

EU GUIDELINES ON HUMAN RIGHTS DEFENDERS



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Land, housing and land rights for vulnerable groups (women, people with disabilities and LGBTI people) living in rural areas governed by traditional leaders: “Khulumani Sekuyisikhathi Collective (KSC)”, implemented by a number of partners including Gay and Lesbian Network (LGBTIQ rights) and CREATE (disability rights);

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1 - PURPOSE

Support for human rights defenders is already a long-established element of the European Union's human rights external relations policy. The purpose of these Guidelines is to provide practical suggestions for enhancing EU action in relation to this issue. The Guidelines can be used 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.

An important element of the Guidelines is support for the Special Procedures of the UN Human Rights Council, including the UN Special Rapporteur on Human Rights Defenders and appropriate regional mechanisms to protect human rights defenders. The Guidelines will assist EU Missions (Embassies and Consulates of EU Member States and European Commission Delegations) in their approach to human rights defenders. While the primary purpose of the Guidelines is to address specific concerns regarding human rights defenders, they also contribute to reinforcing the EU's human rights policy in general.

2 - DEFINITION

The definition of human rights defenders, for the purpose of these Guidelines, draws upon operative paragraph 1 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (see Annex I), which states that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels".

Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.

3 - INTRODUCTION

The EU supports the principles contained in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. Although the primary responsibility for the promotion and protection of human rights lies with States, the EU recognises that individuals, groups and organs of society all play important parts in furthering the cause of human rights. The activities of human rights defenders include:

- documenting violations;
- seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support;
- combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms; and
- mainstreaming human rights culture and information on human rights defenders at national, regional and international level.

The work of human rights defenders often involves criticism of government policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government's policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognised and supported.

The EU acknowledges that the activities of human rights defenders have over the years become more widely recognised. They have increasingly come to ensure greater protection for the victims of violations. However, this progress has been achieved at a high price: the defenders themselves have increasingly become targets of attacks and their rights are violated in many countries. The EU believes it is important to ensure the safety of human rights defenders and protect their rights. In this regard it is important to apply a gender perspective when approaching the issue of human rights defenders.

4 - OPERATIONAL GUIDELINES

The operational part of these Guidelines is meant to identify ways and means of effectively working towards the promotion and protection of human rights defenders, within the context of the Common Foreign and Security Policy.

Monitoring, reporting and assessment

EU Heads of Mission are already requested to provide periodic reports on the human rights situation in their countries of accreditation. The Council Working Party on Human Rights (COHOM) has approved the outline of fact sheets to facilitate this task. In line with these fact sheets Missions should address the situation of human rights defenders in their reporting, noting in particular the occurrence of any threats or attacks against human rights defenders. In this contexts HoMs should be aware that the institutional framework can have a major impact on the ability of human rights defenders to undertake their work in safety. Issues such as legislative, judicial, administrative or other appropriate measures, undertaken by States to protect persons against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of any of the rights referred to the UN Declaration on Human Rights Defenders are all relevant in this regard.

The EU Heads of Mission are requested to deal with the situation of human rights defenders at meetings of local working groups on human rights. Where it is called for, HoMs should make recommendations to COHOM for possible EU action, including condemnation of threats and attacks against human rights defenders, as well as for demarches and public statements where human rights defenders are at immediate or serious risk. HoMs may decide to conduct an urgent local action to support human rights defenders who are at immediate or serious risk, and to report on their action to COHOM and other relevant working parties with recommendations concerning the scope for following up the European action. HoMs should also report on the effectiveness of EU action in their reports. Furthermore, Missions should pay particular attention to the specific risks faced by women human rights defenders.

The HoM reports and other relevant information, such as reports and recommendations from the Special Rapporteur on Human Rights Defenders, other UN Special Rapporteurs and Treaty bodies and the Commissioner for Human Rights of the Council of Europe as well as non-governmental organisations, will enable COHOM and other relevant working parties to identify situations where EU action is called for and decide on the action to be taken or, where appropriate, make recommendations for such action to PSC/Council.

