Thematic evaluation of the European Commission support to respect of Human Rights and Fundamental Freedoms

(including solidarity with victims of repression)

2011 Nobel Peace Prize

"for their non-violent struggle for the safety of women and for women's rights to full participation in peace-building work":

Tawakkol Karman

Leymah Gbowee

Ellen Johnson Sirleaf

Final Report

Volume 1

December 2011

Evaluation for the European Commission

Framework contract for
Multi-country thematic and regional/country-level strategy evaluation studies and synthesis
in the area of external co-operation
Ref.: EuropeAid/122888/C/SER/Multi

LOT 2:
Evaluation of EC main policies and strategies in the areas of external cooperation

EVA 2007 – Lot 2
Volume 1

Thematic evaluation of the European Commission support to respect of Human Rights and Fundamental Freedoms (including solidarity with victims of repression)

Final Report

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December 2011

PARTICIP GmbH
Germany

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Belgium

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ACRONYMS

ACP	Africa Caribbean and Pacific countries
ACHPR	African Commission on Human and People's Rights
AFCHPR	African Commission on Human and Peoples' Rights and the African Court
AGA	African Governance Architecture
AIDCO	EuropeAid Co-operation Office
ALA	Community financial instrument for support to Asia and Latin America
ASEAN	Association of Southeast Asian Nations
ASEM	Asia-Europe Meeting
AU	African Union
CAP	Common Agricultural Policy
CARDS	Community Assistance for Reconstruction, Development and Stabilisation
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBSS	Country Based Support Schemes
CCI	Cross-Cutting Issue
CD	Capacity Development
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEMAC	Communauté Economique et Monétaire de l'Afrique Centrale
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CfP	Call for Proposal
CFSP	Common Foreign and Security Policy
COE	Council of Europe
COHOM	Human Rights Working Group of the Council of the European Union
COM	Commission Communication
CPR	Civil and Political Right
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
CSP	Country Strategy Paper
DCI	Development Cooperation Instrument
DDH	Democratie et Droits de l'Homme (European Initiative on Democracy and Human Rights)
DG	Directorate General
DG DEV	Directorate General for Development
DG DEVCO	Directorate General for Development – EuropeAid
DG ECFIN	Directorate General for Economic and Financial Affairs
DG ELARG	Directorate General for Enlargement

DG HOME	Directorate General Home Affairs
DG RELEX	Directorate General for External Relations
DG JLS	Directorate General for Justice, Freedom and Security
DIP	Democratic Institutions Program
DP	Death Penalty
EEAS	European External Action Service
EC	European Commission
ECA	Eastern Europe & Central Asia
ECCAS	Economic Community of Central African States
ECD	European Consensus on Development
ECOWAS	Economic Community of West African States
ECDP	European Community's Development Policy
ECHO	European Commission Humanitarian Office
ECHR	European Court of Human Rights - European Convention on Human Rights
EDF	European Development Fund
EIUC	European Inter-University Centre for Human Rights and Democratisation
EIDHR	European Initiative for Democracy and Human Rights /European Instrument for Democracy and Human Rights
ENP	European Neighbourhood Policy
ENPI	European Neighborhood Partnership Instrument
EOM	Election Observation Mission
EP	European Parliament
EPA	Economic Partnership Agreement
EQ	Evaluation Question
ESCR	Economic, Social and Cultural Rights
ESF	ECOWAS Standby Force
EU	European Union
EUD	Delegation of the EU
FAFA	Financial and Administrative Agreement
FOMUC	CEMAC Multinational Force
GAERC	General Affairs and External Relations Council
GBS	General Budget Support
GESC	Gender Equality Screening Checklist
GONGO	Government-Operated Non-Governmental Organization
GSP	Generalized System of Preference
HoD	Head of Delegation
HRD	Human Rights Defenders
HRDN	Human Rights and Democracy Network
HR	Human Rights

HRC	Human Rights Council
IA	Inter-American
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRD	International Committee of the Red Cross
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IfS	Instrument for Stability
IL	Intervention Logic
ILO	International Labour Organization
IMF	International Monetary Fund
IO	International Organisation
IOM	International Organization for Migration
IPA	Instrument for Pre-Accession Assistance
iQSG	Inter-service Quality Support Group
IRFFI	International Reconstruction Fund Facility for Iraq
JPP	Justice Partnership Programme
LA	Local Authority
LIS	Local Implementation Strategy
LOFTA	Law and Order Trust Fund for Afghanistan
MARAC	Early Warning Mechanism for Central Africa
MDG	Millennium Development Goals
MEDA	European financial instrument for the implementation of the Euro-Mediterranean Partnership
MENA	Middle East and North Africa
MS	Member State
NGO	Non-Governmental Organization
NIP	National Indicative Programme
NSA	Non-State Actor
OAS	Organisation of American States
OECD	Organization for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
OHCHR	Office of the UN High Commissioner for Human Rights
OQSG	Office Quality Support Group
PA-PANDDH	Programme d'appui au plan national en matiere de democratie et droits de l'homme

PCA	Partnership and Cooperation Agreements
PPT	PowerPoint Presentation
PSC	Political and Security Committee
REH	EC budget line on rehabilitation
RG	Reference Group
RO	Regional Organisation
ROM	Result Oriented Monitoring (System)
RRM	Rapid Reaction Mechanism
RSP	Regional Strategy Paper
SBS	Sector Budget Support
SEC	Commission Staff Working Document
SECR	Socio-Economic and Cultural Rights
TACIS	Technical Assistance for the Commonwealth of Independent States
TEU	Treaty of the European Union
TF	Trust Fund
TSIA	Trade Sustainability Impact Assessment
3 Cs'	Coordination, Complementarity and Coherence
ToR	Terms of Reference
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational Scientific and Cultural Organization
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UPR	Universal Periodic Review
USAID	Aid Agency of the United Stated
WB	World Bank
WFP	World Food Programme
WTO	World Trade Organisation

Executive Summary

Objective and Scope

This evaluation has been commissioned by the Evaluation Unit in DEVCO on behalf of the European Commission. It assesses the ***EC support to human rights and respect of fundamental freedoms*** by taking into account all rights (political, social and economic), regions[1] and instruments over the period 2000-2010.

The evaluation seeks to provide an ***independent assessment*** of the Commission's[2] human rights work in non-member countries and aims *at* ***identifying key lessons and recommendations*** with a view to improving current and future Commission strategies and programmes. It concerns both the funds contracted by the European Commission over the period covered and the so-called ***'non-financial activities"***, notably the political and policy dialogues that are central to the EU approach to human right promotion in third countries (as stated in the Council Conclusions of the 25 June 2001).

This study assessed in detail how the EC advanced the human rights agenda in different political and institutional environments. It examined to what extent and how the EC managed to: (i) use its political clout to leverage change; (ii) strategically combine various instruments; (iii) mobilise the various actors (states, civil society, regional organisations, UN); (iv) pro-actively promote the mainstreaming of human rights; (v) foster the application of the 3Cs' in the field of human rights and (vi) achieve results and impact. In the process, it took stock of the dilemmas encountered, the innovative practices employed and the lessons learnt.

During the evaluation, the overall EU[3] institutional set-up changed drastically. The study started with a focus on the structures at Commission level ("EC only") under the prevailing framework *before* the Lisbon Treaty. Yet the study was concluded in the post-Lisbon set up and the related creation of the External European Action Service (EEAS). Under this new framework part of the political and geographic mandate of the EC are transferred to the EEAS. The recommendations coming out of the evaluation, proposed below, should be read in that light.

Methodology

The evaluation addresses learning as well as accountability objectives. This report duly takes into account that the EC action in the field of human rights is strongly embedded in and influenced by the ***overall context*** (both in Europe and in partner countries) as this determines the arena and space available to promote human rights as a 'core value'.

The study looked closely at the evolving landscape for human rights over the past decade and took stock of trends and changes at various levels (international, regional national, local). Therefore, the evaluation team has applied an approach that seeks to analyse the extent to which the objectives have been reached as well as the reasons and determining factors behind the observed successes and failures. This evaluation sought to assess achievements by ***focusing on changes/developments and trends,*** rather than assessing outcomes against fixed targets.

The first task consisted in elaborating the ***intervention logic*** underlying the hierarchy of the objectives of the EC action to support human rights in partner countries. The evaluative approach was further specified through ***ten evaluation questions*** and different methods of data collection, including the analysis of aid flows[4]; a comprehensive desk study; the analysis of ***32 questionnaires*** from EU Delegations; a review of 40 Country Strategy Papers (CSPs)[5]; 6 field missions including Ethiopia, Guatemala, Morocco, Kazakhstan, Vietnam and Jordan (which focused on the participation to the

[1] Excluding countries that fall within the mandate of DG Enlargement).
[2] The Evaluation duly takes into account that the action of the Commission in the field of human rights is strongly embedded in and influenced by the broader set-up of EU external action.
[3] *The evaluators have used the acronym "EC" to refer to policies, programmes and financial instruments that are specific to the European Commission, while the acronym "EC/EU" relate to actions that imply the cooperation of both the European Commission and the EU Member States (such as the political dialogue and the démarches) as well as for actions to be taken in the context of the new post-Lisbon architecture (involving the EC, the EEAS and the Member States). The acronym "EU "is used when indicating the "HR policy" in general term not in relation to specific tools or competence.*
[4] See Volume 3: Inventory of EC financial interventions.
[5] Covering 20 countries over two programming periods.

structured human rights dialogue with civil society from the ENP countries); around ***100 interviews*** in Brussels and in the field (included with HR defenders and governments in hostile environments); attendance to specific conferences and events on human rights; the study of more than ***200 documents***, as well as the ***analysis of the various instruments*** (financial and of public diplomacy) used by the EC/EU to work on human rights.

Several limitations and challenges were encountered in the process of executing this evaluation, including (i) the sheer scope of the theme: (ii) the heterogeneity of the local environments; (iii) the difficulty of 'isolating' the specific EC role and contribution towards human rights in the broader EU external action; (iv) the multiplicity of perspectives on human rights and suitable engagement strategies within the EC; (v) the secrecy surrounding data on EC/EU interventions; (vi) the scarcity of evaluation material (beyond EIDHR) and documented learning on human rights; and (vii) methodological difficulties to assess impact[6]. It was also challenging to incorporate into an on-going evaluation both the institutional changes brought about by the Lisbon Treaty and the quite drastic EU policy changes with regard to human rights, announced in the aftermath of the Arab Spring.

Considering these limitations the EC Reference Group stressed the need for the evaluation to strongly focus on pressing policy demands related to EC/EU approaches to human rights (e.g. on how to effectively mainstream human rights or conduct a political dialogue) while highlighting good practices that could form a source of inspiration for EU Delegations across regions.

Conclusions

On the overall support of the EC/EU

The overall ***track record*** of the EC in promoting human rights as a 'core value' of the Union in its external action has been ***mixed*** over the past decade. On the positive side, the EC has sought to place human rights more firmly on the map as an integral part of the EU external action. In many countries, the EC has made ***relevant*** contributions to promoting this agenda at various levels through the use of funding and non-funding instruments. Evidence of results (outcomes) as well as (intermediate) ***impact*** has been identified in relation to both the promotion and protection of human rights (see specific conclusion 6 below). In terms of process, these positive effects were generally achieved because the EC smartly positioned itself in a given context to push forward (with Member States and other actors) a realistic human rights agenda, skilfully using its leverage capacity and different instruments through the action of dedicated officials or supporting units at headquarters level.

