



European Commission

## 12th EU-NGO Forum on Human Rights

Brussels, 12 & 13 July 2010

### **Recommendations of the Forum on “EU Human Rights Instruments and the Lisbon Treaty: State of Play and Way Forward”**

The 12th EU NGO Forum on Human Rights which addressed the issue of “EU Human Rights Instruments and the Lisbon Treaty: State of Play and Way Forward”, was held in Brussels on 12 and 13 July 2010. It featured four workshops comprising representatives of the EU, EU Member States and civil society, particularly from the global South, as well as international experts. The Forum focused on human rights issues of current concern to the EU and the international community at large, in particular:

Working Group I on	“EU Instruments in the Fight against the Death Penalty”
Working Group II on	“The EU’s Role for the Promotion and Protection of Economic, Social and Cultural Rights”
Working Group III on	“The EU’s Relations with Regional Human Rights Mechanisms”
Working Group IV on	“Lisbon and the EU’s Internal-External Consistency”

Following the Forum’s opening plenary session, each workshop met to discuss challenges and opportunities concerning the EU’s interaction with human rights NGOs against the backdrop of the entry into force of the Lisbon Treaty and the changes the Treaty has introduced into EU structures and functions relating to human rights strategy making, policy formulation and the implementation of programmes and projects. Each workshop drafted and agreed upon a set of recommendations under the guidance of the workshop moderator. Each of the four moderators then provided a synopsis and set forth the recommendations at the Forum’s closing plenary session. The present document sets forth the recommendations that emerged from the rich interaction and debate that characterized the 2010 Forum’s proceedings, according to the workshop themes.

#### **Workshop I: EU Instruments in the Fight against the Death Penalty**

The Workshop affirmed that the global abolition of the death penalty ranks among the main objectives of EU human rights policy. Four key elements formed the basis for the Workshop’s recommendations as follows:

- coherence and consistency;
- cooperation;
- education, awareness-raising; and
- efficiency and effectiveness.

## **1. Coherence and Consistency**

*The EU should:*

- a. ensure consistency in its discourse. Article 6 of the Lisbon Treaty recognises that the rights, freedoms and principles set out in the EU Charter of Fundamental Rights form part of EU law. Furthermore, the EU is obliged to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Wherever norms and standards appear to conflict, the higher threshold of human rights protection should prevail.
- b. raise regularly the issue of the abolition of the death penalty in its political contacts and discussions with third countries through the High Representative of the Union for Foreign Affairs and Security Policy.
- c. continue calling for compliance with international minimum standards as set out by the UN Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty and as reaffirmed and further developed by the EU Guidelines on the Death Penalty as regards retentionist countries.
- d. deal with death penalty issues in connection with all other relevant human rights issues such as those relating to due process of law, right to fair trial, the right to appeal, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment (in connection with methods of execution) and the basic human right to dignity. Human rights are interconnected and issues surrounding the death penalty should be viewed through the human rights lens.
- e. continue to ensure that, as stated in Article 19(2) of the EU Charter of Fundamental Rights, no one may be removed, expelled or extradited to a state where there is a serious risk that he or she will be subjected to the death penalty.
- f. encourage ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and of relevant regional instruments such as Protocol 13 to the European Convention on Human Rights and Fundamental Freedoms, by all States, including EU Member States.
- g. reassess its support and aid policy to retentionist countries and countries which violate human rights. The abolition of the death penalty could be raised in discussions relating to development aid and EU-funded programs. EU humanitarian aid on the other hand should always be unconditional.
- h. take into consideration concrete steps that may have been taken towards human rights protection including the abolition of the death penalty when granting financial assistance and enhancing relations with third countries, in particular with neighbouring countries.
- i. ensure greater coherence among various EU institutions and among EU Member State actions and policies in relation to the death penalty.

## **2. Cooperation**

*The EU should:*

- a. develop continuous, systematic and strategic consultation with NGOs to reassess local needs and situations on the ground regularly.

