



Review of the EU Action Plan on Human Rights and Democracy FIDH recommendations

April 2019

The increasing challenges on human rights and democracy require that the EU reaffirms the strong calls made in 2012 in the EU Strategic Framework on human rights and democracy. This reassertion should be the basis for a reinforcement of both tools and policies, and for defining specific actions to address the challenges.

FIDH recommends that the new Action Plan identifies clear commitments, seeks to attain concrete results, and clarifies actions in some key areas. FIDH fully endorses the recommendations made by the Human Rights and Democracy Network (HRDN) and considers that its recommendations are preconditions to ensure a result-oriented Action Plan.

In complement to the recommendations made by HRDN which focus on general principles and transversal commitments, FIDH wishes to recommend concrete actions in specific areas. Without such actions geared towards delivering tangible results the Action Plan risks becoming a plan without action. The increasingly challenging global context demands that the EU develops a new methodology to enhance the efficiency of its policy. It also requires new concrete commitments to ensure that the EU duly adapts to its new environment.

FIDH recommends to:

Step up efforts to implement the EU Guidelines

The EU has adopted guidelines on several crucial issues, from human rights defenders, to torture, freedom of expression online and offline, LGBTI etc¹. The broad span of tools the EU has at its disposal is unique and can enable it to reach meaningful results in these areas.

¹ EU Human rights guidelines, https://eeas.europa.eu/headquarters/headquarters-homepage_en/6987/EU%20Human%20rights%20guidelines

However, so far the EU guidelines remain too much unknown and underused.

- To address this, the EU should develop a comprehensive handbook to pull together practical guidance.
- The process should also be a reflection on the effectiveness, complementarity and comprehensiveness of the various human rights guidelines in order to clarify their best use as part of the EU's human rights policy.
- Clear instructions should be provided to all EU staff members on the implementation of the human rights guidelines and more generally the human rights tool box.
- The job description of relevant staff members, including EEAS Heads of Divisions and EU Ambassadors should clearly spell out their roles and responsibilities in implementing the EU's human rights policy.

Increase support to Human Rights Defenders (HRDs), address threats to the space for civil society

The new Action Plan should propose a reinforcement of EU and Member States' actions in support of human rights defenders, Non-Governmental Organisations and civil society in general.

Key actions include:

- More systematic monitoring of trials of human rights defenders and more systematic follow-up actions.
- More means for emergency support for human rights defenders at risk and the delivery of visas with simplified procedures. The EU should develop a clear, simplified and responsive EU visa-granting mechanism for human rights defenders, including access to multi-entry long term visas allowing them to easily move in case of threats.
- An increased access for human rights NGOs to core funding and a simplification of reporting requirements.
- Systematic public statements to condemn negative policies and legislative changes affecting the independence of civil society. The EU can play an essential role by systematically providing public and visible support to civil society organisations when authorities attack them. It is also essential that the EU refuses collaboration with and financial support to "governmental NGOs".
- The development of good practices in communicating about human rights defenders at risk, with a view to maximise the chances of securing their release, the dropping of charges against them and the end of other forms of harassment. The EU should consult civil society to develop this set of good

practices, in line with the “Do’s and Don’ts in EU public statements on HRDs” published by HRDN in 2016².

Make trade and investment policies benefiting human rights

Key actions include:

- The reinforcement of human rights mechanisms in order to deal with the impacts of Free Trade Agreements (FTAs) and Investment Protection Agreements (IPAs) on the ground, including by offering problem solving procedures. Special attention should be brought to the indivisibility of human rights and ensuring both protection and promotion of human rights.
- The enhancement of the Generalised Scheme of Preferences (GSP) positive impacts on human rights, including by reinforcing transparency and participative mechanisms for civil society and better aligning the Everything But Arms (EBA) regime to the GSP+ one.

Business and human rights

Key actions include:

- The full implementation of the UN Guiding Principles on Business and Human Rights (UNGPs)³ and the development of an EU Action Plan to that end in consultation with civil society.
- The development of a legislation to introduce a corporate “duty of care” or “vigilance” towards individuals and communities affected by their global operations, including mandatory Human Rights Due Diligence (HRDD) regarding a company’s operations, investments, business relations and global supply chains.
- Making sure that the private sector does not benefit from EU support if it does not implement HRDD and in the absence of due mechanism to address the negative impacts they may have on human rights.