Yet EC action has also been structurally hampered in terms of results/impact by several systemic ***constraints*** including:

- insufficient use of high-level EU political leverage (particularly in countries where major interests are at stake);
- the lack of a clearly spelled out and effectively implemented "joint" strategy between the EC and Member States, adapted to different country contexts;
- the tendency to 'ghetto-ise' human rights;
- the limited Commission leadership at political and managerial level to push for the mainstreaming of human rights in all aspects of cooperation;
- a wide range of downstream implementation problems (including at procedural level);
- inadequate knowledge, capacities and incentives to act effectively on a sensitive manner such as human rights.

This has major consequences for the ***effectiveness and efficiency*** of the overall EC actions in the field of human rights. The EC/EU does not optimally use its potential power and leverage when it comes to promoting human rights. High-level political statements and declarations in favour of human rights are not systematically and consistently translated into effective implementation strategies. The positive dynamics generated by EC supported programmes and projects are often not taken further and/or strategically linked to other reform processes (e.g. in the justice sector) that could enhance the overall impact on human rights. Opportunities to support societal forces struggling to localise human

[6] For more explanations on how the evaluation team addressed the questions of "results" and "impacts" see section 1.3 below

rights (beyond legalistic and normative approaches) are not fully exploited. The incentives that the EC/EU uses to push forward its human rights agenda are often too limited to effectively pressure or encourage partner countries. Inconsistencies and double standards are still prominent in EU external action. As a result, the EC/EU increasingly faces a credibility gap in its human rights action.

Specific conclusions

1) The profile of human rights has been enhanced at EC/EU level

Over the last decade human rights has gained greater prominence in the external action of the EC/EU. There have been many declarations of the EC political leadership in favour of human rights during this period. At EU level there has been a proliferation of human rights dialogues and démarches. Guidelines have been produced on key political and civil rights. Strategic partnerships have been concluded while the EC has reached out to a myriad of civil society organisations. Funding for human rights (directly or indirectly through broader governance reforms) has increased steeply (with fluctuations over the years)[7].

On the whole, this strong profile of the EC/EU on human rights is highly appreciated by a wide range of human rights activists across the world. They feel supported in their uphill struggle for rights, particularly in hostile local environments.

2) There is a deficit in political commitment towards implementing an effective and coherent human rights policy

There are clear signs of the EC/EU's principled engagement in favour of human rights. Human rights clauses underpin partnerships. The discourse on human rights permeates Country Strategy Papers and Actions Plans. There is no shortage of mechanisms for political dialogue on human rights. The EC has gradually built up its institutional infrastructure to deal with human rights.

Yet the evaluation findings clearly suggest that the overall EC/EU political commitment towards effectively ***implementing*** this human rights agenda is incomplete, ambiguous and selective. (i) ***Incomplete*** because the EU policy and institutional architecture addressing human rights lacks a strong 'political roof' in the form of truly joint strategies on human rights for which the EC and Member States assume *joint* responsibility and accountability for results. (ii) ***Ambiguous*** because a strong discourse on human rights is not consistently translated into action, particularly when major political and economic interests are at stake. (iii) ***Selective*** because double standards continue to be applied depending on the strategic importance of the partner country. As a result, the EC/EU is often perceived by stakeholders in third countries to be both a core ally in the struggle for human rights and a player "lacking teeth".

This EC/EU deficit in political commitment to act coherently on human rights *all along the chain* (i.e. from policy discourse to implementation and accountability for results) structurally hampers the ability of the EC/EU to be an effective and result-oriented change agent in the field of human rights.

3) EC action on human rights is too often confined to a ghetto

The separation between the world of human rights (characterised by values, legal norms and technical complexity) and the arena of foreign policy/development cooperation (driven by interests, needs and aid processes) is not new. The above-mentioned lack of a consistent political commitment to coherent EU action on human rights, explains why the EC still often tends to deal with human rights as a 'separate issue' or to confine the theme to a 'ghetto'.

These ghettos can be: ***Mental*** - when the EC staff see the value of human rights but find it difficult to "do something with it" in their development work; ***Political*** - when the dialogue takes place on human rights that is largely disconnected from economic ties, aid and effective progress on the ground; ***Institutional*** - when too much responsibilities are given to dedicated human rights units that do not enjoy sufficient political backup and resources; ***Instrumental*** - when the EC support is too much focused on thematic instruments and not sufficiently on the potential leverage of geographic instruments, non-financial tools and other incentives to be used in the broader EU external action (e.g. in the field of trade, upgrading of association agreements).

[7] For the EC funding to HR-related activities over the period 2000-2010 see Volume 3: Inventory.

In the last years, promising breaches have appeared in the walls surrounding the various ghettos. Push factors have been: the growing importance of foreign policy and security considerations in development cooperation, the search for a better balance between 'needs and rights' in poverty reduction strategies as well as the promising innovations by engaged EU Delegations. The policy developments related to the ENP and budget support represent other breaks in the wall.

4) There are innovative practices yet the EC is confronted with an important delivery gap with regard to its human rights agenda

Despite structural limitations, the evaluation took stock of several good and innovative practices in terms of:

- incorporating a sound human rights analysis in the Country Strategy Papers;
- promoting a decentralised, multi-actor and iterative dialogue process on human rights;
- establishing a virtuous link between the political dialogue and the programming exercise;
- combining different instruments in a strategic manner to enhance the impact;
- reaching out to human rights activists and providing them with much more sophisticated forms of support;
- strengthening the human rights dimension in (second-generation) justice/security reform programmes;
- up-scaling positive project outcomes into much broader support strategies;
- building complementarities with Member States and UN agencies.

However, the problem with these innovations is that they remain too much ad hoc initiatives pushed through by committed EC officials (both in headquarters and Delegations). There is limited evidence of a proper institutionalisation of these good practices and a limited learning culture (including effective monitoring and evaluation systems).

5) The knowledge, capacities and incentives provided are not commensurate with EC ambitions on human rights

Dealing with human rights is a demanding task for all EC actors involved at both Delegation and Headquarter level. Specialist (legal) knowledge is required as well a wide range of capacities to analyse human rights situations, detect opportunities to support promising dynamics, engage with local actors (both state and non-state), manage the 'politics' involved in pushing forward a human rights agenda, coordinate with Member States and UN agencies, etc.

There is also a need for the right mix of incentives for EC officials to enter this 'messy' arena or to mainstream human rights. Addressing this deficit is not just a matter of quantity and quality of staff. It is also linked to: i) weaknesses in the overall EC institutional set-up for dealing with human rights (e.g. limited priority-setting, inadequate guidance[8], disjointed policy agendas[9] or the existence of institutional 'silos'[10]); ii) the still often less than optimal collaboration with Member States (in terms of collective action and burden sharing in EU external action); iii) a sub-optimal use of local sources of knowledge and expertise; iv) the lack of incentives from the political and managerial leadership to ensure an effective and coherent integration of human rights in all aspects of cooperation and in all relevant instruments.

6) Results have been achieved yet the full EC/EU potential to promote human rights remains largely under-utilised

On the one hand, the evaluation team found many examples where the EC action in favour of human rights –undertaken directly or within broader EU framework- has generated positive effects, including

[8] There is, for instance, a growing awareness on the potential added value of mainstreaming human rights. Yet EC officials and technical experts are a bit at loss on *how* this can be done in practice; their drive to adopt a stronger rights focus are hampered by the lack of relevant and manageable operational guidance.

[9] This refers to the tendency to deal separately with the different components of the governance agenda supported by the EC. This often leads to a situation whereby the human rights agenda is addressed without strong connections with adjoining policy areas such as democracy, civil society development, the rule of law, etc.

[10] Systematic reference was made in this context to the negative impact of the 'silo' that exists between thematic units dealing with human rights and geographic desks.

- at a macro level, the sheer presence of the EU as a global player promoting a human rights agenda (though with various levels of consistency and conviction) has helped to protect and eventually also enlarge the space to address human rights issues (= the EC/EU acting as agency of restraint)
- in several settings (including highly restrictive environments) the EC has been able to intelligently mobilise the different instruments at its disposal with a view to pushing for legal changes or effective application of ratified conventions
- EU political demarches have helped to prevent a deterioration of human rights situation (e.g. when contributing to halt legislative reforms that would re-introduce the death penalty)
- the EC support to human rights defenders and civil society organisations has repeatedly been described as a 'lifeline' for the actors involved;
- several EC-supported programmes have contributed to promoting joint action between state and non-state actors on human rights
- EC support to justice sector reforms and the fight against impunity have contributed to improving the overall environment for the protection of human rights;
- though poorly documented, there is evidence of impact achieved with capacity building initiatives (which consume a large share of EC aid for human rights).

On the other hand, the evaluation findings clearly indicate that the overall EC/EU potential to support human rights remains all too often untapped. Many opportunities are missed to build on promising local dynamics, to structurally support drivers of change or to promote human rights through other cooperation programmes and instruments that are not optimally used so far.

Recommendations

Overall Policy Recommendation

Upgrade the political status of human rights in the EC/EU external action so as to ensure coherent action and increased impact.

Bold decisions are needed to ensure that human rights can leave the 'ghetto' in which they have all too often been relegated. The EC/EU needs to clarify 'upstream' how much weight it wants to give to human rights and how it can better reconcile values and interests in this critical area of its external action. It needs to build stronger bridges between human rights and other domains of EU external action. These are pre-requisites for a more credible, effective and result-oriented EC/EU action.

There are indications that this ***overall recommendation may now fall on a relatively fertile ground within the EC/EU***:

- The Arab Spring has had the effect of a 'wake-up call' for the EC/EU.
- At EC level, Commissioner Piebalgs pleaded to give "human rights the place in development policy that they deserve" and to "embed human rights and democracy even more deeply" in EC practices (speech 11 October 2011 before European Parliament). The recently proposed 'Agenda for Change' (COM [2011] 637 final) is clear on the ambition to heighten the impact of EC cooperation on democracy and human rights. The new orientations for the use of budget support (COM [2011] 638 final) are another illustration of this approach. From now on, human rights will be a central consideration when the EC analyses a partner's country profile and suitability for budget support.
- In the abovementioned speech Commissioner Piebalgs also made the point that revision of the instruments in the framework of the new Financial Perspectives provides for a "unique opportunity to embed human rights and democracy even more deeply in our practices […}. Our aim must be to look beyond the instruments themselves so as to frame human rights and democracy in the tools we use in our daily practices".
- The EU High Representative Catherine Ashton has repeatedly stressed the need to integrate human rights as a "silver thread" throughout all EU external action. To this end, a major policy review of the EU policy towards human rights was announced.

The finalization of this independent evaluation largely coincides with the planned policy review. The recommendations below may provide a source of inspiration for this fundamental re-orientation and upgrading of human rights in EU external action.

