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**THE EU'S STRATEGIC FRAMEWORK AND ACTION PLAN ON HUMAN RIGHTS  
AND DEMOCRACY – ONE YEAR AFTER ITS ADOPTION**

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Since the adoption of its new human rights policy last year, the European Union has been developing instruments and strategies to give this important policy substance. Work has been undertaken to devise new guidelines (consultation has been conducted with civil society over guidelines on freedom of religion and belief), human rights focal points have been nominated in EU delegations, and the process for developing local human rights country strategies in third countries has begun (though has not yet been made public), amongst other things.

However, further effort has yet to be made, especially on issues highlighted by FIDH as being important achievements in the new policy, but also significant challenges.<sup>1</sup> Two commitments in particular require concerted action: firstly, the commitment to use EU human rights policy instruments (dialogues, guidelines, incentive sanctions, human rights clauses, impact assessments, etc.) in a strategic fashion to better serve human rights progress; and second, the undertaking to integrate human rights into all EU policies and actions, such as its cooperation on counter-terrorism, on business, migration, development aid and trade.

**Integrating human rights into all areas of the EU's external relations without exception, including trade and investment (strategic framework § 9), and making trade work in a way that is supportive of human rights (action plan points 1 and 11).**

The EU envisages that this requirement will incorporate human rights into impact assessments carried out for trade and investment agreements, thereby taking human rights into account when launching such agreements. The EU must guarantee respect for its own human rights obligations and ensure that trade and investment promote instead of erode human rights.<sup>2</sup> Unfortunately, current practice does not comply with this element of the conceptual Framework:

Human Rights Impact Assessments are yet to be systematically applied: While 2012 saw the European Commission undertake to conduct human rights impact assessments for various free trade agreements (Georgia, Moldova, Armenia, Tunisia and Morocco), their implementation is not systematic. Thus, no similar exercise was undertaken for Vietnam and Thailand, for which the trade agreement negotiations were launched in March 2013<sup>3</sup>.

Impact assessment methodology should be improved: The consultation process established to inform impact assessments remains too formal. It should be improved to empower civil society, including those people potentially most affected, to feed directly into the impact assessments, providing policy recommendations, throughout the investigation and negotiations process. In addition, impact assessment agencies should refrain from stating theoretical assumptions, but document potential impacts<sup>4</sup> and improve the quality of their recommendations<sup>5</sup>.

Provisions and safeguards negotiated with trade and investment partners should provide efficient tools to protect, respect and fulfil human rights: Current assessments fail to effectively and significantly influence the negotiation process.<sup>6</sup> Human rights commitments, monitoring and dispute settlement mechanisms remain broadly formulated in terms that are not enforceable nor sufficiently punitive, rendering them unable to secure human rights respect.

Recommendations:

The EU should define and adopt specific *policy guidelines on the effective inclusion of human rights into its trade and investment policies*. Those guidelines should be inspired by

<sup>1</sup> "The new EU Human Rights Policy: A determination to marry human rights objectives with the EU's economic weight", 26 June 2012, <http://www.fidh.org/The-new-EU-human-rights-policy-A>.

the UN guidelines on human rights impact assessments.<sup>7</sup> They should reframe the policy and working methods of relevant DGs, in order to ensure that trade and investment agreements are consistent with the EU's obligations under international human rights instruments.

The proposed guidelines should, amongst other things, particularly address:

- Increasing the transparency of the negotiation process and the quality of consultation, including by empowering civil society and the European Parliament, thereby demonstrating better governance by the European Union;
- Developing standard and binding clauses to facilitate negotiation with partners to reinforce coherence and effectively ensure respect for human rights obligations. The European Parliament's recommendations should be implemented in this regard;<sup>8</sup> and
- Scrutinising on-going negotiations, such as those initiated with Vietnam, Thailand, Morocco, Tunisia, China and Myanmar.

To this end, the COHOM should set up a dedicated task force to draft and subsequently ensure the implementation of, such guidelines, strengthening the monitoring of the European Commission's work on this issue.

