



**“Towards the Full and Effective Implementation
of the EU Guidelines on Human Rights Defenders
in the Democratic Republic of Congo”**

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*We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights.*¹

Kofi Annan, UN Secretary General

1. Introduction

Kofi Annan could have been talking specifically about the Democratic Republic of Congo (DRC) where the human rights defenders (HRDs) who are crucial to promoting greater respect for human rights are constantly under attack. So what is the European Union (EU) doing to protect human rights defenders as part of its policy in the DRC? And is the EU, including its member states, implementing its policy *Ensuring Protection – European Union Guidelines on Human Rights Defenders*² in the DRC? Following a mission to Bukavu, Goma and Kinshasa these questions are giving cause for serious concern.

After years of conflict, the DRC has since 2002 been going through a process of transition. This process – supervised by the United Nations (MONUC) – involves reunification of the country, disarmament and integration of armed groups, and elections. While some progress has been made, corruption, armed violence and lawlessness are still the order of the day in many parts of the country.³

In this context, the work of HRDs has been very difficult. As a consequence of carrying out activities such as investigating and exposing atrocities, combating sexual violence, advocacy with respect to the elections, and independent journalism, many HRDs have been subject to threats and attacks in recent months. In November, a prominent journalist was shot together with his wife at their residence in Kinshasa. In the same month, a human rights defender was killed in a collision with a police vehicle in Lubumbashi in suspicious circumstances. The situation of HRDs in Eastern DRC is especially precarious. In July 2005, the prominent HRD Pascal Kabungulu Kibembi was murdered in the eastern town of Bukavu. Pascal Kabungulu's killing and persistent threats have instilled a climate of fear among local HRDs. They are particularly vulnerable because of ongoing violence, ethnic tensions, and the unstable political and military situation in the region.⁴ While the situation of

¹ *In Larger Freedom: Towards Development, Security and Human Rights for All, Report of the Secretary General*, document A/59/2005 of 21 March 2005, paragraph 17. Available at <http://www.un.org/largerfreedom/>

² *Ensuring Protection – European Union Guidelines on Human Rights Defenders*, adopted by the Council of the European Union on 14 June 2004. Available at <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf>

³ For a recent assessment of the transition process in the DRC, see “A Congo Action Plan,” Africa Briefing No. 34, International Crisis Group, Nairobi/Brussels, 19 October 2005, available at <http://www.crisisgroup.org/home/index.cfm?id=3758&l=1>

⁴ The dangers faced by HRDs in the DRC, in particular in the East of the country, were highlighted in the recent UN resolution on the “Situation of human rights in the Democratic Republic of the Congo,” document A/C.3/60/L.41/REV.1 of 22 November 2005, paragraphs 4(c), 5(f) and 6(i). This resolution was adopted by the Third Committee of the General Assembly on 23 November 2005.

HRDs in the DRC is currently difficult, it is likely to worsen in the period preceding and immediately following elections in 2006.

Front Line was founded in Dublin, Ireland in 2001 with the specific aim of protecting HRDs. Front Line has been working in support of Congolese HRDs for a number of years, in the areas of training, material assistance, and advocacy. Front Line believes that the EU has an important role to play in supporting and protecting HRDs in the DRC. Prompted by Pascal Kabungulu's murder, Front Line, Amnesty International, Human Rights Watch and Christian Aid addressed a joint letter to the EU in September 2005, calling on it to fully implement its guidelines on HRDs in the DRC.

In November 2005, Front Line carried out a mission in the DRC in order to research the extent to which the guidelines are being implemented in the country, especially with respect to Eastern DRC, one-and-a-half years after their adoption. The mission was also undertaken in order to formulate recommendations to the EU to improve support and protection for HRDs. This report is a result of this mission.

The mission was carried out in collaboration with Amnesty International. Interviews to assess the implementation of the guidelines and to help formulate recommendations were held with EU missions, HRDs, UN agencies and government representatives in Kinshasa and in the East (Bukavu, Goma). A total of seven EU missions were visited (German Embassy, Swedish Embassy, British Embassy, Belgian Embassy, Dutch Embassy, French Embassy and the Delegation of the European Commission).

The report first gives a brief overview of the guidelines themselves. Following this, the main findings of the mission are presented, followed by recommendations to the EU.

