments valid 15 years ago may not appear valid in a world which has changed. An evident example lies in the human rights dialogue held with the Chinese authorities, where 15 years after its first session, one cannot measure significant change nor merit in pursuing a format without thorough adaptation.

Some of the principle challenges for these instruments can be summarised as follows

1995 – 2010			
Development of EU specific instruments for the promotion of human rights in its external policy			
EU toolkit	Origin	Development	Current challenges
HR clauses	First HR clauses in 1992	Systematically included in all EU-third countries agreements since 1995	Exclusion of HR clauses in sectoral agreements Conditions of activation and implementation
HR dialogues	1 st dial. in 1995 with China	8 structured dialogues (China, Russia, 5 Central Asian States, EU-AU) Local HR dialogues ENP Subcommittees on HR	Risk of boxing in Human rights - Lack of effective impact - Shortfalls in promoting HRDs and their work
HR Guidelines	1 st guideline on Death Penalty in 1998	- 8 EU guidelines on HR Launch of Local Implementation strategies (LIS)	- Implementation - Consultation and coordination with local HR actors
ENP Action plans	1 st signature s in 2004	- 12 ENP Action plans - JLS and HR subcommittees in charge of evaluating the implementation - Annual country progress reports	- Making « joint ownership » of HR priorities a reality - Serious difficulties in implementing HR sections of the ENP AP
EIDHR	Established in 1994	- Revisited in 2000 and 2006 - 1 billion Euros for 2007-2013 - Open to NGOs, IGOs, parliamentary bodies	- Difficulties of access for many local independent human rights NGOs - Impact diminished by other EU programmes excluding HR benchmarks and conditionality

RECOMMENDATIONS

Human rights clauses

- Maintain the inclusion of human rights clause in all agreements, including sectoral ones
- Define a methodology and conditions of activation of human rights clauses as established in the Cotonou agreement

Human rights dialogues : *see attached FIDH evaluation of the HR dialogues with China and Russia*

- **Establish public indicators of progress for all human rights dialogues**: on an annual basis, a set of specific objectives and (even minimal) steps should be set; concrete benchmarks measuring progress on these objectives should be shared between each round of the consultations; NGOs should receive this list of specific objectives and benchmarks.
- **Make regular public substantial assessments of progress**: more substantial assessments of the effective results of each round of the dialogues and of the overall human rights evolutions should be made by the EU, on the occasion of EU-third countries Summits and ministerial meetings.
- **Send strong message of concern and support for human rights defenders** and their families by continuing to raise individual cases and consider making the lists of individual cases submitted public to enhance impact of increased public attention on releases or improved conditions and treatment.
- **Strengthen the role and participation of human rights NGOs and defenders in the dialogues and seminars' processes**: FIDH policy has been consistent in saying that a truly constructive dialogue must involve national human rights advocates and independent social groups, and that the participants in the EU-partner country seminars should be chosen freely by each party without any veto right.

Human rights guidelines

- Increase the consultation of and coordination with local human rights NGOs and defenders in the definition and implementation of the Local Implementation Strategies

ENP action plans and follow-up instruments

- Define a set of EU specific benchmarks and objectives to be reached on an annual basis in order to initiate a dynamic of effective implementation the Action plan's jointly agreed priorities
- Concentrate and assess the EU involvement in the ENP human rights Subcommittees on the effective realisation of jointly agreed priorities

EIDHR

- Explore concrete avenues to modify, or overcome, the EU financial regulation *de facto* limiting access to EU funding for small local, and often non registered, human rights NGOs
- Make sure that the impact of EIDHR programmes is not diminished by the allocation of bigger financial supports given to authorities and goNGOS without human rights conditionality and benchmarks

II- Ladders : restoring the primacy of Human rights at all levels of EU-third countries relations

The **risk of isolation of human rights** concerns and instruments of the EU external policy is true both on a horizontal and a **vertical scale**. In this respect, the potential instrumentalisation of EU-third countries human rights dialogues is high if the EU does not give a high level political back up to its concerns. The EU-Russia human rights consultations is a good illustration of this danger: Since the establishment of the consultations in 2005, the EU has not made anymore direct reference to the situation of Human rights in the EU-Russia post-summit press-release. The press releases only refer to the process of the Human rights consultations, systematically presented as being held in “a good and constructive atmosphere” despite the absence of progress on the ground and on the modalities of the dialogue.