Main recommendations[11]

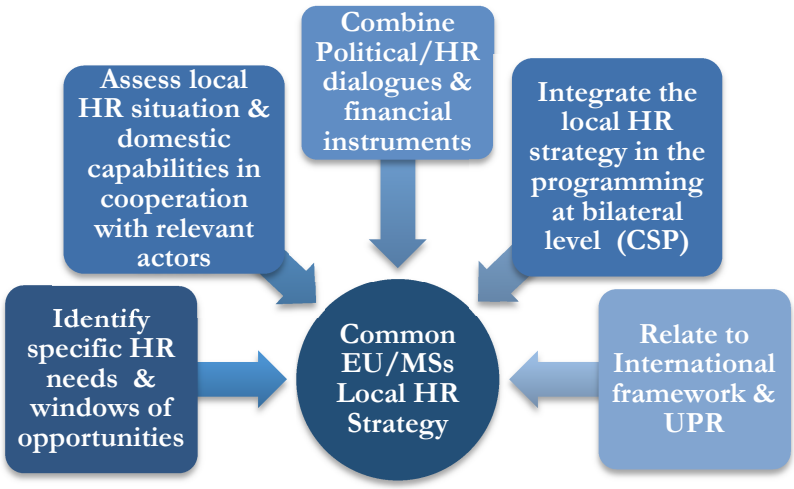
1. *Clarify the political agenda of the EU with regard to human rights and translate this in common implementation strategies*

This is the necessary starting point for a more credible EC/EU human rights policy in the new Post-Lisbon institutional set-up. The EC/EU need to ensure that, the architecture for addressing human rights has a solid 'political roof'. This means providing clarity on the EU human rights ambitions towards third countries and regions. It implies being more explicit about the EU interests that co-exist with the promotion of human rights as a core value. It means developing common implementation strategies for which both the Commission and the Member States take responsibility[12]. It calls upon all EU institutions to fully exploit the potential of the Post-Lisbon configuration to define such political agenda with regard to human rights towards third countries and regions.

2. *Develop a comprehensive strategy to localize human rights*

The next step is to take the local reality as the point of departure for elaborating a realistic and inclusive human rights local agenda. This 'localization' process is crucial to: i) allow local actors to define a realistic and prioritized ***reform agenda***; ii) ensure that the struggle for legislation on human rights is complemented by efforts to make ***rights 'substantive' and 'real'*** for poor and marginalised people; and to iii) better **connect** international normative frameworks with societal dynamics at country level, since there is no contradiction between maintaining human rights as a global reference and allowing for variations in the content in order to make human rights protection as locally relevant as possible. The recently introduced innovation to request all Delegations to elaborate a local implementation strategy is a step in the right direction.

How to develop a local HR strategy that can be realistically implemented?



3. *Revitalize the political dialogue on human rights by clarifying its objectives while ensuring an inclusive, iterative and result-oriented approach*

The evaluation confirmed the structural deficiencies of the current dialogue processes on human rights, including their overtly formal ('ritual') nature, the focus on government (at the expense of other actors), the disconnection with mainstream cooperation processes and the ad hoc organization. In order to be effective, important changes are needed in the way political dialogues are prepared and

[11] Each of these main recommendations are translated in a set of operational recommendations (see the report – volume 1).
[12] This is crucial also to avoid that the active promotion of human rights in the new post-Lisbon configuration of human rights is left too much to the EU level without fully embarking Member States in the delivery of coherent actions.

conducted. The way forward is to adopt a much more decentralised, inclusive, iterative and result-oriented formats that match the local context and optimally use the potential of the EU's new institutional framework 'post Lisbon'.

4. Overcome the divide between human rights and development through smart forms of mainstreaming and direct support to human rights

The task at hand is to remove silo's that prevent an integrated approach on human rights. Adopting an integrated approach is not only a question of improving the mainstreaming of human rights. It also calls for an optimal use of direct (dedicated) actions in favor of human rights (which mobilize a large share of the funding). An integrated approach implies (i) to reconcile the needs-based and the rights-based approaches; (ii) to better focus on human rights in EU programming and needs assessments; (iii) to exploit, where appropriate, the possibility of retaining human rights as a focal sector in future programming; (iv) to further strengthen the EC niche and comparative advantage to work directly on human rights through dedicated instruments (such as EIDHR) and (v) to actively promote smart forms of mainstreaming human rights[13] in all relevant policies, cooperation instruments and practices. The climate seems ripe for such a qualitative move as societal demands for freedom, social justice and accountability increase and globalisation brings with it an enhanced focus on social and economic rights within a more inclusive and equitable global economic system.

5. Better use the added value of the EC to support systemic reforms that help realizing rights

The EC has increased its support to major institutional reforms linked to governance (e.g. in the justice and security sectors, regulatory reforms, etc.). These have the potential to structurally improve the position of right holders and to structurally improve the human rights situation. To better tap this potential the EC should (i) improve the political economy analysis of the structural reforms; (ii) strengthen the human rights dimension in structural reforms and related EC support strategies by including conditionalities and specific benchmarks on human rights particularly linked to the independence of the judiciary; (iii) associate the various stakeholders in the process (including the right holders); (iv) ensure that (budget) sector support programmes include a component and funds to strengthen the capacity of non-state actors to access justice or enjoy protection; (v) regularly monitor the impact of the structural reform programmes on the human rights situation.

6. Deepen the strategic engagement with citizens, civil society political actors and regional organisations

Human rights are derived from the normative framework developed by the international community and agreed upon by states. Yet the struggle to make rights real is first and foremost a domestic process. If the EC/EU are to provide effective support to these endogenous processes, it needs to listen more to societal dynamics, to define localised human rights strategies (recommendation 2) and to ensure inclusive approaches (recommendation 3). All this, in turn, requires a strengthening of the "actor dimension" in future EU human rights policies. The evaluation findings show that the EC has already quite some experience with engaging with state actors and non-state actors at various levels on human rights related issues. Good practices have been developed, though in a rather ad hoc manner. The challenge now is: (i) to enhance the understanding of societal dynamics so as to better detect windows of opportunities; (ii) to deepen the strategic engagement with actors from civil society and political society (beyond projects) as well as regional organisations (that can act as legitimate norm-setter and monitoring agency); (ii) to diversify the type of actors to be involved; and (iv) to provide smarter and more sustainable forms of support in close cooperation with Member States.

7. Create an enabling institutional environment for effective delivery of a coherent EC/EU action on human rights

The EC/EU should strengthen the overall institutional architecture and its overall capacity to deliver an expanding human rights agenda. At EC level, this implies addressing well-known institutional bottlenecks such as: (i) poor incentives to consistently integrate human rights in all relevant aspects of the partnership with third countries; (ii) gaps in knowledge and capacity; (iii) limited cooperation between human rights specialists and other staff; (iv) the existence of many 'silos' (e.g. within Delegation; between Delegation and headquarters; within headquarters). In this context what deserves more careful consideration is the provision of the 'right mix' of political, managerial and individual

[13] Smart forms of mainstreaming focus on substance and seek to embed human rights in concrete practices on the ground. They avoid bureaucratic approaches to mainstreaming (e.g. by imposing rigid formats or checklists).

incentives – all along the chain - to ensure an effective integration (mainstreaming) of human rights in all relevant policies and instruments. At EU level, the challenge will be to make the new Post-Lisbon configuration work for human rights. Systematic monitoring will be essential to determine whether the new structures and processes help to deliver a more political and coherent human rights agenda and what adaptations are needed to improve overall effectiveness and impact.

1. INTRODUCTION

1.1 Objective of the Evaluation

The thematic evaluation of the European Commission support to respect of human rights and fundamental freedoms (including solidarity with victims of repression) has been entrusted to the EGEval II-lead consortium in the framework of the contract EVA 2007/social LOT2. The consortium is composed by: ADE - Aide à la Décision économique (Belgium), DIE - Deutsches Institut für Entwicklungspolitik (Germany), DRN - Development Researchers Network (Italy), ECDPM - European Centre for Development Policy Management (Belgium), and ODI - Overseas Development Institute (United Kingdom) and DRN is in charge of the evaluation.

In accordance with the ToR[14], the main objectives of this evaluation are:

- to provide the relevant external services of the EC, other EU institutions and the wider public with an **overall independent assessment** of the extent to which Commission's past and current activities (policies, strategies and programmes) have contributed to promote greater respect for human rights worldwide;
- to **identify key lessons** with a view to improving current and future Commission strategies and programmes, taking into account recent EU institutional developments (i.e. the EU Lisbon Treaty).

The evaluation serves policy decision-making and management purposes. The evaluation is ***forward looking***, provides lessons and recommendations for the continued support to respect of human rights. The recommendations present elements to improve current practice concerning programming, designing and implementation of the EU/EC external activities in the domain of human rights.

1.2 Temporal, geographic and thematic scope

This evaluation **focuses on the period 2000-2010**, but take also into consideration the most recent organisational changes and events that have been integrated in the analysis.

During the evaluation, the overall EU institutional set-up changed drastically. The study started with a focus on the structures at Commission level ("EC only") under the prevailing framework *before* the Lisbon Treaty. Yet the study was concluded in the post-Lisbon set up and the related creation of the External European Action Service (EEAS). Under this new framework part of the political and geographic mandate of the EC are transferred to the EEAS. The recommendations coming out of the evaluation, proposed below, should be read in that light.

It is important to note that the reasoning behind this particular temporal focus emphasises the importance of the year 2000 as a cornerstone in the Commission policies and programmes in relation to promotion of human rights and democratic values in its external relations activities. As stated in the TORs, in 2000 'the Commission launched an ambitious reform package for the management of external assistance programmes. It provided for a 'radical overhaul' of programming, the integration of the project cycle with a single body in charge of implementation (EuropeAid), the extensive devolution of project management to Commission delegations. 2000 was also a year in which the EU restated its commitment to human rights and fundamental freedoms through the proclamation of the Charter of Fundamental Rights, by the President of the Council, the President of the Parliament and the President of the Commission at the European Council meeting in Nice'.

The TORs also indicates that the **geographical scope** for this evaluation includes all countries where relevant human rights interventions in external relations are taking or took place in the evaluation period (including spending and non spending activities), excluding countries which have been recognised as accession candidates to the EU[15].

The **funds** covered include Community thematic and geographical budget lines and instruments, notably the EIDHR, the European Development Fund (EDF) and other financial instruments with the exception of humanitarian relief falling under the responsibility of DG ECHO.

[14] The ToRs are presented in Annex 1 in the Annexes' volume.
[15] See COM(2001) 252 final 'The European Union's Role in Promoting Human rights and Democratisation in Third Countries - Communication from the Commission to the Council and European Parliament'.

The evaluation focused as well on the analysis on the broadly called ***'non-spending activities"***, including public diplomacy instruments and notably the political and policy dialogues which are central to the EU approach to human right promotion in non-member countries as stated in the Council Conclusions of the 25 June 2001.

During the implementation of this evaluation, the High Representative of the Union for Foreign Affairs and Security Policy, Catherine Ashton, announced a review of the overall EU policy on human rights, and in this context it was important to ensure a cross-fertilisation between the two processes in terms of content and perspectives.

1.3 Human Rights evaluation: a complex and challenging exercise

This Human Rights Evaluation confronted the team with major methodological challenges. These, in turn, led to clear choices in terms of: (i) clarifying the nature of this evaluation; (ii) delineating a realistic scope; (iii) identifying feasible evaluation questions and (iv) specifying the type of impact assessment that could be produced.

With regard to the nature of this evaluation, it needs to be emphasized that human rights concern the application of normative standards. States are the primary duty-bearers with external agencies playing a supportive role. Donor agencies can opt for a 'human rights based approach' (HRBA) which explicitly frames interventions in the logic of duty-bearers and right holders. If this is the case a normative approach to evaluating human rights can be adopted. Such an evaluation could assess to what extent donor interventions benefit right-holders (particularly those most likely to have their rights violated), strengthen the capacity of duty bearers or other actors to fulfill obligations and responsibilities, strengthen accountability mechanisms, and monitor and advocate for compliance with international standards. However, ***the EC has so far refrained from embracing the HRBA***. Hence, it was necessary to choose for a rather ***'institutional' approach to evaluating EC interventions***, which rather looks at how the institution has organized itself to support human rights through a variety of instruments. By definition this also means that the ***evaluation is primarily of a political and strategic nature*** with a global perspective (i.e. the overall relevance, efficiency, effectiveness and impact of EC interventions).