2. The EU Guidelines on Human Rights Defenders

The development and consolidation of respect for human rights and fundamental freedoms is a key objective of the EU's Common Foreign and Security Policy.⁵ The EU has developed guidelines that "serve as a framework for protecting and promoting human rights in third countries (and) draw together the range of tools at the European Union's disposal for promoting human rights."⁶ The guidelines on human rights defenders were adopted in June 2004. They are recognition of the crucial role that HRDs play in the promotion and protection of human rights in their respective countries.

The guidelines are commitments that apply to all EU institutions and member states. The guidelines "provide for interventions by the Union for HRDs at risk and suggest practical means to support and assist HRDs."⁷ The guidelines include an operational part which "is meant to identify ways and means to effectively work towards the

Available at

<http://daccessdds.un.org/doc/UNDOC/GEN/N05/614/32/PDF/N0561432.pdf?OpenElement>

⁵ *Treaty on the European Union*, Title V, Article J.1.2

⁶ *EU Guidelines on Human Rights*, Council of the European Union, Secretariat General, May 2005, p. 3

⁷ *idem*, page 1

promotion and protection of HRDs in third countries, within the context of the Common Foreign and Security Policy.”⁸ The overall objective is to enhance EU support to HRDs and to bring about an environment where HRDs can operate freely.⁹ The guidelines are meant to be fully and effectively implemented so that their full potential is realised.¹⁰

The guidelines provide for a variety of actions by the EU to support and protect HRDs. EU missions should monitor and report periodically on the situation of HRDs, both the institutional framework within which they operate, and threats or attacks against individual defenders. They should report collectively on the situation of HRDs in their annual human rights “fact sheet.” They should make recommendations to the Council of the EU’s working group on human rights (COHOM) for possible EU actions, including condemnation of threats and attacks against HRDs, as well as for *démarches* and public statements where HRDs are at immediate or serious risk. COHOM and other relevant working parties, such as the Africa Working Group, should identify situations where EU actions are called upon and decide actions to be taken or, where appropriate, make recommendations for such action to the Council’s Political and Security Committee.¹¹

According to the guidelines, in many third countries, EU missions are the primary interface between EU member states and HRDs on the ground. They have an important role to play in putting into practice the EU’s policy toward HRDs and should therefore adopt a pro-active policy. The guidelines provide for actions by EU missions such as coordination and sharing of information on HRDs, maintaining contact with HRDs, giving HRDs visible recognition, and observing trials.¹²

The guidelines state that when EU officials are visiting third countries they will, where appropriate, include meetings with HRDs and raise individual cases with government authorities. The situation of HRDs will be included in political dialogues, in which the EU will underline its support for HRDs and – again – raise individual cases of concern.

Finally, the guidelines provide for practical support to HRDs through social and economic development programmes of the EU and individual member states. This can include financial support for capacity-building and public awareness campaigns of HRDs, assisting in the establishment of international networks of HRDs, and seeking to ensure that HRDs can access financial resources from abroad.

3. Main Findings Regarding the Implementation of the EU Guidelines on HRDs in the DRC

The research found that the EU has undertaken a number of initiatives to support and protect HRDs in the DRC since the adoption of the guidelines. For example, the EU has monitored the case of Pascal Kabungulu, in particular the work of a commission

⁸ idem, page 3

⁹ *Ensuring Protection – European Union Guidelines on Human Rights Defenders*, page 6

¹⁰ *EU Guidelines on Human Rights*, p. 3

¹¹ idem, page 4

¹² idem, page 5

set up to investigate Kabungulu's killing. There has also been some monitoring of the situation of journalists due to the fact that the United Kingdom, during its EU Presidency in the second half of 2005, has given priority to the theme of freedom of expression. Many EU missions maintain contact with local human rights organizations, and some embassies reported being contacted by HRDs at risk. The human rights situation is often discussed at Heads of Mission (HoMs) meetings.

One EU Ambassador gave visible support to HRDs by having a meeting with a group of them in Bukavu in the week after Pascal Kabungulu was killed and by attending a vigil organized for Kabungulu by HRDs in Kinshasa. A few individual EU missions have raised cases of HRDs with the authorities.