### **Ensure the optimal strategic use and interplay of dialogue, targeted support, incentives and restrictive measures (action plan point 33), stepping such up efforts across all aspects of the EU's external relations (strategic framework §§ 8-9)**

The EU has committed to place human rights at the centre of its relations with all third countries. It has undertaken to do so by seeking constructive engagement, raising human rights issues vigorously, identifying projects that bolster human rights, and when faced with human rights violations, making use of the full range of instruments at its disposal, including

<sup>2</sup>Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum, Guiding principles on human rights impact assessments of trade and investment agreements, A/HRC/19/59/Annex, December 2011.

<sup>3</sup> Open Letter, Vietnam and Free Trade Agreement Negotiations: NGOs urge the EU to carry out a human rights impact assessment, 30 April 2013, <http://www.fidh.org/open-letter-vietnam-and-free-trade-agreement-negotiations-ngos-urge-the-eu-13221>.

<sup>4</sup> See for example, Trade Sustainability Impact Assessment for the FTA between the EU and ASEAN, Phase 2, Interim Report, 3 April 2009 p. 42.

<sup>5</sup> For the ANDEAN region, for example, the TSIA recommends without much further precision the inclusion of a chapter on sustainable development that introduces a "reference" to the requirement to "commit" to meet core labor standards. The study also recommends that the agreement "insists" on the sustainable use of forests and include a "strong commitment" to the FLEGT Action Plan. It also recommends that a mechanism be established to monitor implementation, and to establish a Trade and Sustainable Development (SD) Forum to allow for consultation with civil society or develop an adequate monitoring system: EU-Andean Trade Sustainability Impact Assessment, Final Report, October 2009, pp.121 and following. Recommendations like those advocating for the introduction of a clause by which parties commit themselves to meet international standards are unrealistic as a measure to mitigate negative impacts or avoid violations when countries have already ratified relevant international conventions and benefitted from the accompanying measures but persist in failing to implement their obligations in practice. See the TSIA on the ANDEAN region for example; EU-Andean Trade Sustainability Impact Assessment, Final Report, October 2009, pp. 121 and following. We have examples of problems regarding migrant workers that have been pointed out but not been addressed in the recommendations made in the Trade Sustainability Impact Assessment of the FTA between the EU and ASEAN, Final Report, Volume I - Main Findings and Recommendations, 19 June 2009, p. 11. Moreover, the recommendations tend to follow a global logic. They have, as a whole, an inherent coherence and thus when the Commission refuses to follow some recommendations, the remaining recommendations are rendered inadequate to address problems in their complexity. In consequence, a genuine exchange should take place between the contractor and the Commission. E.g. Commission services' position paper on the trade sustainability impact assessment of the free trade agreement between the EU and ASEAN, June 2010, pp. 5-6-11.

<sup>6</sup> E.g. Commission services' position paper on the trade sustainability impact assessment of the free trade agreement between the EU and ASEAN, June 2010, pp. 5-6-11

<sup>7</sup> Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum, Guiding principles on human rights impact assessments of trade and investment agreements, A/HRC/19/59/Annex, December 2011.

<sup>8</sup> See European Parliament resolution of 16 April 2013 on trade and investment-driven growth for developing countries, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2BTA%2BP7-TA-2013-0120%2B%2BDOC%2BXML%2BV0%2F%2FEN&language=EN>, paras 30-33: 30. Encourages the Commission to include Trade and Sustainable Development chapters in bilateral trade agreements with binding environmental and labour rules and CSR clauses; considers that, additionally, the Commission should offer cooperation to help DCs and LDCs meet those standards; believes that a strong involvement of civil society in the monitoring of the implementation of such chapters increases awareness and acceptance of environmental and social standards; 31. Recommends that the Commission negotiate the inclusion of binding and enforceable human rights provisions, in addition to social and environmental provisions, in all future trade agreements in order to increase the effectiveness and credibility of the EU's conditionality policy; 32. Urges the EU to design its trade agreements so as to foster responsible investor behaviour and compliance with best international practices of corporate social responsibility (CSR) and good corporate governance; 33. Calls on EU-based companies with production facilities in developing countries to set an example by abiding by obligations to respect human rights and freedoms, social and environmental standards, core labour standards and international agreements.

sanctions or condemnation. Here, the main objective is to find the best way to foster human rights achievements by thinking strategically.