Defining a realistic scope was the second challenge as human rights cover a very wide range of rights to be promoted in hugely different country contexts, where the action and leverage capacity of the EC/EU also tends to vary widely. It led the team to a focus on evaluation questions that directly addressed key policy and delivery challenges of EC support to human rights, including mainstreaming, policy coherence, complementarity, partnerships with third countries, civil society and regional organizations. This approach was embraced by the Reference Group, which stressed the need to collect evidence on how the EC had managed to engage in the field of human rights ***within the broader and evolving EU institutional set-up*** *(which heavily influences and may limit EC actions).* This was seen as particularly pertinent considering the fact that this was the first worldwide evaluation undertaken in the field of EC support to human rights

Within this framework there was great attention to assessing impact (4 out of the 10 questions deal with impact). However, considering the nature of this evaluation (as a political, strategic and global exercise), the impact questions also sought to determine a feasible scope. This need was reinforced by the fact that support to human rights -much alike support to governance- is a field riddled by contribution problems, notably at impact level . Furthermore, results can by definition only be expected over a longer period of time, at least when focusing on changes in the human culture and related benefits for right-holders.

Measuring the contribution of the EC/EU to the progress of human rights in the world is a multifaceted exercise. Firstly, several actors cooperate in the interventions such as national public institutions, civil society, human rights defenders, beneficiary groups and international organizations. All these stakeholders may exercise an influence on the achievements and shortcomings of the EC/EU actions. Secondly, exogenous factors may determine certain results for the better or the worse (e.g. major changes taking place in the politics of a given country).

By nature, this is a "complex" evaluation. Effects may be emergent, hence the country programme and the diplomatic tools may not be amenable to a linear logic, thus challenging the classical cause-effect thinking. In these complex evaluations the distinction between results (outcomes) and impacts is not always clear-cut. Many of the so-called expected outcomes may be expressed as long-term effect so

that they are akin to impacts. At the same time, "long-term" is not an absolute value or quantity and may vary from a few months to several years especially when human benefits are concerned[16].

All this has implications for the way in which results and impacts are presented in this evaluation. A clear choice was made to focus on the determining factors behind the successes and failures and on the capacity of the EC/EU Institutional structure to positively impinge upon the human rights situation (rather than on indicating a specific effect). Depending on the evaluation questions the level of the effects documented varies, spelling out more often results or intermediate impacts instead of long-term effects in line with the logical diagrams. For instance the EQ 7 on human right defenders and death penalty put the accent on the results of the EC/EU action towards specific target groups or human rights theme. On the other hand the EQ 8 on capacity development goes beyond the results level. It presents evidence of positive impact as far capacity development is concerned for the 'promotion' of human rights. Yet it stresses that the track record is much less positive when it comes to contributing to the 'protection' of human rights. Other critical aspects of the evaluation have been addressed through crosscutting questions encompassing the overall chain of effects from output to results and impact (as for instance in EQ 1 on mainstreaming or EQ 10 on Institutional capacity).

1.4 Structure of the Final Report

The Final Report has the following structure:

- Chapter 1: provides a brief overview of the objectives, the scope and the challenges of the evaluation;
- Chapter 2: presents the main features of the methodological approach as well as the challenges and limitations of the evaluations;
- Chapter 3: presents the subject and context of the evaluation with special attention to the evolving landscape that framed the policy and institutional EU architecture for promoting human rights all over the world and to the new opportunities for pushing forward the HR agenda;
- Chapter 4: provides for each of the ten Evaluation Questions, a summary box and the detailed answer. The evaluation questions tackled 6 main clusters including: i) Mainstreaming of human rights (EQ1); ii) Coordination, complementarity and coherence (EQ2); iii) Actors and partners (EQ3, EQ4); iv) Instruments (EQ5); Achievements of objectives (EQ6, EQ7, EQ8, EQ9); v) EC institutional capacity to deliver on its human rights mandate (EQ10)
- Chapter 5: presents the overall and the main conclusions from the analysis; and
- Chapter 6: presents the overall and the main recommendations.

[16] See also discussions on impact assessment of NONIE initiative (Network of Networks on Impact Evaluation).

2. METHODOLOGICAL APPROACH

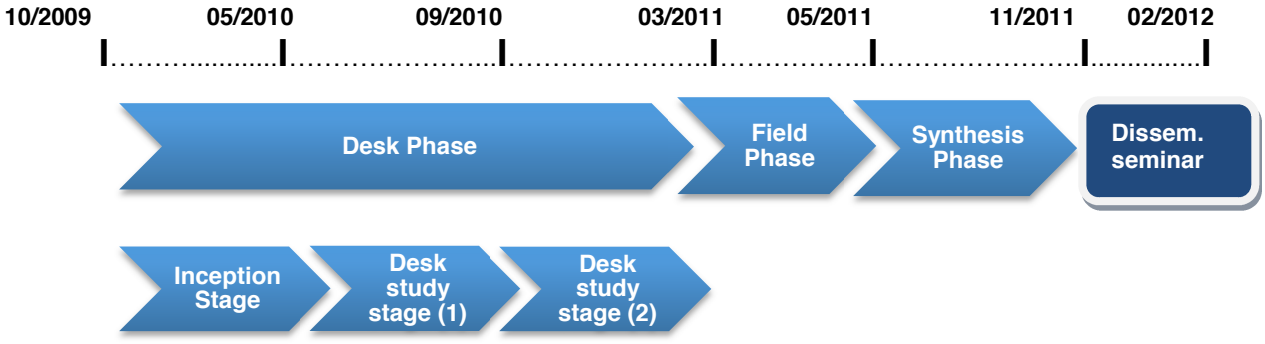
2.1 General approach

The evaluation addresses learning as well as accountability objectives. This evaluation duly takes into account that the EU action in the field of human rights is strongly embedded in and influenced by the ***overall context*** as this determines the arena and space available to promote human rights as a 'core value'. The study looked closely at the evolving landscape for human rights over the past decade and took stock of trends and changes at various levels (international, regional national, local). Therefore, the evaluation team has applied an approach that seeks to analyse the extent to which objectives have been reached as well as the reasons and determining factors behind the observed successes and failures. This evaluation is to be considered as a process, assessing achievements by ***focusing on changes/developments and trends***, rather than assessing achievements against fixed targets.

The methodology applied for this evaluation is based on the approach developed by the former Joint Evaluation Unit (AIDCO 03) now named "Evaluation Unit of DEVCO".

The evaluation has been conducted in four main phases: structuring & collection; analysis & judgment carried out during a desk, a field and a synthesis stages. This exercise produced six deliverables: i) Inventory, ii) Inception report, iii) Desk report 1, iv) Desk report 2 (2 volumes), v) Issue Note on HR policy and vi) Final report. After the approval of the Final report a dissemination seminar open to all EU Institutions, Member States, International Organisations and civil society will be organised. See figure 1 below for detail:

Figure 1 – The process of the evaluation



Tasks	• Definition of the thematic scope • Data collection, typology of intervention and inventory • Analysis of the literature review • EC HQ interviews • Reconstruction of the intervention logic • Propositions of a set of 20 preliminary evaluation questions	• Further development of the descriptive sections of the Inception Report • Validation of the intervention logic • Preliminary findings on the 3Cs • Detailed evaluation matrix for the 10 evaluation questions retained	• EC HQ interviews • Questionnaire survey for a sample of 50 EU Delegations • Preliminary findings and hypotheses for the evaluation questions • Proposal for case studies and methodology for the field missions	• Missions to 5 countries	• EEAS /DEVCO workshop on HR • Answering to the EQs • Drafting conclusions & recommendations • Drafting the Final Report	• Presentation of the final Report
Deliverables	• Kick –off meeting (PPT) • Inception Report	• Desk Report 1	• Desk Report 2	• Field missions debriefing (ppt)	• Issue note on EU HR policy • Draft and Final Report	• Dissem. seminar

The evaluation was managed and supervised by the Evaluation Unit (EV). The evaluation progress was closely followed by a Reference Group (RG) chaired by the EV, and consisting of members of Director Generals RELEX (now EEAS), Development & AIDCO (now DEVCO).

The results of each step were presented in a report, which was then submitted to the JEU and the RG, composed of Human rights specialists from various DGs. The feedback obtained in written form during the meetings and afterwards was considered in the next version of individual report. Reports were then formally approved once perceived as being satisfactory by the Evaluation Unit and the Reference Group.

2.2 The tools and activities of the Structuring Stage (Design of the evaluation)

The methodological framework that served as a basis for the entire exercise is defined in the Terms of Reference of the evaluation.

The first task of the structuring phase consisted in elaborating the **intervention logic** (IL) underlying the hierarchy of the objectives of the EC action to support human rights in partner countries. The IL constituted the basis for formulating the evaluation questions and served as the reference against which the HR strategy and activities have been evaluated.

The second task consisted in defining and structuring a set of **evaluation questions** (EQS) in order to verify to what extent and how the Commission's intended objectives have been achieved as planned. Accordingly, a set of 10 evaluation questions have been elaborated:

Table 1 – Proposed EQs

EQ	Issue - Theme	Full Evaluation Question
EQ 1	HR mainstreaming	*To what extent and how has the EC ensured the mainstreaming of human rights within its overall organization –through adequate procedures, processes, capacity building initiatives as well as incentives?*
EQ 2	Coherence	*To what extent and how has the Commission promoted coherent policies in support of human rights in the framework of EC/EU development cooperation policies and CFSP?*
EQ 3	EC response	*How has the Commission engaged with partner governments on the promotion of human rights, identified the relevant entry points, support strategies, and adapted EC responses to different country contexts (conflict, post-conflict and fragile countries)?*
EQ 4	Actors	*To what extent and how has the EC developed dialogue and partnerships relations with regional organizations as well as civil society organizations to enhance the value of its human rights strategies and programmes in relation to the achievement of its different objectives?*
EQ 5	Instruments	*To what extent and how has the EC ensured a complementary use of the various instruments (geographic and thematic) available?lo supporting human rights*
EQ6	Dialogue	*To what extent and how have the EC/EU human rights dialogues and programming processes (at national/regional level) contributed to advance towards respect for human rights in third countries?*
EQ 7	HR guidelines	*To what extent and how have EC efforts to ensure an effective application of EU human rights guidelines contributed to progress towards respect for human rights in third countries?*
EQ 8	Capacity development	*To what extent and how have EC supported capacity development programmes targeted at national governments, regional organisations and civil society contributed to empowering/enabling these actors to promote human rights?*
EQ.9	Geographic programmes	*To what extent and how have EC supported geographic programmes (directly or indirectly dealing with human rights) contributed to promoting human rights in third countries?*
EQ 10	Institutional capacity	*To what extent and how has the Commission developed its internal capacities to deal effectively and efficiently with human rights, ensured political leadership and contributed to establish a conducive overall institutional architecture for human rights in EU external action?*

The EQs also addressed the following **evaluation criteria** (**relevance, efficiency, effectiveness, impact**) of the Development Assistance Committee (DAC) of the OECD, along with **coherence** and **EC added value**. They also considered the complementarity which is of particular importance for this evaluation.

Table 2 - Evaluation Questions and Evaluation Criteria

Cluster	*EQs*	*Evaluation criteria*					
		Relevance	*Effectiveness*	*Efficiency*	*Impact*	*Coherence*	*EC added value*
Mainstreaming	*EQ 1*	◊	◊	◊		◊	◊
Coherence	*EQ 2*	◊	◊			◊	◊
Actors & Partners	*EQ 3*	◊	◊				
	EQ 4	◊	◊				
Instruments	*EQ 5*	◊	◊	◊		◊	◊
Achievement of objective	*EQ 6*		◊		◊		◊
	EQ 7		◊		◊		
	EQ 8		◊		◊		
	EQ 9		◊		◊		
Institutional capacity	*EQ 10*		◊	◊			◊

In order to facilitate the data collection as well as the production of answers to these questions at a later stage, the EQs were further structured. For each of them, ***judgment criteria and indicators*** were defined. Furthermore, for each indicator, information sources and the tools for collecting the information were identified. Subsequently, the evaluation questions were gathered in a ***matrix*** that served as the basis for the collection of raw data and information throughout the entire evaluation process.