The EU has undertaken two *démarches* regarding HRDs, both with respect to the Pascal Kabungulu case. One *démarche* was undertaken right after Mr. Kabungulu was killed, urging that an independent investigation be carried out, and another was undertaken a couple of months later, expressing concern regarding the progress of the enquiry.

In October 2005, the EU issued a public statement on freedom of expression in the DRC.¹³ The statement expressed concern regarding violations against journalists and support for groups working on press freedom. The statement was eventually (in the second half of November 2005) issued to the press and covered by two newspapers and the United Nations' radio.

EU missions also provide funding for the activities of local HRDs.

While the research carried out during Front Line's mission to the DRC identified a number of positive practices, it also revealed a number of areas in which the implementation of the guidelines in the country could be improved.

Almost all (five out of seven) of the EU missions visited were not aware of the guidelines and no initiatives had been undertaken to publicize the guidelines among HRDs. Not surprisingly, none of the HRDs interviewed had heard of the guidelines.

The research found that the situation of HRDs and individual cases (other than that of Pascal Kabungulu) are not pro-actively or systematically monitored. Most of the information coming to EU missions regarding violations against HRDs is of an incidental and *ad hoc* nature and often long after the fact. The EU's collective reporting on the situation of HRDs could not be assessed, since the human rights "fact sheet" is confidential. In any case, there is no mention of the difficult situation being faced by HRDs in the annual human rights report of the UK government, which had a section on the DRC, it being for the UK a "major country of concern."

There does not appear to be any regular sharing of information on the situation of HRDs and on individual cases. For example, although the human rights situation is

¹³ "Statement by the Presidency on behalf of the European Union on freedom of expression in the Democratic Republic of Congo (DRC)," Council of the European Union, 17 October 2005, Brussels, Belgium, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/cfsp/86622.pdf

often on the agenda of the HoMs meeting, the situation of HRDs and individual cases (other than Pascal Kabungulu) are not regularly discussed.

Contacts with HRDs are not regular or extensive and often have a bias towards Kinshasa-based NGOs. Contacts appear to focus on organizations that receive or request funding and most of the communication relates to the funding relationship. While some embassies reported being contacted by HRDs at risk, others didn't, meaning that HRDs are not accessing many EU missions. The head of one EU mission thought that a possible reason for his mission not being contacted by HRDs was that "they are not aware they can be assisted." Many effective human rights organizations in the conflict-ridden east of the country receive little or no attention or support from EU missions. Efforts to give visible recognition to HRDs have been limited.

As mentioned above, the guidelines provide for EU public statements on behalf of HRDs at risk. However, there were no public statements made with respect to the case of Pascal Kabungulu. With respect to the EU's public statement on freedom of expression, one of the organizations mentioned in the statement – Journaliste En Danger – was not aware of it when interviewed almost a month after it had been issued. At the time it was made, the statement was not released to the national media and was therefore not covered by the local press.

According to a relevant EU official in Kinshasa, the situation of HRDs and individual cases of violations are not integrated into the political dialogue with the DRC, which takes place within the framework of the Cotonou Agreement.¹⁴ In fact, although the DRC gets substantial cooperation funds from the European Commission through the European Development Fund¹⁵ and through the standard Commission budget lines, it was reported that no meaningful political dialogue takes place. The political dialogue that does take place is separate from the development cooperation programme, meaning that Commission aid is not effectively conditioned on respect for human rights.

While EU missions provide funding to local human rights groups, a number of missions reported not being able to identify enough capable partners. In 2004, one mission was actually unable to disburse its fairly limited funds for human rights projects. This was not only due to the inability of local groups to present proposals which met the mission's requirements, but was also a reflection of the mission's lack of in-depth contacts with many effective local human rights organizations, particularly in the East.