Role of EU Missions in supporting and protecting human rights defenders

In many third countries, EU Missions (Embassies of EU Member States and European Commission Delegations) are the primary interface between the Union and its Member States and human rights defenders on the ground. They therefore have an important role to play in putting into practice the EU's policy towards human rights defenders. EU Missions should therefore seek to adopt a proactive policy towards human rights defenders. They should at the same time be aware that in certain cases EU action could lead to threats or attacks against human rights defenders. They should therefore, where appropriate, consult with human rights defenders in relation to actions which might be contemplated. If action is taken on behalf of the EU, EU Missions should provide feedback to human rights defenders and/or their families. Measures that EU Missions could take include:

- preparing local strategies for the implementation of these guidelines, with particular attention to women human rights defenders. EU Missions will bear in mind that these Guidelines cover human rights defenders who promote and protect human rights, whether civil, cultural, economic, political or social. EU Missions should involve human rights defenders and their organisations in the drafting and monitoring of local strategies;
- organising at least once a year a meeting of human rights defenders and diplomats to discuss topics such as the local human rights situation, EU policy in this field, and application of the local strategy for implementing the EU Guidelines on human rights defenders;
- coordinating closely and sharing information on human rights defenders, including those at risk;
- maintaining suitable contacts with human rights defenders, including receiving them in Missions and visiting their areas of work; consideration could be given to appointing specific liaison officers, where necessary on a burden-sharing basis, for this purpose;
- providing, as and where appropriate, visible recognition for human rights defenders

and their work, through appropriate use of the media – including the internet and new information and communication technologies – publicity, visits or invitations for such purposes as presenting prizes they have obtained;

- where appropriate, visiting human rights defenders in custody or under house arrest and attending their trials as observers.

Promoting respect for human rights defenders in relations with third countries and in multilateral fora

The EU's objective is to influence third countries to carry out their obligations to respect the rights of human rights defenders and to protect them from attacks and threats from non-State actors. In its contacts with third countries, the EU will, when deemed necessary, express the need for all countries to adhere to and comply with the relevant international norms and standards, in particular the UN Declaration. The overall objective should be to bring about an environment where human rights defenders can operate freely. The EU will make its objectives known as an integral part of its human rights policy and will stress the importance it attaches to the protection of human rights defenders. Actions in support of these objectives will include the following:

- where the Presidency or the High Representative for the Common Foreign and Security Policy or the Personal Representative of the SG/HR on Human Rights or EU Special Representatives and Envoys or representatives of the Member States or the European Commission are visiting third countries, they will, where appropriate, include meetings with human rights defenders during which individual cases and the issues raised by the work of human rights defenders are addressed, as an integral part of their visits;
- the human rights component of political dialogues between the EU and third countries and regional organisations, will, where relevant, include the situation of human rights defenders. The EU will underline its support for human rights defenders and their work, and raise individual cases of concern whenever necessary. The EU will be careful to involve human rights defenders, under the most appropriate arrangements, in the preparation, follow-up and assessment of the dialogue in accordance with the EU Guidelines on human rights dialogues;
- EU Heads of Mission and EU Embassies will remind third countries' authorities of their obligation to implement effective measures to protect human rights defenders who are or could be in danger;
- working closely with other like-minded countries notably in the UN Human Rights Council and the UN General Assembly;
- recommending, where appropriate, to countries when they are under the Universal Periodic Review of the Human Rights Council that they bring their legislation and practices into line with the UN Declaration on Human Rights Defenders;
- promoting the strengthening of existing regional mechanisms for the protection of human rights defenders, such as the focal point for human rights defenders and national human rights institutions of the OSCE Office for Democratic Institutions and Human Rights, the Commissioner for Human Rights of the Council of Europe, the Special Rapporteur on Human Rights Defenders of the African Commission on

Human and Peoples' Rights and the special Human Rights Defenders Unit within the Inter-American Commission on Human Rights, and the creation of appropriate mechanisms in regions where they do not exist.