It is important to highlight that the choice of the strategy for data collection and analysis was determined by a careful balance between *utility, credibility and feasibility of the data* and the fact that analysis of data needs to reflect the *level of aggregation* corresponding to a thematic evaluation, without losing *solidity and objectivity of the evidence.*

2.3 The tools and activities of the Desk Phase (Collection of evidence and analysis)

For the purpose of answering the questions, the evaluation team collected data that were already available (secondary data) and applied data collection tools with a view to obtaining new information (primary data). The specific tools used during the Desk Phase are described hereafter:

- ***Documentary review***. In view of the complexity and wideness of the subject, the documentary analysis of actual EC practices towards HR has a special importance. More than 250 documents of different kinds have been reviewed. This task involved collecting useful information from secondary sources, including a wide range of official normative and policy EU/EC and international documentations as well as specific reports related to the HR issues and academic literature. For the selected countries the team proceeded with the collection of relevant *programme documents* (financing agreement, project synopsis, monitoring reports) and of other *reports and indicators on the country's* HR situation (including UN *UPR reports and NGOs reports and significant literature*)
- ***Inventory* of spending activities.** The inventory of spending activities presents a complete overview of EC financial contributions to HR projects and programs over the period 2000 to

2009 and, in order to get an insight into more recent trends, it also considered the financial data for the year 2010. It was not possible to identify quantifiable financial amounts directly linked to human rights in budget support programs and in the HR mainstreaming into other cooperation sectors. It is against this background that these two issues have been analysed separately, without exploring the financial implications.

- ***CSP analysis.*** The analysis has considered a sample of CSPs for 20 countries that had been selected on the basis of six criteria: HR thematic priorities; HR dialogues in third countries; the partnership with the EC; HR mainstreaming in specific cooperation sectors; balance of regions; financial amount of cooperation in HR sectors. The main aspects that were taken into account for the analysis were the following: i) the presence of HR-related sectors in both focal and non-focal areas of EC intervention; ii) the consideration of CPRs and to SECRs in the analytical section; iii) the inclusion of HR in the partner country's agenda; iv) the reference to UPR; v) the partner country's position in relation to international Conventions and UN Treaty bodies. The results of the analysis are outlined in Annex 10.
- ***Interviews (semi-structured).*** More than 100 stakeholders have been consulted both in Brussels and at country level. Interviews were used in this evaluation mostly to collect information, opinions and perspectives on: i) HR policy and strategies, ii) implementation issues and iii) to understand the changing role of the EU/EC in relation to new organisational structure. They included EU Institutions Headquarters (the Commission, EEAS, European Parliament, the Council), EU Delegations, NGOs, think tanks, selected practitioners, experts activists, and observers of human rights matters.
- ***EU NGO Forum on Human Rights.*** The evaluation team attended this seminar that was held in Brussels on 12nd and 13rd of July 2010. It was an opportunity to meet representatives of the EU, EU Member States and the civil society, particularly from the global South, as well as international experts, and to participate in workshops and discussions. The discussions focused on the challenges and the opportunities of the EU's interaction with NGOs working on human rights against the backdrop of the entry into force of the Lisbon Treaty, most notably the changes that the Treaty has introduced into the EU architecture a**nd the functions relating to human** rights strategy making, policy formulation and the implementation of programmes and projects.
- ***Questionnaire*** (**EU Delegations).** The purpose of the questionnaire survey was to add information and data to the *evidence-base of the evaluation*. Experience from previous evaluations has shown that it is critically important to "hear the voice of EC staff on the ground". This tool was intended to provide an opportunity to express such voice and to inform the evaluation team on what it means to actually implement existing EC policies with regard to human rights in a variety of local country contexts. This not only helped to collect essential data but also to gather good practices and lessons learnt. Another important challenge of this evaluation was to define the relevance and the implication of the HR mainstreaming in other cooperation sectors programmes at geographical and thematic level. The questionnaire has enriched the evaluation also in this regard. The questionnaire has been sent through the web to 50 EU Delegations (EUD) and 32 of them have responded. The list of the participating Delegations and the questionnaire results are presented in Annex 5 and integrated in the conclusions of the Final Report.

Box 1 – Issues addressed in questionnaire to EU Delegations

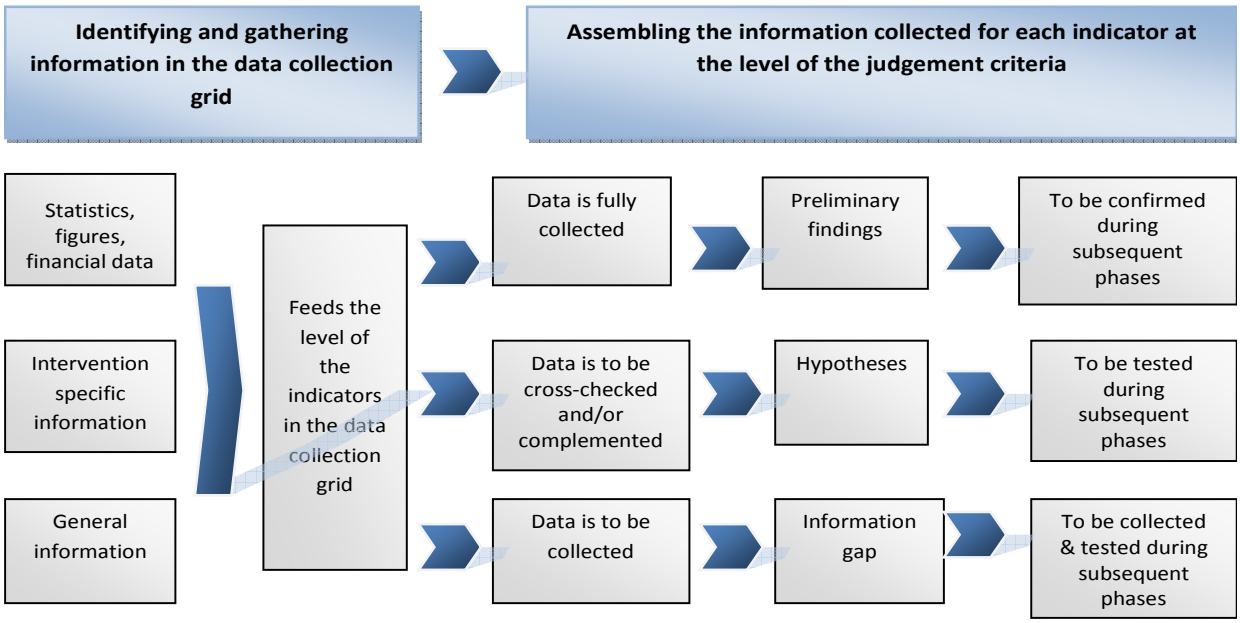
T*he main issues covered by the questionnaire are the following:*

- *Quality of the EC overall policy framework;*
- *EC strategy of HR at country level;*
- *Use of the different types of dialogue in supporting human rights;*
- *Role of geographical & thematic instruments;*
- *Achievements of mixing these different instruments in specific situations/countries;*
- *Mainstreaming of HR across sectors, themes and instruments;*

- *Institutional capacity to deal with HR;*
- *Coordination and coherence;*
- *Participation of the civil society.*

At the end of each phase, the strategy for data collection and analysis for the subsequent phases was confirmed or amended. To this end, the process showed by the figure below was used, as it allowed considering how the data collection and analysis process feeded into the *evaluation matrix grid* and highlighted information gaps (figure 2).

Figure 2 – Data collection and analysis



2.4 Activities and tools for the field phase (Collection of evidences at country level)

To complete the data collection conducted from the desk, 5 missions had been carry out in the following countries: Ethiopia, Morocco, Vietnam, Guatemala, Kazakhstan. The visits were prepared in close collaboration with the EUD concerned.

The selection is linked to a combination of various criteria that includes geographic considerations (i.e. inclusion of countries from various regions), the specificities of the country context (i.e. the high complexity of human rights situation), as well as amount of the EC financial contribution to the country.

In addition, countries where the EC is involved in formal policy dialogue on HR (i.e. explicitly referring to international framework and instruments), as well as countries where the strategies are more informal have been included. Finally, countries where governments are more open to HR and countries where the political dialogue is more challenging have also been considered.

The overall approach chosen for each field mission is based on three building blocks: i) selecting major *"case studies"* (which represented the core of the mission) linked to a critical human rights issue in the country in order to carry out an *in-depth analysis* of the EC/EU response strategies. To this extent as well, the different kinds of *dialogue* and how they feed the geographical and thematic instruments will be taken into consideration; ii) considering -in *less detail*- a limited set of *other dimensions of the EC support* to human rights that underpin the overall country strategy programme; iii) collecting, where feasible, additional evidence that could help the evaluation team to address the various *global evaluation questions* that were agreed upon with the EC Reference Group.

In addition to the 5 country missions, the team participated in a Seminar in Amman intended to collect the perspectives and direct experiences from stakeholders from the ENP regions on the situation of HR.

- **Seminar in Amman** "Human rights and democracy support initiative to the structured dialogue on the involvement of civil society and local authorities (CSOs & LA) in EC external cooperation". Over 150 participants from the civil society in North African, Middle Eastern and Eastern European countries as well as from the European Commission Headquarters, EU Delegations, Member States and European Parliament have had a unique opportunity to exchange and network among themselves. Challenges of protecting and promoting human rights in the region were addressed by all participants and recommendations were made, in addition, best practices on how the cooperation between all stakeholders should be further enhanced in order to reinforce work in this area were presented.
- **Field missions.** The result of the field phase is a synthetic country paper for each of the country field missions (for internal use) and a PPT for the debriefing to the RG. For any event, prior contact with EU Delegations in the field was taken in order to optimize the missions' results. A preliminary information package detailing the objectives of the mission, the institutions and types of stakeholders to be visited and other pertinent information was sent in advance.
- **Case study.** The case studies were primarily linked to the 5 planned field missions in Ethiopia, Morocco, Guatemala, Vietnam and Kazakhstan. In a brief visit to a country the team cannot and should not try to cover all EQs. The mission focused on selected case studies (with the view to ensuring the "right mix" of case studies in the 5 trips). The focus on the case study during the field visit does not mean that one should ignore other interesting matters occurring in that particular country. The objective was to systematically provide a view of the EC strategy and action in supporting HR, whilst taking into account the country context. Given the heterogeneity of the country selected (region balance) and the different combinations of the thematic HR aspects in each country, the case studies mostly had a formative purpose to allow a better understanding of the dynamics in different contexts and to extract lessons. Case studies are not exclusively linked to field missions. If gaps remained in the overall analysis, the team used this tool for a more refined desk work. The case studies were constructed so as to be as harmonised as possible and to obtain comparable data and information, in order to make possible generalisations at the level of the overall findings and conclusions.

2.5 Tools and activities of the Synthesis Phase (Analysis and Judgment)

The results obtained during the desk phase and their subsequent validation and/or revision through the field phase constitute the basis for the synthesis exercise leading to the main conclusions and recommendations produced by the evaluation and presented in this report.