To summarize, although the EU has undertaken a number of initiatives to support and protect HRDs in the DRC, the research revealed that many steps still need to be taken to implement the guidelines on HRDs. The research also revealed a number of

¹⁴ *Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States, of the Other Part* (undated) at

http://europa.eu.int/comm/development/body/cotonou/pdf/agr01_en.pdf#zoom=100

¹⁵ For example, in October 2005, 80 million worth of assistance in the health sector over a four-year period was approved.

relevant factors which may affect future implementation. There is a general lack of awareness of the guidelines at EU missions. There is also the view, expressed by one EU ambassador, that the EU is already doing enough to support and protect HRDs in the DRC. Thirdly, it was reported that some EU states, perhaps because of economic interests, appear to place greater emphasis on maintaining harmonious relations with the DRC's political leaders than on taking strong positions toward the government on human rights. Finally, there appears to be a lack of responsiveness on the part of the government. For example the DRC government has reportedly not responded to the *démarches* related to the Pascal Kabungulu case. The question then arises: what further steps is the EU able and willing to take? These are some of the issues that may have to be addressed in order to ensure the full and effective implementation of the guidelines in the DRC.

4. Recommendations to the European Union

Building on current practices, the EU should intensify support and protection for HRDs in the DRC through the full and systematic implementation of the EU Guidelines on HRDs. Given their crucial work in the areas of investigating and exposing atrocities, combating sexual violence, free and fair elections work and independent media, supporting HRDs and enlarging the space for HRDs and civil society is crucial for a democratic transition and sustainable peace. This support should therefore be a central part of the EU's political strategy vis-à-vis the DRC.

In order to ensure the full and effective implementation of the EU Guidelines on HRDs, EU missions should:

1. Ensure that key staff (at minimum, Head of Mission, person responsible for political affairs, person responsible for funding to civil society organizations) are familiar with the guidelines. Publicize the guidelines among HRDs in order to make them aware of the ways that EU missions can contribute to their protection.
2. Hold regular discussion at HoMs meetings regarding progress in implementing the guidelines, the situation of HRDs and individual cases. Share information on the situation of HRDs and specific cases with a view to deciding or recommending collective EU actions on behalf of HRDs.
3. Appoint specific liaison officers at each mission, responsible for HRDs issues including for maintaining contact with HRDs (to the extent that it has not already been done).
4. Pro-actively and systematically monitor the situation of HRDs in general and individual cases of HRDs at risk. For this, EU missions should make use of a wide range of information, especially reports from:
 - Mission monitoring visits
 - Local NGOs
 - International NGOs
 - The Office of the High Commissioner on Human Rights (OHCHR)
 - MONUC human rights section

5. Provide increased visible recognition of HRDs through visits to HRDs' offices and by accompanying them on field visits. Attend public events organized by HRDs, especially those where they face heightened risk of violations. Promoting the legitimacy of HRDs and visibly demonstrating to government and military authorities that the EU is concerned for their security is an important measure to prevent violations against HRDs.
6. Make use of public media and issue public statements to express concern regarding ongoing violations against HRDs, to call on the DRC authorities to investigate violations and take concrete measures to protect HRDs, and to give legitimacy and recognition to the work of HRDs as essential to building peace and stability in the DRC. Ensure wide dissemination of public statements by distributing them to national media, state authorities and NGOs. Consult with HRDs if they are specifically named in public statements.
7. Discuss among HoMs all cases of credible reports of attacks or other serious violations against HRDs, and raise concerns - as a matter of urgency – with relevant provincial and national authorities, including through *démarches*. Such initiatives should press for prompt and impartial investigations ensuring that those responsible are identified and brought to justice.
8. Provide increased financial support to HRDs, ensuring that their organizations are given guidance in qualifying for such funding through capacity-building. When requested by HRDs, fund practical measures to ensure their physical security.
9. For HRDs at imminent risk of physical attack, arrange or facilitate
 - temporary refuge abroad
 - “safe havens”
 - resettlement
 - emergency visas
10. Focus attention on supporting and protecting HRDs in Eastern DRC. In particular,
 - Identify key HRDs working in Eastern DRC, building on current knowledge and by consulting with MONUC, OHCHR, Amnesty International, Human Rights Watch, Front Line and other international NGOs.
 - Visit key HRDs in Eastern DRC. Inform them about the guidelines, the existence and function of mission liaison officers, and provide contact information. Consult with HRDs and other relevant actors to identify priority actions for EU support and protection for HRDs in Eastern DRC.
 - Monitor the situation of HRDs in Eastern DRC through maintaining structured and regular contact with them and through other sources of information on the situation of HRDs, in particular MONUC, OHCHR and international NGOs.
 - Establish a permanent EU presence in Eastern DRC responsible for human rights.