- b. support the World Coalition against the Death Penalty initiative to set up an international database that could function as a forum through which the EU and NGOs can publish updates on their respective work and actions.
- c. support the development of an academic community on the abolition of the death penalty.
- d. consult local NGOs and lawyers to identify when EU action is needed on individual cases.
- e. provide technical support to:
  - i. regional bodies such as the African Commission and the Arab League through the sharing of EU knowledge and expertise in the promotion and protection of human rights;
  - ii. NGOs, through the sharing of EU country best practices and lessons learned drawing on EU experience, briefing papers, etc. including for example through the European External Action Service;
  - iii. regional NGO networks.
- f. cooperate with and support UN bodies and especially the work of the UN Human Rights Council Special Rapporteur on the Prevention of Torture and Extrajudicial, Summary or Arbitrary Executions, and draw upon the recommendations arising from the Universal Periodic Review and UN human rights treaty body mechanisms to remind States of their obligations.
- g. provide financial support to enable NGOs and human rights defenders to continue their work on the abolition of the death penalty.
- h. also support States that are taking steps towards a moratorium on the death penalty or the abolition of the death penalty. In this regard, visits of observers from the international community could be particularly effective as well as pressure through the media and other avenues available to the international community.
- i. politically support human rights defenders who call for the abolition of the death penalty and in individual cases, wherever EU guidelines may have been violated.
- j. try to engage companies doing business in retentionist countries in the fight against the death penalty.
- k. close current loopholes in EU regulations banning the trade in death penalty equipment and ensure its better implementation by EU Member States, whilst also actively promoting the development of further regional and international instruments in this area.
- l. cooperate with countries that have adopted a moratorium on the death penalty or which have abolished the death penalty to act as intermediaries to initiate discussions with neighbouring retentionist states.

### **3. Education and awareness-raising**

*The EU should:*

- a. adopt a human rights based approach to offenders in particular:
  - i. to support the launching of public campaigns, notably in schools and through the media to address public concern over such issues as impunity, reparations, deterrence, and to highlight the value of the possible rehabilitation of criminals through appropriate programs, as well

- as to spread awareness about the realities surrounding the death penalty and conditions of detention; and
  - ii. to support training, seminars and guidelines for judges, lawyers, prosecutors, police and prison personnel.
- b. take into account fully the needs of victims and issues involving impunity and reparation.
- c. support the implementation of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
- d. foster the organisation of seminars for members of national parliaments as well as the creation of a network of parliamentarians for the abolition of the death penalty.
- e. support initiatives that encourage education about the abolition of the death penalty.
- f. finance research and campaigns in retentionist countries.
- g. promote transparency on the part of retentionist countries by requesting information on executions to be sent to the High Representative of the Union for Foreign Affairs and Security Policy.

#### **4. Efficiency and effectiveness**

*The EU should:*

- a. adopt a strategic approach in particular to pay sufficient attention to the specific conditions of each country setting and the necessity to approach the human rights agenda in a focussed and realistic way, tackling each case with a detailed understanding of the country at hand.
- b. react through diplomatic means in a timely fashion to address individual cases of death penalty threats or political opportunities to move towards abolition.
- c. engage actively and take full advantage of abolitionist action taken through the UN in particular by supporting the upcoming UN resolution on a moratorium of the death penalty in cooperation with all cross-regional partners.

#### **Workshop II: The EU's Role for the Promotion and Protection of Economic, Social and Cultural Rights**

Workshop II focussed on numerous issues under the following main themes:

- the adoption of local human rights strategies;
- the full application of EU human rights guidelines to economic, social and cultural rights;
- the enhancement of EU credibility through improved internal / external consistency;
- trade and avoiding double standards;
- dialogue and development cooperation; and
- EU Delegations and EU staff.