Information from various sources was combined, cross-referenced and cross-checked, and this served as the basis for developing the argumentation. The evaluative approach specified by the ten evaluation questions included different methods of data collection that were used to cross-check the information obtained (i.e. analysis of 32 questionnaires from EC Delegations; analysis of CSPs for 20 countries for 2 programming periods; 5 field visits; participation in 2 major EU seminars with civil society organisations, literature review of more than 250 documents; structured and unstructured interviews with more than 100 stakeholders in Brussels and on the field; a brainstorming workshop with EEAS and EC staff in Brussels; identification of the intervention logic; statistical analysis).

The analysis was carried out on a question-by-question basis in the framework of an overall design across all questions. The analysis is required to translate data into findings, which themselves call for a judgment in order to be converted into conclusions. The type of analysis that is being primarily applied in this evaluation is the *contribution analysis*. This analysis confirms or disconfirms cause-and-effect assumptions on the basis of the chain of reasoning. The chain of reasoning explains how evaluation questions are answered, connecting data, findings and conclusions.

A *meta-analysis* which extrapolates upon findings of other evaluations and studies has been used to a limited extent due to a lack of EC evaluations of this subject, at strategic level. It regarded mainly EIDHR projects, HR independent organisations' reports and other literature.

A brainstorming session was held with key actors in EEAS and DEVCO and served as a pilot experience of an *explanatory analysis* aiming at improving the understanding of crucial elements of

the evaluated area. This kind of tool is especially important when themes are wide and complex, and concern policy issues as well as institutional organisational matters. The specific tools used in the synthesis phase are presented below:

- **Brainstorming session.** Parallel to this evaluation, the EU has announced a major 'review' of its human rights policy, expected to become public at the end of 2011. In this context, a brainstorming session was organised on May 12th, 2011 and attended by relevant functionaries from EEAS and DEVCO. The purpose of this session was to ensure a cross-fertilisation between the two processes (the on-going evaluation and the upcoming review), most notably to introduce some 'food for thought' into the review, to check if the evaluation process was on track and to have some feedback to proceed to the next phase..,.
- **Issue note on the HR policy** builds on the outcome of the brainstorming, and further develops a number of points for reflection without pre-empting the outcomes and conclusions of the final evaluation report. It first focuses on key contextual factors that are currently (re-) shaping the human rights landscape. It then presents a set of important challenges to ensure a more credible and effective EU human rights policy.[17] It concludes with concrete pointers on how the EU might review its approaches to political dialogue, HR mainstreaming and institutional capacity to deliver.
- **Consistency table.** A table for internal use was developed in order to check the consistency (and the transparency) of the logical chain findings – conclusions – recommendations. This allowed the team to see if all issues have been integrated in the evaluation process and if all conclusions are based on clear findings. Triangulation was used to analyse and cross-check the quantitative and qualitative data collected. This analytical approach allowed the evaluation team to synthesise the data collected in the most appropriate way.

2.6 Limitations & challenges

The evaluation struggled with the sheer scope of the HR theme, the heterogeneity of the local environments, the changes of the international context and of the EU institutional set-up. The Lisbon Treaty established a new institutional configuration for the EU with the creation of the European External Action Services and the enhancement of the role and responsibilities of the EUDs, which adds to the complexity of assessing EC/EU contributions.

To this extent, several limitations were encountered in the process of executing the evaluation. The main ones include:

- The ***huge diversity of country contexts*** (e.g. in terms of overall political conditions, type of governments, HR situation, actors involved, etc.) reduces the scope for drawing general conclusions. Evidence has been collected though a multiplicity of sources but country case studies, selected for the diversity of their features, constitute a key tool for in-depth analysis to acquire a thorough understanding of the country contexts, as well as of the extent to which the EU/EC strategy responded to the specific situation.
- The highly political nature of HR means that policies and actions are decided upon in constant interaction between EU and Member States at various levels. This, in turn, makes it difficult to "isolate" and assess the role played by the EC in the broader EU arena.
- The requirement on the ToR of assessing "*non-spending" tools* that are sensitive political issues, such as dialogues, enhanced the strategic challange of this exercise.
- The secrecy surrounding data on EC/EU interventions in HR, notably in relation to dialogues and local implementation strategies that are considered confidential. In addition, the EU human rights reports in some countries are of restricted use even for EC staff.
- The nature and the different format of HR dialogues between EU and non member countries made it hard to compare the effectiveness of this tool.
- The scarcity not only of evaluation evidence but also of ***documented institutional learning*** on HR within the Commission (e.g. no internal stocktaking or assessment of collective efforts in the field of mainstreaming).

[17] Involving extensive desk analysis and five field missions (Ethiopia, Guatemala, Kazakhstan, Morocco and Vietnam).

- The variety of (diverging) perspectives and approaches on human rights issues and engagement strategies within the geographic and thematic directorates and sections (both at HQ and in EC Delegations).
- The inadequate coverage of HR (apart from specific EIDHR projects' evaluations) in strategic EC evaluations, which reduced the availability of meaningful secondary data from this source;
- The difficulties in obtaining reliable figures from **EC databases** when elaborating the inventory of spending activities (see volume 3 "Inventory of EC interventions") due to encoding inaccuracies and the use of broad thematic categories for the classification of HR intervention. For instance, it was not always easy to identify the pertinence of the financed interventions in the field of human rights based on the relevant DAC codes and the selected key words: data on CRIS often do not display DAC codes, in other cases the encoded DAC codes are wrong, misleading or simply do not exist. Moreover, quite a number of EC interventions have a wide scope and, consequently, could have been attributed to different categories at the same time; this implies that a number of choices were made by the evaluators.

3. THE EVOLVING EU LANDSCAPE FOR HUMAN RIGHTS

This section briefly reviews the gradual incorporation of human rights as a 'core value' in the external relations of the EC/EU. It focuses on key features of the European policy and institutional architecture for promoting human rights abroad as it evolved over time as a result of progress in the international normative framework, major external events and internal dynamics within the Union. It furthermore takes stock of recent contextual factors that provide new opportunities for the EU to push forward the human rights agenda.

3.1 Timid start for human rights in Community policy

The 1958 Rome Treaty, which established the European Community, did not include foreign policy objectives, reflecting its origin as a project of economic integration. In 1970 the first separate framework for foreign policy cooperation was created, i.e. the European Political Cooperation (EPC). From the outset, human rights issues featured on the agenda of the EPC. However, an explicit declaration of human rights as a foreign policy objective did not occur until 1986[18]. Initially the promotion of human rights took place through declaratory diplomacy and dialogue. Only since the late 1980s instruments with "more teeth" were used[19]. While EU member states widely agreed on the importance of promoting human rights externally they were (and are still) often divided over how to achieve this in practice and over whether or not to prioritize human rights in particular contexts. Some EU member States did not wait for a full-fledged European approach, and started to integrate human rights in their foreign and aid policies during the 1970s (e.g. the Netherlands and the Scandinavian countries).

In this initial period, the ***European Commission was rather reluctant to embrace this agenda***. Partly, this related to its explicit choice for a 'neutral' stance vis-à-vis third countries. Community's aid was supposed to be non-political, its relations with the 'Third World' free of the vestiges of colonialism and distinct from the superpowers[20]. Typically, the first two Lomé Conventions (1975-80, 1980-85) did not refer to human rights at all, amongst other because ACP countries refused aid with political conditions attached. At the Community's insistence, the Lomé III agreement (1985-90) timidly created a first opening to consider issues of human dignity and human rights. Yet there was still a widespread resistance to use EC aid and trade instruments to pursue a human rights agenda, despite the growing insistence of the European Parliament, which increasingly acted as a "norm entrepreneur" in the field of human rights[21].

The ***end of the Cold War*** was in many ways a turning point. The collapse of communism ended the 'bipolar' confrontation on human rights and opened a new field on relations with the countries of East and Central Europe. The resulting partnerships focused on supporting economic and political reforms

[18] See Smith, K.E. 2008. *European Union Foreign Policy in a Changing World*. Polity Press. Cambridge, UK, p. 111
[19] *Ibid*, p. 116.
[20] Frisch, D. 1997. *The political dimension of Lomé*. The Courier, no 166. See also Sebahara, P. La cooperation politique entre l'UE et les Etats ACP. Bilan despolitiques et des pratqiues sous les quatre Conventions de Lomé 1975-1998. Document de réflexion, ECDPM nr 7, Juin 1999.
[21] From the 1980s onwards the EP became an active promoter of political conditionalities. Since 1983 it adopts an Annual Report in Human Rights in the World.

(including respect for human rights). This new approach soon permeated into cooperation agreements with other regions. Political conditionality (based on a mix of positive and negative measures) became an accepted principle for both the EC and Member States.

3.2 The Maastricht Treaty and gradual build-up of the EU architecture on human rights

All these policy changes found their way into the 1992 Maastricht Treaty, which created a European Union (EU) composed of three pillars, including a 'Common Foreign and Security Policy'. Within this new political and institutional framework, the status of human rights in EU external relations was fundamentally upgraded and legally enshrined. Acknowledging that he EU is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, the Treaty of Maastricht considers the development and consolidation of human rights and fundamental freedoms as an ***objective of both the CFSP*** (second pillar) ***and EC development cooperation*** (first pillar).

From then onwards, the EU gradually developed its ***normative and institutional architecture*** for dealing with human rights in its external relations[22]. EU policy in support human rights in third countries has been articulated and developed in Commission communications - which also included clear commitments to 'mainstreaming' human rights in all relevant areas of HR intervention[23] - Council conclusions and EP resolutions over the years. The EU also developed a set of Guidelines on particular human rights issues[24]. As stipulated in the Treaty mandates[25], the objective of developing and consolidating democracy and the rule of law, and respect for human rights and fundamental freedoms is now a feature of all forms of EU co-operation with the various countries and regions. The recognition of human rights as a cross-pillar foreign policy objective is reflected in the inclusion of a human rights clause in Agreements[26] with third countries and in the commitment to promote this core value in country strategies, dialogues and all relevant external assistance instruments. Both the European Consensus on Development and the new generation of regional partnership frameworks (such as the 2007 Joint Africa-EU Strategy) reiterate the centrality of human rights in the EU vision on development.

All European Union Institutions (Council, Commission, Parliament) are involved in activities supporting the respect of human rights. This is done through a wide range of diplomatic-political tools (such as joint actions, common positions, political dialogue, diplomatic démarches and specific human rights dialogues) as well as different geographic and thematic financial instruments (including the dedicated European Instrument for Democracy and Human Rights – EIDHR). The EU also plays an active role in the United Nations and other International Organisations. The UN Human Rights Council remains the key forum in the worldwide promotion and protection of human rights, and the EU contribution to its discussions is a fundamental component of the EU's external action. EU is also contributing to human rights activities of the Organisation for Security and Co-operation (OSCE), the Council of Europe and the African Union (AU).

As a result of these various efforts, the EU clearly positioned itself as a lead actor in the promotion of human rights since the end of the Cold War, with the distinctive feature that it continues to privilege 'persuasion through dialogue' and remains reluctant to use negative measures (for security/commercial reasons but also because of scepticism about the effectiveness of sanctions) except as a political tool of last resort.