In identifying priorities and strategic partners (like Russia, China, Egypt, Bahrain, or Burma, for example), the work undertaken by the EU Special Representative for Human Rights, appointed in July to support the implementation of the EU strategic framework, is a most valuable step forward. This new diplomacy is a good signal and an important tool. However, the Special Representative's actions must be backed up by strong and unambiguous statements, notably from the EU High Representative for Foreign Affairs and Security Policy, Ms Catherine Ashton, as well as other high level representative during summits, visits and so on in order to ensure efficacy. In addition, the Special Representative's work should be bolstered by better assessment by other institutions of how to support that work, taking into account all the instruments the EU has at its disposal. For example:

Bahrain: To date Bahrain has failed to implement the key recommendations of the BICI, has not brought to justice anyone responsible for abuses nor independently investigated the deaths of protesters and allegations of torture, and has instead continued to harass, imprison and detain opposition activists, demonstrators, and human rights defenders.<sup>9</sup> Since the adoption of the Strategic framework and the appointment of the EU Special Representative for Human Rights, the EU has made efforts to answer to the gravity of the situation. However, these efforts are best supported by the other institutions. The EU High Representative for Foreign Affairs and Security Policy, Ms Catherine Ashton, should send a stronger public message, calling for the release of human rights defenders and political prisoners.<sup>10</sup> Should those efforts fail, a stronger signal should be sent by, for example, adopting targeted sanctions (visa bans and freezing of assets) against individuals suspected of being responsible for acts of torture (as documented by the BICI report), and banning the export of tear gas and crowd control material to Bahrain until investigations have been made.<sup>11</sup> The GCC summit should also be used to raise human rights concerns at the regional level and to convene regarding strategic achievements<sup>12</sup>.

China: The EU's efforts to improve China's human rights situation, notably through the human rights dialogue it has engaged in since 1996, has failed to achieve solid results. The EU therefore faces an urgent need to devise new solutions. It must assess various options and seize new opportunities. Among its options is the EU's potential to support the creation of a permanent civil society forum that could be organised in Hong Kong, an area of China that gathers an important pool of legal experts and where a genuine space for civil society exchange and influence on the rest of China should be maximised. Moreover, it is crucial that the EU seize the occasion afforded by current discussions regarding the negotiation of an investment and/or trade agreement. This should be used as incentive to obtain commitments and realization of progress concerning the ratification of key international human rights instruments, such as the Covenant on Civil and Political Rights and ILO conventions.

Burma: Burma continues to be plagued by the killing of civilians, arbitrary arrests, torture,

<sup>9</sup>See Joint Open Letter to Baroness Catherine Ashton on the human rights situation in Bahrain, 11 April 2013, <http://www.fidh.org/Joint-Open-Letter-to-Baroness-Catherine-Ashton-on-the-human-rights-13143>.

<sup>10</sup> See Joint Open Letter to Baroness Catherine Ashton on the human rights situation in Bahrain, 11 April 2013, <http://www.fidh.org/Joint-Open-Letter-to-Baroness-Catherine-Ashton-on-the-human-rights-13143>.

<sup>11</sup> See *Silencing Dissent: A Policy of Systematic Repression*, 19 September 2012, <http://www.fidh.org/Silencing-Dissent-A-Policy-of-12188>.