## **1. The Adoption of Local Human Rights Strategies**

*The EU should:*

- a. adopt local human rights strategies that address economic, social and cultural rights in their wider context.
- b. in doing so, consider economic, social and cultural rights in relation to other issues involving human rights, human security and development.

## **2. The Full Application of EU Human Rights Guidelines to Economic, Social and Cultural Rights**

*The EU should:*

- a. maintain strong focus on the EU Guidelines on Human Rights Defenders.
- b. adjust the EU Guidelines to economic, social and cultural rights. For example, the EU Guidelines on Torture should take into consideration the economic and social root causes of torture.
- c. make full use of other relevant tools, such as the EU Guidelines for Support to Land Policy Design and Land Policy Reform.
- d. provide political support to civil society organisations and human rights defenders to help raise their legitimacy and profile.

## **3. EU Credibility: Internal / External Consistency**

*The EU should:*

- a. accede to the European Social Charter of the Council of Europe parallel with its accession to the European Convention on Human Rights and Fundamental Freedoms.
- b. make full use of the standards and norms of the Council of Europe and the Organization for Security and Cooperation in Europe when engaging with partner countries belonging to those organisations.
- c. encourage its Member States to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- d. ensure that all EU legislation that has an external impact should protect economic, social and cultural rights for example by dropping the 'return directive'.
- e. take account of the impact of the EU Charter on Fundamental Rights on the EU's external action and level of accountability.
- f. encourage all Member States to abide by the highest standards and norms, for example, with regard to certain AIDS-related discriminatory practices.

#### **4. EU Credibility: Avoiding Double Standards**

*The EU should:*

- a. encourage EU companies to promote high economic, social and cultural rights standards and refrain from operating in situations of gross human rights violations. EU companies should apply uniform standards and refrain from operating abroad in conditions that differ from the standards that they have to apply at home.
- b. hold companies accountable for respecting economic, social and cultural rights in their operations abroad, moving from corporate social responsibility to business accountability.
- c. together with EU Member States, monitor business behaviour.
- d. look at best practices, such as to check for discrimination of companies from the West, working in India.
- e. be consistent in its engagement towards third countries (situation in Gaza).

#### **5. Trade**

*The EU should:*

- a. observe in its trade policy, as a minimum obligation, a ‘no harm policy’ on human rights, particularly with respect to vulnerable groups and small producers.
- b. make its human rights impact assessment on planned trade and association agreements more systematic.
- c. check to ensure that trade incentive schemes (GSP+) do not produce a discriminatory impact, that they remain transparent and conform to universal UN standards and that they ensure effective implementation through monitoring.
- d. be less reticent in applying conditionality, for example as regards free trade agreements in Colombia and Honduras and admission into the GSP+ framework as well as with regard to the negotiation of human rights clauses in conformity with international human rights law.

#### **6. Dialogue and development cooperation**

*The EU should:*

- a. adopt human rights based approaches in all aspects of its cooperation frameworks, for example, by respecting the right to non-discrimination, access to information, the right of interested parties to be consulted, and for NGOs, social partners and EU experts to be included in a broad-based social dialogue.
- b. champion human rights-based approaches to the UN Millennium Development Goals.
- c. take fully into consideration its obligations on economic, social and cultural rights in the context of multilateral development cooperation and coordination with such bodies as the European Investment Bank, the International Monetary Fund, the World Bank and the European Bank for Reconstruction and Development.
- d. promote close coordination among donors and stakeholders.