Economic, social and cultural rights

The development of a new Action Plan offers the EU the opportunity to foster a comprehensive agenda on the indivisibility of human rights. This agenda should combine the defence of Economic, Social and Cultural Rights (the rights to food, housing, access to education, health, water, decent standards of living, etc.) and the defence of Civil and Political Rights (rights to freedom of expression, assembly, association, right to be protected from extrajudicial killings, enforced disappearance, arbitrary detention, right to privacy, etc.). This comprehensive

² HRDN, Do's and Don'ts for EEAS, EU delegations and Member State embassy public statements or letters on human rights defenders, 2016, <http://hrdn.eu/2017/wp-content/uploads/2016/04/DosAndDonts.pdf>

³ UN Guiding Principles on Business and Human Rights, 2011, https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf

agenda should be the basis to offer better protection to human rights defenders, to better address the needs of the most vulnerable people (including the poor, farmers, women, indigenous people, victims of discriminations), to reinforce the judicial and other recourse and remedies mechanisms, and to address the impacts of corporate activities and policies supposed to foster economic development.

Key actions include:

- The development of a specific strategy to address land conflict issues. This should include the monitoring of the EU's development programming and budget spending related to private sector development. The strategy should foresee the implementation of the Food and Agriculture Organisation (FAO) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and other relevant initiatives.
- The enhancement of the international protection and enforcement of Economic, Social and Cultural Rights, notably by promoting broader implementation of General Comment No. 24 by the Committee on Economic, Social and Cultural Rights (CESCR)⁴ and the broader ratification of the optional protocol to the international covenant of economic, social and cultural rights (OP-ICESCR)⁵ and the International Labour Organisation (ILO) Convention n° 169 on indigenous peoples⁶. The Member States which are Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) should include in their periodic reports to the CESCR information about the efforts made at the EU policy level to respect the Covenant.
- The mainstreaming of human rights in International Financial Institutions (IFIs) and banking activities, including the ones of the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), and the World Bank.

New technologies and human rights

Key actions include:

- The assessment of the impacts new technologies may have on human rights as a basis to adopt due policies to address these impacts, including a

4 Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQclMOuuG4TpS9jwLhCJcXiuZ1yrkMD%2FSj8YF%2BSXo4mYx7Y%2F3L3zvM2zSUbW6ujlnCawQrJx3hIk8Odk6DUwG3Y>

5 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>

6 C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312314

revised regulation on dual use items that protect human rights and enhance transparency.

- Cooperation with the Council of Europe (CoE) on automated data processing techniques and possible regulatory implications.

Migration

Key actions include:

- The adoption of a human rights based approach to migration in close cooperation with civil society and with the Fundamental Rights Agency (FRA).
- Addressing the issue of shrinking space for civil society in the matter and develop an action plan to that end.
- The enhancement of transparency in all migration activities.

International Justice

Key actions include:

- The establishment of a mechanism to monitor the implementation of Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court (ICC)⁷, the Action Plan on its implementation⁸, and Council decision 11240/18 taken on the occasion of the 20th anniversary of the Rome Statute to promote cooperation with the ICC⁹, including on the execution of arrest warrants.
- The establishment of a focal point tasked with promoting merit-based nominations and elections of judicial prosecutorial candidates to the ICC with due regard to geographical and gender balance.

Torture, ill treatment and death penalty

Key actions include:

- Systematic observation of key trials and the development of specific follow-up strategies when the sentence may result in the application of the death penalty.
- Encouraging systematic independent investigations and prosecutions for torture and ill-treatment cases.

7 Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court and repealing Common Position 2003/444/CFSP, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:076:0056:0058:EN:PDF>

8 Council of the European Union, Action Plan to follow-up on the Decision on the International Criminal Court, 2011, <https://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2012080%202011%20INIT>

9 Council Conclusions on the International Criminal Court on the occasion of the 20th anniversary of the adoption of the Rome Statute, 17 July 2018, <https://data.consilium.europa.eu/doc/document/ST-11240-2018-INIT/en/pdf>

- Mainstreaming safeguards against the death penalty, torture and ill-treatment in EU activities, including in counter-terrorism, crisis management and in any financial and technical support to security forces and border guards.
- Undertaking joint actions to promote the absolute prohibition of torture and to achieve the global ratification and implementation of the UN Convention against Torture (CAT)¹⁰ by 2024 its Optional Protocol (OPCAT)¹¹, and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty¹².
- Continue supporting activities around the World Day against the Death Penalty on 10th of October.

ENDs

10 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

11 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

12 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>