[22] See Annex 2.
[23] These include the Communication from the Commission to the Council and the European Parliament: '*The European union's role in promoting human rights and democratisation in third countries'* (COM 2001, 252) and the Communication from the Commission to the Council and the European Parliament: '*Thematic Programme for the promotion of democracy and human rights worldwide under the future Financial Perspectives (2007-2013)'*, COM (2006) 23.
[24] Guidelines to EU policy towards third countries on the death penalty, June 1998; guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, April 2001; EU guidelines on children and armed conflict, December 2003; EU guidelines on human rights defenders, June 2004; EU guidelines on promoting compliance with international humanitarian law (IHL), December 2005
[25] Article 11(1) TEU; Articles 177(2), 181a(1) TEC.
[26] Since 1995 the EU has systematically included democratic principle and human right observance as an essential element in all its formal agreements with other countries (so-called *"Human rights clause").*

3.3 Confronting the challenge of implementation

The EU architecture for dealing with human rights may look impressive at first sight. Yet from the outset, the EC/EU also had to face major implementation challenges in turning its human rights pledges into practice. During the desk phase, the evaluation team reviewed annual reports related to human rights by the EU and the EP, existing (yet rather scarce) evaluation material and reviews of the EU's human rights by civil society organisations. This documentary analysis reveals a set of ***structural impediments to effective EC/EU action*** in the field of human rights, including:

- *Hostile environments.* In many non-member countries the overall environment for promoting human rights is not conducive. The governments involved tend to develop a quite sophisticated façade of laws and institutions to display an apparent concern for human rights and commitment to reform. Yet this often barely hides the reality of an authoritarian regime unwilling to consider change if not a deterioration of human rights standards. This confronts the EU with multiple strategic and operational challenges as well as with the limits of its leverage capacity (especially in non-aid dependent countries).
- *EU credibility gap.* The universality of human rights may be legally enshrined, yet in practice this notion is often contested by authoritarian regimes. Europe is often accused of trying to "export" so-called European values to other countries. In addition to this, Southern governments tend to berate the EC/EU for major gaps between its norms and practices, reflected in the use of 'double standards' or important human rights inconsistencies in other external and internal[27] EU policies, that affect the credibility of EU action.
- *How central should human rights be in EU external actions?* While efforts have been made at various levels to create greater awareness on human rights and translate this commitment into practice, the documentary analysis clearly suggests that human rights are still too often treated as "a separate issue". It is considered to be too sensitive and politically threatening for the relations with partner countries as well as for the smooth delivery of development programmes and related aid disbursements. This often leads to a situation whereby human rights are not receiving consistent political back up. It also hampers the utilisation of all components of EU external action to reach the EU objectives in relation to human rights[28].
- *Downstream delivery challenges.* Existing evaluation material on human rights confirms the political, legal and technical complexity of promoting human rights from the outside. The EC, much alike all other donors intervening in this area, is confronted with a host of thorny questions and capacity challenges in terms of providing relevant, well-targeted and flexible support -through appropriate programming processes and procedures[29]- that can contribute to effective and sustainable changes on the ground.

3.4 New opportunities for a more credible and effective EU human rights policy

The landscape for human rights is constantly evolving. The evaluation team sought to take stock of key trends, evolutions and dynamics at different levels (international, regional, national, local). In the process, several (recent) positive evolutions could be noted providing new windows of opportunity:

- The international and European[30] normative framework for human rights continues to expand and to be refined, including through dynamics at regional level[31]. This, in turn, is contributing to

[27] This refers to the so-called "internal-external gap" or "domestic human rights deficit" within the Union. Thus, the 2009 Annual Report of the European Parliament includes a renewed plea for a strong and effective EU human rights policy that guarantees greater consistency between the EU's internal and external policies. The EU accession to the European Convention of Human Rights (ECHR), made possible by the Lisbon Treaty, could help to address this gap.
[28] This has been systematically criticized by European NGO organizations. For a recent example see: FIDH, Contribution to the Informal COHOM dedicated to the strategic review of the EU human rights policy. October 2010.
[29] This was confirmed in the framework of a recent "structured dialogue" between EC, EU institutions, Member States and civil society organizations working on human rights
[30] Article 21 of the Treaty on European Union clearly spells out the legal obligations of the Union with regard to human rights in its external action.
[31] Thus the African Union (AU) is increasingly seeking to define its own agendas and norms. To this end it is building an 'African Governance Architecture' (AGA). Within this framework it is elaborating a new African policy framework on human rights

the emergence of new EU policy frameworks based on ***'rights-based approaches'*** in development[32].

- The struggle for better human rights legislation is increasingly complemented by efforts to make rights 'substantive' and 'real' for poor and marginalised people. This is reflected in processes of ***'localising' human rights***, particularly social and economic rights, with a view to fostering inclusive growth and social justice[33].
- The deepening of inequality and poverty in many parts of the world has led to a growing focus on power relations and systemic/structural factors that perpetuate poverty. This has pushed governance, institutional change and regulatory reforms to the forefront of the agenda. By investing in these structural reforms donors can indirectly contribute to creating a more enabling environment for human rights.
- The growing realisation that a widening and deepening global economy carries with it profound implications for human rights (both positive and negative). This economic dimension is quickly moving to the forefront of the human rights agenda. Current debates focus on the role that human rights standards should play in formulating economic and social policies, on the human rights responsibilities of transnational corporations and on the role of the state as 'guardian' of human rights (including labour rights) within the context of the global economy. This highlights the critical need for global players (such as the EU) to contribute to a more ***inclusive and equitable global economic system***.
- Europe has been projecting itself as a frontrunner in the promotion of human rights worldwide. The new political and institutional configuration established by the ***Lisbon Treaty*** (and the related creation of EEAS) has sparked expectations of more coherent and effective human rights action by the EU.
- ***Growing societal demands arising 'bottom-up'*** in many parts of the world (epitomised by the recent upheavals in North Africa and the Middle East) provide major opportunities for the EU to support endogenous human rights dynamics.

In order to better respond to these contextual changes and new opportunities, the High Representative for Foreign Affairs and Security Policy, Catherine Ashton, announced a major 'review' of the EU policy on human rights. The stated objective is to integrate human rights as the ***"silver thread" throughout all EU external action***. The new policy is due to come out by the end of 2011. Yet the Arab spring has already led to new policy orientations in the European Neighbourhood Policy (ENP). In a recent Communication, the EU formulated a new approach that would put the "shared commitment to the universal values of human rights, democracy and the rule of law" at the core of the partnership relation. Increased support would be "conditional" on effective progress in these areas. The EU also commits itself to "uphold its policy to curtailing relations with the governments engaged in violations of human rights including by making use of targeted sanctions and other policy measures"[34].

All this suggests that the EU policy and institutional framework on human rights finds itself at a critical juncture. The present evaluation could provide further 'food for thought' for the ongoing review process.

4. ANSWERS TO THE EVALUATION QUESTIONS

This chapter presents the answers to the ***ten Evaluation Questions***. Three different levels have been used, providing three levels of reading:

- ***Answers*** to each Evaluation Question (EQ) in the form of ***summary boxes***;

[32] Though the EC has not formally embraced the 'rights-based' approach to development, key policy documents increasingly use a language of 'rights' and 'entitlements'. A case in point is the 2010 EC Communication "An EU policy framework to assist developing countries in addressing food security challenges". For the first time, it explicitly recognizes that access to food can be improved by applying the "right-to-food" approach in the context of national food security.

[33] For brief overviews see: ODI. 2001. *Economic Theory, freedom and Human Rights: The Work of Amartya Sen*. ODI Briefing Paper. IDS Policy Briefing. 2003. *The rise of rights. Rights-based approaches to international development.* Issue 17 May 2003 and Foresti, M and others. 2010. *Human Rights and pro-poor growth.* ODI Project Briefing, No 34

[34] European Commission and European External Action Service, 2011. Joint Communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission. "*A New Response to a Changing Neighbourhood". A Review of European Neighbourhood Policy*. Brussels, 25 May 2011, p. 2-3

- ***Findings and analysis*** on which each answer is based presented for each Judgement Criteria (JC) usually completed by concrete examples, good practices or figures included in boxes or diagrams;
- **Evidence and facts** on which the findings are based, as provided in the Data Collection Grids for the general-level data collection (Annex) which relates to the specific information sources with the indication of the annexes at the level of the Indicators (I) under the EQs and JCs to which the different sections of this chapter refer

4.1 EQ 1: Human rights' mainstreaming

EQ 1. To what extent and how has the EC ensured the mainstreaming of human rights within its overall organization – through adequate procedures, processes, capacity building initiatives as well as incentives?

Background

Mainstreaming human rights is a key component of this evaluation. Beyond the provision of direct support to the promotion of human rights, the EC has also committed itself to 'mainstream' human rights in the internal and external actions of the EU. This is a legal obligation derived from the Treaties that has been reaffirmed and elaborated in various key policy documents, including the 2001 Communication on the European Union's Role in Promoting Human Rights and Democratisation in Third Countries[35]. In order to assess the degree and quality of EC mainstreaming strategies, the evaluation team has followed two main paths:

(i) it carried out a desk study (including through interviews) of EC mainstreaming approaches in four selected policy areas (i.e. food security, health, trade, migration and asylum) and two specific regional frameworks (i.e. European Neighbourhood Policy and Asia) [36]

(ii) it formulated a specific evaluation question (EQ 1) to assess the existence of adequate internal organisational conditions for an effective mainstreaming of human rights.

Answer

*On the whole, the progress on mainstreaming human rights in EC/EU action appears to have been limited. While the political discourse in favor of human rights, the overall awareness among staff and the development of new policies with a stronger human rights focus (e.g. in the area of food and access to health) have increased substantially**, coherent action on mainstreaming remains ad hoc, unsystematic and insufficiently supported from the hierarchy**.*

*The desk analysis of six concrete areas where EC sought to mainstream human rights shows **the phenomenon of 'dilution' of the human rights component as the cycle moves downstream** (i,e. from broad political pledges to clear policies, coherent programming, choice and combination of instruments, selection of actors, suboptimal use of human rights clauses, etc.). All this is compounded by a lack of even basic systems to monitor and evaluate progress in relation to mainstreaming. This dilution is related to **political resistance of partner countries** but also to major **internal weaknesses at EU level**, such as limited political leverage and inconsistent decision-making with regard to the place and weight of human rights in EU external action*

*The EU's difficulties to reconcile values and interests have been widely documented and criticized by media and civil society**. The Arab Spring was an eye-opener on the limits of the "stability versus human rights approach"** and may open perspectives for a more serious approach to mainstreaming human rights. Yet the evaluation also shows that within the EC there has been a marked lack of political and managerial leadership to provide adequate incentives to promote*

[35] Important references to the commitment of mainstreaming can be found in the 2005 European Consensus for Development; the EC Guidelines to mainstream human rights in Country Strategy Papers; the Regulation n. 1899/2006 for the EIDHR for the period 2007-2013; the EU Guidelines on human rights dialogues; and the various policy documents related to mainstreaming human rights in ESDP missions.

[36] Five main selection criteria were applied: (i) existence of normative frameworks; (ii) EC expertise in the field: (iii) leverage/influencing power of the EC; (iv) need to reflect a diversity of policy areas and regions; (v) inclusion of a key EU internal policy area (migration) with an important external dimension.

mainstreaming or to ensure internal quality control (e.g. through iGSG) or accountability. While there has been quite some capacity development among staff (amongst others through 'learning by doing' and training), there is still ***a generalized deficit of practical guidance on how to mainstream human rights.***

(i) Main messages from the desk review

This section presents a summary of the rather extensive desk study focusing on EC mainstreaming efforts in the four selected thematic areas and two regions[37]. For each of these six entry points into the mainstreaming question, the evaluation team analysed the relevant normative and policy frameworks; the respective EC response strategies (through country and regional strategy papers and thematic instruments) and the key implementation challenges encountered.