- e. promote effective participation of local civil society in the design, implementation, monitoring and evaluation of projects and programmes in all sectors, for example as regards human security in relation to food, water, waste reduction and elimination, health and education.
- f. mainstream in its political and policy dialogues and assistance in third countries key economic, social and cultural rights issues, such as:
  - i. gender and economic, social and cultural rights;
  - ii. sharing of benefits arising from economic activities for example, extractive industries;
  - iii. demographic considerations;
  - iv. human rights education, training, information and awareness raising;
  - v. focussing on prevention in relation to land and resources-related conflicts and forced displacements;
  - vi. best practices on right to food, for example, through cash transfer schemes;
  - vii. indigenous people and the application of customary law;
  - viii. access to education, training, including vocational training and research;
  - ix. HIV and persons with physical or mental disabilities;
  - x. specific situations concerning the rights of minorities and vulnerable populations, for example, the rights of detainees and persons with mental disabilities;
  - xi. the fight against impunity in situations of difficult economic or ecological conditions or rampant organised crime;
  - xii. the fight against corruption;
  - xiii. capacity building in economic, social and cultural rights, notably with regard to national human rights institutions, which should conform to the Paris Principles relating to the Status of National Institutions;
  - xiv. continued political and financial support to NGOs, especially in countries where there may be reduced space for operations, for example, through the European Instrument for Democracy and Human Rights's new strategy which addresses economic, social and cultural rights and the question of corporate social responsibility;
  - xv. the development of specific strategies on cooperation with civil society and the provision of enhanced support to independent civil society organisations. The EU should simplify its funding procedures for grassroots NGOs and consult with NGOs prior to the launch of call for proposals; and
  - xvi. funding of sustainable work of civil society projects.

## **7. EU Delegations and EU Staff**

*Further, the EU should:*

- a. ensure high level involvement on economic, social and cultural rights through its Ambassadors.
- b. ensure sufficient resources, training and exchange of best practices among EU Delegations.
- c. strengthen the role of EU Delegations on human rights defenders.

- d. encourage its Delegations and the Embassies of Member States to monitor promotion and protection of economic, social and cultural rights.
- e. ensure that EU Delegations and Member States undertake annual monitoring on the status and conduct of EU companies with regard to corporate social responsibility policies and make these reports public.
- f. use all available tools, such as the UN Human Rights Council's Universal Periodic Review recommendations, to promote effective engagement on economic, social and cultural rights.
- g. ensure that EU Delegations encourage partner countries to engage and consult fully with civil society, for example, with regard to preparing for the Universal Periodic Review process and implementing the recommendations arising from this process.

### **Workshop III: The EU's Relations with Regional Human Rights Mechanisms**

Workshop III considered the EU's relations with regional human rights mechanisms according to the following main themes:

- the EU's support to civil society organizations and human rights defenders;
- the EU's cooperation with regional organizations and mechanisms;
- the EU's relations with specific regional human rights mechanisms; and
- the EU and human rights multilateral fora.

#### **1. The EU's Support to Civil Society Organizations and Human Rights Defenders**

*The EU should:*

- a. ensure that human rights monitoring forms an integral part of a credible and coherent EU foreign policy based on ongoing relations with human rights defenders and civil society organizations dealing with human rights;
- b. support and associate more closely with civil society, in its relations with regional organisations and third countries, ensuring and encouraging the participation of civil society organizations and human rights defenders in high-level EU human rights events and dialogues.
- c. support and encourage the participation of civil society organizations into the drafting, implementation and assessment of human rights national and regional action plans in cooperation with regional human rights mechanisms.
- d. support the creation of civil society organization networks at the regional level, with an emphasis on including victims and survivors of human rights violations.
- e. share information on the situation of human rights defenders collected through its delegations with the Council of Europe Commissioner on Human Rights, the Organization for Security and Co-operation in Europe / Office for Democratic Institutions and Human Rights focal point on human rights defenders, the UN Special Rapporteur on the Situation of Human Rights Defenders, and regional intergovernmental bodies as may be appropriate.
- f. support and encourage civil society organizations to spearhead efforts to create, enhance, and support regional human rights mechanisms.