This need for a high level political signal in favour of human rights also raises the issue of the **visibility and publicity of the EU human rights policy**.

Finally, this political back up to human rights policies and instruments requires a **stronger political willingness, a more systematic direct involvement at the ministerial level and a stronger coherence** in the EU decision making process. A number of political decisions taken at the ministerial level have indeed fueled the suspicion of incoherence of EU policies when stronger community, or bilateral, interests are at stake. The lifting of the sanctions against Uzbekistan in 2008, the decision to engage in an “upgraded” partnership with Israel and Tunisia are examples, among others, of political decisions that were not coherent with the EU strategy to promote human rights in these countries.

RECOMMENDATIONS

- Give an explicit and systematic political back up to EU-third countries human rights dialogues and subcommittees at ministerial level,
- Include, in all post summits press releases or statements, substantial reference to the situation of human rights in the partner country and an assessment of the steps taken, or not, by the partner authorities to address this situation
- Directly involve Heads of States, Ministers and the HR-VP in the implementation of EU guidelines on human rights, and systematically include a meeting with local human rights NGOs and defenders in their country visit's agendas
- Keep releasing public statements of concern on violations of human rights and make sure that the EU assessment and wording on these situations is coherent with UN reports and statements
- Regularly raise at the ministerial level the issue of the coherence of EU external action's decisions in situations where the primacy of human rights is challenged by other community or bilateral interests
- Consider making more frequent use of targeted individual sanctions against direct responsables for systematic human rights violations

III- Bridges : making an effective use of all components of the EU external policy to reach EU objectives of promotion and protection of Human rights

Where the EU stands

While the evaluation of EU instruments specifically dedicated to Human rights shows that the EU is confronted to serious limits in terms of concrete impact, FIDH strongly believes that thinking the overall EU strategy on promotion of human rights beyond these specific instruments is key to producing more results in third countries.

For example, we fear that while the concerns raised by the EU in its human rights dialogue with third countries have been greater, they have very often not impacted on other political negotiations and cooperation on trade, business development, counter-terrorism or migration, isolating the human rights dynamic from the overall EU strategy towards these countries.

Furthermore the EU technical cooperation and financial assistance to third countries, beyond EIDHR, often lacks coherence with Human rights objectives and does not necessarily help addressing the identified challenges. For example, when the UN, human rights NGOs, and even the EU itself, clearly identify the lack of independence of the judiciary system in a partner country as one of the main obstacle to the improvement of the human rights situations and as a direct instrument of the crackdown on HRDs, the EU can not keep funding this Justice system without any conditionality or benchmark linked to its independence.

RECOMMENDATIONS

TRADE (see attached FIDH paper on HRIA)

- Adopt EU Human Rights Impact Assessments (HRIA) of EU-third countries trade agreements allowing to assess, ex ante and ex post, the impact of each agreement on the realisation of human rights
- Adopt a regulation banning the import of goods made with the use of forced labour
- Define more objective indicators for the activation of GSP in conformity with ILO assessments and conclusions

CSR

- Adopt a regulatory framework to prevent EU companies operating abroad from directly or indirectly committing human rights abuses
- Control the export of EU new technologies to prevent from the use of this technology to repress dissent and freedom of expression in third countries

COUNTER-TERRORISM (see attached FIDH presentation to COTER)

- Develop an EU strategy to prevent the abusive use by EU partners of counter-terrorism policies against peaceful political opposition and Human rights defenders
- Use the opportunity of all bilateral political dialogues on counter-terrorism to recall that A) human rights have to be respected and maintained when combating terrorism, and B) under no circumstance can counter-terrorism policy be instrumentalised to use against Human rights defenders or political opponents
- Include international and national Human rights NGOs in the definition and implementation of EU-third countries counter-terrorism strategies and cooperation

COOPERATION AND FINANCIAL ASSISTANCE

- Include conditionality and specific benchmarks on human rights in EU cooperation and financial programmes having a direct impact on internal leverages for change: judiciary, security forces, media, governance, migration, counter-terrorism, development of civil society...