<sup>12</sup> See "EU must put human rights at the centre of the EU-GCC relations", 22 June 2012, <http://www.fidh.org/EU-must-put-human-rights-at-the>.

rape, forced relocation, forced labour, recruitment and use of child soldiers, land confiscation, and destruction of property. Inter-communal violence is increasing.<sup>13</sup> Abuses against the Rohingya have been qualified by the United Nations Special Rapporteur, Tomás Ojea Quintana, as being widespread and systematic and are perpetrated in a context of total impunity.<sup>14</sup> Since the adoption of the strategic framework, the EU has opened a new chapter in its relations with Burma, lifting sanctions, envisaging further support and fostering investments. However, the EU must balance reward for human rights improvements with key strategic action in response to ongoing violations. To this end, it should use all instruments at its disposal (dialogues, incentives, financial and technical support, impact assessments, etc), and tailor them to efficiently address ongoing abuses. In addition, the EU and its Member States should take effective measures to ensure respect of their own human rights obligations regarding the extraterritorial activities of the EU based companies. Bearing in mind that the current legal, political, and economic context in Burma does not allow foreign investment to comply with key international norms and standards,<sup>15</sup> FIDH insists on the need to guarantee effective access to justice for victims and to adopt a binding and enforceable framework to ensure that companies that do business in Burma respect international principles of corporate responsibility, including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

Cambodia: Conflict over land and natural resources has emerged as the most important issue facing Cambodia in the early 21st century. Indeed, as we end the second quarter of 2013, the country's biggest source of strife – and human rights violations – continues to be the unlawful seizure of land by State authorities, usually on behalf of well-connected business interests. Human rights defenders who assert their rights face increasing pressure and violence from authorities. The last 16 months have seen some of most significant and violent rights abuses documented against Cambodians in well over a decade; most were linked to conflict over land and natural resources.<sup>16</sup> The EU has raised this issue in dialogue and provided financial and technical assistance, including by providing budget assistance since 2007. However, it has failed to obtain satisfactory results. In September 2012, the UN Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, concluded that “[t]here are well documented serious and widespread human rights violations associated with land concessions”<sup>17</sup>. The EU should take the opportunity provided by its strategic framework commitments to reassess and adapt its strategy on Burma. Trade leverage should be better mobilised to support efforts made in other fields of EU competence, and, as requested by the European Parliament in October 2012, an investigation as part of the incentive tool put in place in the framework of the GSP, should be initiated<sup>18</sup>.

Recommendations :

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<sup>13</sup> See “Urgent resolution on the human rights situation in Burma”, 31 May 2013, <http://www.fidh.org/urgent-resolution-on-the-human-rights-situation-in-burma-13340>.

<sup>14</sup> “UN Myanmar expert: Fatal shooting of Rohingya women the latest product of impunity”, OHCHR Press Release, 11 June 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13440&LangID=E>.

<sup>15</sup> See “Burma not ready for rights-compliant investment”, 4 March 2013, <http://www.fidh.org/Burma-not-ready-for-rights-12969>.

<sup>16</sup> “Concern over the end of year crackdown against human rights defenders”, 8 January 2013, <http://www.fidh.org/Re-Concern-over-the-end-of-year-12684>; “Serious and systematic violations of land and housing rights continue in a climate of violence, intimidation and criminalisation of dissent”, last update 12 October 2012, <http://www.fidh.org/Serious-and-systematic-violations-12197>.

<sup>17</sup> Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi: Addendum A human rights analysis of economic and other land concessions in Cambodia, 24 September 2012 § 199, A/HRC/21/63/Add.1.

<sup>18</sup> “No more excuses for EU inaction on Cambodian exports tainted by land grabbing”, 30 October 2012, <http://www.fidh.org/No-more-excuses-for-EU-inaction-on-12351>.

The adoption of the EU's strategic framework and action plan in June 2012 marked a significant advancement in empowering the EU to adopt a strategic vision of its external activities in the field of human rights. Seeing results, however, requires all EU institutions, committees, working groups and Member States to build bridges in their respective spheres of activity and competence. Coherence and consistency between various EU policies should be systematically improved. All EU institutions should be aware of the activities undertaken by one another and work together to ensure that instruments, tools and policies converge, to maximise efficiency and to "strengthen ... efforts to ensure that human rights are realised for all"<sup>19</sup>.

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<sup>19</sup> EU Strategic Framework and Action Plan on Human Rights and Democracy, June 2012.