## **2. The EU's Cooperation with Regional Organizations and Mechanisms**

*The EU should:*

- a. building on its human rights dialogue with the African Union, engage in regular dialogues with other regional actors and human rights mechanisms, for example, those of the Association of Southeast Asian Nations and Organization of American States, with a view to sharing knowledge and expertise and addressing common challenges. The EU should ensure that civil society plays an integral role in these human rights dialogues.
- b. foster the establishment of effective regional mechanisms aimed at the protection of human rights, including at the judicial level.
- c. contribute to meeting the capacity building needs of, and to raising awareness on, existing and emerging regional and national human rights mechanisms.
- d. work with regional human rights mechanisms to encourage their Member States to adopt, review and implement human rights national actions plans, and to follow up on the implementation of UN recommendations, including those emanating from the UN Human Rights Council's Universal Periodic Review process.
- e. share and discuss its human rights guidelines and toolkits, for example the EU Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People, and the EU Guidelines on Human Rights Defenders, with regional organizations, and should support and cooperate in, their implementation.

## **3. The EU's Relations with Specific Regional Human Rights Mechanisms**

*The EU should:*

- a. address human rights issues in such a way as to avoid any discrepancy between the external and internal dimensions of its human rights policies in its relations with the Organization for Security and Cooperation in Europe and the Council of Europe.
- b. undertake to adhere to other Council of Europe conventions, once it has acceded to the European Convention on Human Rights.
- c. consider its relations with the Council of Europe, as reflected in the Memorandum of Understanding between the EU and the Council of Europe, as an example of best practices, which could serve as a model for framing EU relations with other regional human rights mechanisms.
- d. ensure that further EU human rights instruments and norms it may develop are compatible with existing conventions of the Council of Europe and commitments of the Organization for Security and Cooperation in Europe with a view to promoting the harmonious development of human rights protection in Europe.
- e. endeavour, together with the Organization for Security and Cooperation in Europe and the Council of Europe, to convey a coherent message, for example in the Eastern Partnership area, and to clarify their respective human rights mandates and mechanisms to third countries.
- f. reinforce its human rights mainstreaming efforts in all areas of its relations with regional organizations, in light of the entry into force of the Treaty of Lisbon.

- g. encourage regional human rights mechanisms to share best practices, in particular, to ensure better compliance of judgments and obligations.

#### **4. The EU and Human Rights Multilateral Fora**

*The EU should:*

- a. strengthen its cross-regional approaches in multilateral fora, for example in the UN Human Rights Council.
- b. support the work of the UN Office of the High Commissioner for Human Rights to further strengthen cooperation among regional human rights mechanisms. In particular, the UN's seminars provide an invaluable opportunity to exchange experience among regional organizations, regional human rights mechanisms and civil society organizations. The EU should therefore continue to support these seminars and other types of cooperation between the UN human rights treaty and Charter-based bodies in respect of their regional counterparts.

#### **Workshop IV: Lisbon and the EU's Internal-External Consistency**

Workshop IV considered that civil society expected the EU to improve consistency between its internal and external human rights policies which would allow the EU to play a greater, more effective and more credible role at the international level with a view to avoiding double standards. It further noted the following points:

- Despite the many European human rights instruments, numerous human rights problems persist in EU Member States (for example in the area of discrimination, Roma, sexual orientation, restrictions on religious freedom, the rights of asylum-seekers, police brutality, restrictions on press freedoms). While there is no need to add national or European human rights instruments beyond those of the Council of Europe and European Court of Human Rights, UN treaty bodies and Human Rights Council etc., the EU as a whole does not have effective tools to ensure and support human rights protection within its borders.

The EU has numerous bodies, instruments and mechanisms which have been reinforced by the Lisbon Treaty, for example bodies such as, the EU Agency for Fundamental Rights, the European External Action Service, the Council Working Group on Human Rights (COHOM), the Council Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons, and the Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) and Subcommittee on Human Rights (DROI). However, until now the EU has had no functioning mechanism or official "address" for reports on internal human rights violations.

- this lack of mechanism and response has a critical impact on external relations, where the EU as a whole has had no means of responding to criticisms of its own human rights record, even to offer practical information on the measures that are being taken by member states to address existing problems. This is increasingly threatening the EU's credibility and impact through dialogues and other human rights instruments with third countries.