Support for Special Procedures of the UN Human Rights Council, including the Special Rapporteur on Human Rights Defenders

The EU recognises that the Special Procedures of the UN Human Rights Council (and the individuals and groups carrying them out: Special Rapporteurs, Special Representatives, Independent Experts and Working Groups) are vital to international efforts to protect human rights defenders because of their independence and impartiality and their ability to act and speak out on violations against human rights defenders worldwide and undertake country visits. While the Special Rapporteur on Human Rights Defenders has a particular role in this regard, the mandates of other Special Procedures are also of relevance to human rights defenders. The EU's actions in support of the Special Procedures will include:

- encouraging States to accept as a matter of principle requests for country visits under UN Special Procedures;
- promoting, via EU Missions, the use of UN thematic mechanisms by local human rights communities and human rights defenders including, but not limited to, facilitating the establishment of contacts with, and exchange information between, thematic mechanisms and human rights defenders;
- since the Special Procedure mandates cannot be carried out in the absence of adequate resources, EU Member States will support the allocation of sufficient funds from the general budget to the Office of the United Nations High Commissioner for Human Rights.

Practical supports for Human Rights Defenders including through Development Policy

Programmes of the European Union and Member States aimed at assisting in the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries – such as the European Instrument for Democracy and Human Rights – are among a wide range of practical supports for assisting human rights defenders. These can include but are not necessarily limited to the development cooperation programmes of Member States. Practical supports can include the following:

- supporting human rights defenders, as well as NGOs that promote and protect human rights defenders' activities, through such activities as capacity building and public awareness campaigns, and facilitating cooperation between NGOs, human rights defenders and national human rights institutions;
- encouraging and supporting the establishment, and work, of national bodies for the promotion and protection of human rights, established in accordance with the Paris Principles, including, National Human Rights Institutions, Ombudsman's Offices and Human Rights Commissions;

- assisting in the establishment of networks of human rights defenders at international level, including by facilitating meetings of human rights defenders both within and outside the EU;
- seeking to ensure that human rights defenders in third countries can access resources, including financial resources, from abroad and that they can be informed of the availability of those resources and of the means of requesting them;
- ensuring that human rights education programmes promote, inter alia, the UN Declaration on Human Rights Defenders;
- providing measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, issuing emergency visas and facilitating temporary shelter in the EU Member States.

Role of Council Working Parties

In accordance with its mandate COHOM will keep under review the implementation and follow-up to the Guidelines on Human Rights Defenders in close coordination and cooperation with other relevant Council Working Parties. This will include:

- promoting the integration of the issue of human rights defenders into relevant EU policies and actions;
- undertaking reviews of the implementation of these Guidelines at appropriate intervals;
- continuing to examine, as appropriate, further ways of cooperating with UN and other international and regional mechanisms in support of human rights defenders;
- reporting to the Council, via PSC and COREPER, as appropriate on an annual basis, on progress made towards implementing these Guidelines.

ANNEX I

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights² and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:**ARTICLE 1**

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

ARTICLE 2

Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

ARTICLE 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

ARTICLE 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights,² the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

ARTICLE 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- To meet or assemble peacefully;
- To form, join and participate in non-governmental organizations, associations or groups;
- To communicate with non-governmental or intergovernmental organizations.

ARTICLE 6

Everyone has the right, individually and in association with others:

- To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

ARTICLE 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

ARTICLE 8

Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

ARTICLE 9

In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

To the same end, everyone has the right, individually and in association with others, *inter alia*:

- To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;
- To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
- To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

ARTICLE 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

ARTICLE 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

ARTICLE 12

Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

ARTICLE 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

ARTICLE 14

The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

Such measures shall include, inter alia:

- The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;
- Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

ARTICLE 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

ARTICLE 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

ARTICLE 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

ARTICLE 18

Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

ARTICLE 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

ARTICLE 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

ANNEX II

RELEVANT INTERNATIONAL INSTRUMENTS

- The Universal Declaration of Human Rights.
 - The International Covenant on Civil and Political Rights.
 - The International Covenant on Economic, Social and Cultural Rights.
 - The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
 - The Convention on the Rights of the Child.
 - The Convention on the Elimination of Discrimination Against Women.
 - The Convention on the Elimination on all Forms of Racial Discrimination.
 - The European Convention on Human Rights, its protocols and the relevant case law of the European Court of Human Rights.
 - European Social Charter/Revised European Social Charter.
 - African Charter for Human and Peoples' Rights.
 - American Convention on Human Rights.
 - Geneva Conventions on the Protection of Victims of War and its Protocols as well as customary rules of humanitarian law applicable in armed conflict.
 - The 1951 Convention regarding the Status of Refugees and its 1967 Protocol.
 - The Rome Statute of the International Criminal Court.
 - Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
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