

THE CLOSING SPACE FOR CIVIL SOCIETY: A RIGHTS-BASED APPROACH FOR ACTION

In 2012 the European Union (EU) reinforced its commitment to foster a dynamic, pluralistic and competent civil society and articulated three priorities for support.¹ However, whilst the policy framework provides a useful basis, recent research shows a disturbing trend towards an increasingly restricted space for independent civil society as well as outright threats to individuals and organisations.²

The Human Rights and Democracy Network (HRDN) sees this as a critical issue as it underpins the work of all rights and democracy organisations - and the essential role that they play as a counterweight to public authorities. We therefore urge the European Union to **renew efforts to vigorously defend the space for civil society both externally and within the EU** and ensure that **policy commitments translate into systemic action** and conditions for engagement with partner countries.

A FOUR POINT FRAMEWORK

Limitations and restrictions on civil society manifest in different ways across countries and regions. Attacks are often direct, through restrictive NGO laws, limits on funding sources or distorted criminal charges; or, in the wake of counter-terrorism policies, more indirect through a swathe of restrictive rules that impact non-profit organisations.

HRDN sees four key areas for attention: the legal environment, policy and practice, funding and participation. This is an opportune moment for the EU Special Representative on Human Rights and the new High Representative, Commissioners and members of the European Parliament to identify concrete actions in the four key areas, building on international standards and best practice. A particular opening, to enforce clear policy lines, lies in the development of a new Human Rights Action Plan for the period starting in January 2015.

Under these four key areas HRDN makes the following recommendations to the EU institutions:

I) THE LEGAL ENVIRONMENT Laws and standards define the space for civil society both through human rights standards, including the four cornerstones of freedom of expression, opinion, assembly and association and through domestic laws. Increasingly, however, laws that actively limit the operation or financing of civil society organisations are being adopted.

- Monitor laws globally through staff in delegations and support to organisations and researchers with expert knowledge and experience. Regularly compile and assess information both to follow up on individual cases and develop knowledge on trends.
- Consistently monitor laws within the EU, and where necessary, launch infringement proceedings, where laws are found to breach fundamental rights.
- Urge governments to repeal all laws/articles that violate the rights to freedom of association and assembly and thus the ability of local civil society to cooperate and affiliate themselves with national, regional and international networks.

II) POLICY & PRACTICE Even where a good legal framework exists, arbitrary and continuously changing policies and practice cause considerable harm to civil society. Intimidation, harassment or spurious allegations against individuals are common as are actions that target organisations such as arbitrary registration and reporting requirements, raids and audits or counterterrorism measures that constrain the work of civil society.

- Take a lead role to counter the closing space for civil society. React promptly to cases of intimidation and criminalization of human rights defenders through: diplomatic and political actions (inter alia,

¹ European Commission, Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: *The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations*, COM/2012/0492 final.

² Carothers T. and Brechenmacher S., "Closing space – Democracy and Human Rights Support under fire", Carnegie Endowment, Washington, 2014. Hayes B., "Counter-terrorism, 'policy laundering' and the FATF: legalizing surveillance, regulating civil society", Transnational Institute / Statewatch, Amsterdam, February 2012

statements, and demarches); physical and financial support; and the regular use of all platforms to clearly reaffirm the EUs commitment to the essential function of a vibrant independent civil society.

- Ensure that all EU and member states' policies are coherent. Particular attention should be paid to DGs and government departments whose policies impact on the operation and funding of human rights organisations and coherence between geographic and human rights tools.³
- Develop EEAS guidelines and monitoring tools (that build on the DG Enlargement guidelines⁴ and DEVCO CSO roadmaps) that reinforce and promote an enabling environment for civil society and prevent counter-terrorism measures that restrict civil society activity.
- Ensure that the EU guidelines on Human Rights Defenders are fully implemented including systematic trials observations and visits to human rights defenders who are deprived of liberty.
- Appoint a civil society focal point within the EEAS to liaise with human rights focal points in EU delegations. Ensure that all EU officials meet with a diverse range of civil society on every visit to third countries.

III) FUNDING Civil society organisations rely on multiple funding sources and limiting any one can have a significant impact on the health and sustainability of the sector. Restrictions range from rules that prohibit organisations from accessing foreign funds to blocking registration of international organisations. Measures that lead to excessive scrutiny of civil society, such as those included in the Financial Action Task Force (FATF) and proposed in the 4th Anti Money Laundering Directive, are particularly problematic.⁵

- Ensure that EU funding is available and used both to fund long-term support and emergency interventions when civil society activists including human rights defenders are at risk. Ensure that funding is prioritised and reaches independent civil society actors in countries where their freedom to operate independently and effectively is the most curtailed.
- Take action to diversify EU funding streams, lead and coordinate efforts with other donors and support grantees to build up and diversify their funding sources.
- Actively monitor and take action to ensure that blanket counter-terrorism measures and aspects of anti-money laundering legislation do not in-directly limit the funding of civil society organisations.

IV) PARTICIPATION The active participation of civil society is crucial for inclusive and participatory governance. Campaigns aimed at undermining or diminishing the role of civil society discredit organisations and individuals, and limit their capacity to actively participate in decision making processes. Particular groups of human rights defenders often suffer additional discrimination, further preventing their participation in public life.

- Ensure regular meetings with independent civil society including registered and unregistered human rights and women's rights organisations (in Brussels and through delegations) to gather information, analyse trends and assess implementation strategies.
- Commit to active, meaningful, inclusive, and transparent participation of civil society in all processes – in particular for the drafting of country human rights strategies and EU roadmaps on consultation of civil society. Put in place means of systematic, timely, well-informed consultation processes.
- Commit the EU institutions to close engagement with, and eventual membership of, the Open Government Partnership.

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³ For example policies on dual-use technology, trade agreements, Corporate Social Responsibility measures, counterterrorism measures, the Anti-Money Laundering directive all led by varying DGs including DG Trade, DG Enterprise, Internal Market etc.

⁴ European Commission, *Guidelines for EU support to civil society in enlargement countries, 2014-2020*, July 2013, retrieved on 15.09.2014, at : http://eeas.europa.eu/delegations/kosovo/documents/press_corner/elarg_guidelines_cs_support_after_online_consultation_03072013.pdf

⁵ Proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013PC0045>