- it would not seem useful to increase further the number of European wide and EU legal mechanisms but rather to reinforce coherence among them, their connections, transparency (external visibility of dialogues) and monitoring. It is about implementing words in actual policies and action;
- a series of testimonies were evoked which require careful attention in terms of protecting human rights defenders in Kazakhstan, Saudi Arabia, Uzbekistan, Kyrgyzstan, China, Moldavia and Africa; and
- among the themes most highlighted were the internet, rights of the child, exploitation, human trafficking, women in Africa, victims of torture and the issue of rehabilitation, the rights of lesbians, gay, bisexual and transgender persons, migrants and asylum seekers, financial and political difficulties of human rights NGOs and corporate accountability.

## **1. Internal Dimension**

*The EU should:*

- a. introduce into the EU legislative process the respect for international human rights standards, starting from the European Commission's proposal up to the adoption of texts by the European Council and Parliament.
- b. reinforce a cross-EU monitoring mechanism, early warning through the Fundamental Rights Agency, civil society and UN mechanisms, such as the Universal Periodic Review.
- c. make dissuasive use of Article 7 of the Treaty on the European Union according to which the Union can suspend certain rights of a Member State deriving from the application of the Treaty, if it has determined the existence of a serious and persistent breach of the principles of liberty, democracy, respect for human rights and fundamental freedoms, by that Member State.
- d. ensure that the Council working party on Fundamental Rights, Citizens Rights and Free Movement of Persons has a mandate distinct from that of COHOM, which could include, for example, discussing and responding officially to reports of the Fundamental Rights Agency (in addition to recommendations of UN treaty bodies, special procedures and mechanisms); assessing the external human rights impact of internal EU instruments and policies (together with COHOM); ensuring coordination with agencies without a human rights mandate but human rights impact (e.g. EIB or FRONTEX); examining EU and EU member state signature, ratification and compliance with international human rights instruments; and generally providing a forum for Council exchanges on internal human rights matters.
- e. promote transparency and consultation with civil society.

## **2. Internal / External Dimension**

*The EU should:*

- a. ensure close cooperation between those responsible for internal and external policies, including within the College of Commissioners – most notably between the High Representative of the Union for Foreign Affairs and Security Policy (Catherine Ashton), and European Commissioner for Justice, Fundamental Rights and Citizenship (Viviane Reding) - with an aim to developing coherent internal and external human rights mechanisms.
- b. ensure cooperation between the Council's external and internal mechanisms on human rights, in particular through close cooperation between the Council Working Group on Human Rights (COHOM) and the new Council Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons.
- c. ensure better cooperation among Council, Commission and Parliament as regards reports and humanitarian emergencies etc.
- d. strengthen sharing mechanisms and the judicious use of best practices.
- e. enable external EU officials and spokespeople to respond to human rights criticism by third countries with an acknowledgement of facts and the measures undertaken by the EU and member states to address any violations.

## **3. External Dimension**

*The EU should:*

- a. create a consistent foreign policy on human rights, including in trade and development through partnership agreements, and drawing upon Articles 8 and 13 of the Cotonou Agreement, knowing that the EU has different leverage options according to agreements or the particular relations it has with certain countries. The EU should avoid that dilemmas such as transparency versus discreet diplomacy, encouragement versus sanctions, etc. create double standards. The EU has to achieve results in this area.
- b. provide support, follow-up, and protection to human rights defenders and journalists reporting on human rights violations / seeking justice around the world.
- c. ensure corporate accountability to create a level playing field for all companies to respect, monitor and do no harm (e.g. Sudan, Burma, Nigeria, internet restrictions etc.).

Conclusion: the new European External Action Service has a pivotal role to play in promoting the integration of foreign policies under the authority of High Representative Ashton, as well as all EU institutions in promoting the consistency between the EU's external and internal policies.

*Compiled by:*

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