The following global picture emerges from this desk analysis:

- *Overall sensitivity to human rights.* In the four policy areas and two regions selected for the desk study one can observe a clear sensitivity for human rights. The push for this can derive from the evolutions in the international normative framework which further specify particular rights (e.g. women's and children rights or the right to food or health), upon which the EC builds or which it actively seeks to promote[38]. The decision to include a human rights clause in all partnership agreements (since 1995) provided another powerful drive, particularly in the field of trade and in the regional partnerships (ENP, Asia) which all contain declarations on human rights as an assumed shared value. Internal political imperatives (primarily linked to security concerns) were paramount in putting migration more firmly on the agenda of EU external action and related push for inserting readmission clauses into association and cooperation agreements. From the outset concerns were raised on how human rights would be mainstreamed in this area of external action as well as in the internal policies of the Union and its Member States. The desk analysis suggests that there has been a growing and systematic consideration of human rights issues in the European debates and high-level engagements on migration and asylum.
- *Development of adequate policy frameworks.* Sensitivity to human rights is however a first building block of a mainstreaming strategy. A second building block consists of elaborating clear policy frameworks that can guide EC officials (across the board) and partners in third countries on how to concretely mainstream human rights in different policy domains. The six areas reviewed offer a mix of experiences. In the sector of health, the EC quite soon developed policies that had a strong human rights component focusing on vulnerable groups (e.g. children, women) and specific rights (e.g. sexual and reproductive rights), while considering responsibilities for addressing these rights at different levels (national, regional, global)[39] and encompassing trade-related elements (e.g. avoiding trade diversion into the EU of certain key medicines). Building on the earlier mentioned international debate on 'Global Health', the EC developed in 2010 a new vision on the 'right to health', calling for the application of a 'rights approach' in all EU internal and external actions[40]. A similar, very recent evolution can be noticed with regard to the 'right to food'. Food aid and food security have been longstanding policy issues and areas of expertise of the EC. Fuelled by international normative developments and several intermediate steps, in 2010 the EC defined an ambitious new vision on food security that explicitly recognises that access to food can be improved by applying a 'right-to-food approach'[41]. In the area of migration and asylum efforts were also deployed to develop a more coherent policy framework that integrates human rights considerations. With regard to trade there is no overarching strategy paper setting out how the Commission will approach the mainstreaming of human rights into trade (beyond a commitment to labour standards), but the EC developed a set of specific trade schemes and

[37] See Annex 8 "HR mainstreaming".
[38] In particular health is a sector where the EC has displayed strong sensitivity towards rights-based approaches over the last decade. The EC actively participated in the international debate on 'Global Health' in fora such as the WHO and the G-8, which sought to define the global responsibilities for ensuring the universality of this right.
[39] A case in point is the 2004 Communication on 'A coherent European policy framework for external action to confront HIV/AIDS, Malaria and Tuberculosis'. COM (2004), 726. This was followed by the Communication on 'A European programme for action to confront HIV/AIDS, Malaria and Tuberculosis through external action'.- COM (2005).
[40] See the 2010 Communication of the Commission on the 'EU's role in Global Health' - COM (2010) 128.
[41] European Commission, 2010. Communication on 'An EU Policy framework to assist developing countries in addressing food security challenges'.- COM (2010) 127 final.

regulations aimed at mainstreaming human rights that were welcomed by human rights organisations, including the so-called 'Generalised system of Preferences + programme'[42]. In the regional agreements (ENP, Asia) the policy frameworks to concretise human rights commitments remain rather vague[43], though they recognise the need for 'differentiation' – whereby the level of EU's relationship with its neighbours will take into account the extent to which the values of human rights, democracy and the rule or law are effectively shared. EC staff interviewed on mainstreaming efforts in these various areas acknowledged the progress achieved (in most cases) in terms of refining the EC policy frameworks. Yet they also agreed that major implementation challenges still need to be addressed to effectively operationalise stated policy intentions on mainstreaming. These can range from clarifying what specific rights mean in practice (in terms of 'entitlements' of right holders as well as obligations of 'duty bearers and international actors), overcoming resistance of partner countries, balancing 'needs-based' approaches with 'rights-based' approaches, effectively using the incentive schemes[44], exercising EU leverage for transformational changes in countries with a limited human rights culture or, at a more mundane level, ensuring sufficient levels of legal and technical expertise to facilitate mainstreaming strategies.

- *Integration in programming processes and instruments.* The desk analysis on the selected six areas shows that the EC has sought to further translate its commitment to mainstreaming human rights at programming level, through action plans (for ENP countries) and its various instruments, including regional strategy papers[45]. Yet on the whole one can observe a phenomenon of 'dilution' of the human rights component as the cycle moves 'downstream', i.e. from broad political pledges to policy frameworks down to programming, choice of instruments, allocation of funding and selection of projects. This 'dilution' appears in different forms including (i) in country/regional strategy papers or action plans that have a quite solid analysis of the human rights situation[46] but then fail to coherently address stated problems through concrete interventions; (ii) the limited funding for key sectors (e.g. health, food security) in general and for related human rights aspects in particular; (iii) the tendency to confine human rights work to thematic instruments (particularly EIDHR) rather than fully using the geographic instruments[47] in a complementary way or to activate other triggers that may provide leverage (e.g. trade[48], fisheries agreements, budget support); (iv) the lack of strategic focus on human rights in call for proposals – despite rather progressive language in the programming documents (e.g. the EU Food Facility or in the thematic programme on migration and asylum); (v) the rather narrow scale of 'actors' targeted/reached for human rights support; (vi) limited culture of monitoring and evaluation of mainstreaming efforts[49]. Interviews with EC officials confirm the complexity of programming relevant forms of support for human rights in

[42] The 'GSP+' makes a direct link with human rights by offering special incentives and tariffs to countries willing to ratify 27 Conventions (including UN human rights treaties and core ILO conventions). It foresees a regime of both positive and negative conditionalities. The special incentives act as a spur to the ratification of the conventions, while the negative conditionality involves the withdrawal of preferences if the conventions are not implemented. Other schemes relate to (i) the trade in goods that can be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment'; and (ii) the trade in rough diamonds (the 'Kimberley process'); (iii) the trade in arms.

[43] A notable exception is the 2003 Communication on *'Reinvigorating EU Actions on Human Rights and Democratisation with Mediterranean countries'* which defines a quite specific set of guidelines for the best use of all available instruments to promote human rights and calls for increased institutional knowledge on the situation in each partner country.

[44] According to a recent mid-term review (CARIS, Mid-term Evaluation of the EU's Generalised System of Preferences) the practical application of the GSP+ scheme encountered several constraints, including concerns about the lack of transparency by which countries are awarded GSP+ preferences and suboptimal systems for monitoring performance. For instance, the public consultation for a new regulation (due in 2012) puts forward the question whether the suspension mechanism should be strengthened (e.g. by introducing benchmarks which must be met before awarding preferences).

[45] In the ENP South, regional programmes are used for addressing issues that are perceived to be too sensitive to be dealt with at the national level, at least in an initial stage. Regional programmes also allow for fruitful exchanges of experiences and good practices between countries sharing similar backgrounds and experiences

[46] Thus, the ENP Country Reports preceding the Action Plans include a section on 'Human Rights and Fundamental Freedoms' providing a fairly comprehensive and frank analysis of the human rights situation

[47] A positive evolution is to be noted in the CSPs of ENP South countries, whereby support is not only provided in the form of EIDHR projects but increasingly through structural reforms in governance and the justice sector, to be backed up with substantial budgets from the geographic instruments.

[48] Trade Sustainability Impact Assessments (TSIAs) are carried out before the launch of Free Trade Arrangements negotiations in order to consider the potential effects on developing countries. The European Parliament has criticized these assessments for not considering the impacts on human rights of EU economic/trade policies.

[49] One example is the 2004 Thematic Evaluation on food aid and food security. It covers a wide range of strategic and operational issues but does not include a reference to the question of the 'right to food'. From a broader perspective it is interesting to note that the Evaluation Team did not find a single document that really makes a state of the art and a critical analysis of successes and failures achieved in EC mainstreaming efforts.

ENP countries. This is related to political resistance of partner countries to address upfront questions of human rights but also to internal weaknesses such as limited political leverage to ensure a sound political dialogue as well as to inconsistent decision-making processes at headquarters level (reflecting a diversity of views and interests among Member States).

- *Practical application of human rights clauses.* Evidence suggests that this specific tool for mainstreaming human rights is often not optimally used. In the area for trade, for instance, there is a inter-institutional tension between the European Parliament – which favours a stronger and more consistent use of human rights clauses and sanctions - and the Council/Commission – which prefer a 'carrot' approach whereby clauses are used to encourage human rights dialogues with third countries, to give legitimacy to démarches and allow for a more integrated approach[50]. Hence, the practical application of human rights clauses has been confronted with issues of (i) inconsistent use (as clauses do not appear in all sector trade agreements, such as fisheries and textiles); (ii) variability in wording used in different types of agreements indicating that states can negotiate opt-out options or disregard the view of civil society; (iii) uneven application of conditionality and provisions allowing for a partial or total suspension of agreements – leading to concerns about 'double standards'; (iv) weak implementation mechanisms, particularly for monitoring compliance; (v) lack of reciprocity with the scrutiny not considering the conduct of the Commission and Member States[51]. Similar constraints were also observed in the association and cooperation agreements in the ENP and Asia. For instance, civil society organisations (from Europe and the ENP region) monitor the overall EC policies and interventions with regard to human rights in the ENP[52]. A recurrent criticism in their reports and advocacy notes is a perceived EC culture of 'complacency' towards partner countries and a lack of coherence in the area of human rights. While welcoming the creation of 'Subcommittees' on human rights with Southern ENP countries, they are concerned that these structures become a substitute for discussing human rights concerns in *all* political dialogues with Southern partners[53]. In the ENP East, study findings indicate that the Action Plans had very limited impact in promoting human rights and democracy[54], primarily because of the weak EU leverage on political will at country level to engage in genuine reform processes. The Eastern Partnership (EaP) was launched in 2009 with the intention to intensify the relations with the six countries involved[55] yet doubts have been expressed that the new strategy will have more impact on human rights as it lacks the incentive of the prospect of accession to the EU. Its main incentives – free trade and free travel - remain distant and the aid amounts may not be strong enough[56].
- *Coherence.* The EC shares with the Council a Treaty obligation to ensure coherence at various levels[57], including in the field of human rights. The desk analysis indicates that this opens a huge and (technically/politically) complex agenda when it comes to mainstreaming human rights in a coherent way. The EC/EU track record is mixed. In the health sector, for instance, the EC has actively sought to address the issue of access to affordable and safe pharmaceutical products through action at the global level, particularly through the WTO. The EU has also adopted a legislation to ensure the delivery of cheap medicines to populations in need. Yet a recent evaluation on 'policy coherence for development' suggests that many challenges remain to be addressed in terms of ensuring coherence between the right to affordable health and other EU policies (e.g. on intellectual property rights, custom policies and trade liberalization policies). From a mainstreaming perspective the question of coherence with other EU policies also arises in guaranteeing the right to food. Non-governmental organizations have since long argued that current approaches to international trade liberalization and globalization have been harmful to food security and the right to food. Similar criticism is uttered towards the EU's Common Agricultural Policy (CAP) and the Economic Partnership Agreements (EPAs). Successive reports by the UN Special Rapporteur on the

[50] European Parliament. 2009. Human rights mainstreaming in EU's external relation, pp 57-59.
[51] European Parliament. 2008. The Application of Human Rights Conditionality in the EU's Bilateral Trade Agreements and other Trade Arrangements with Third Countries.
[52] For ENP South this is the EC supported Euro-Mediterranean Human Rights Network.
[53] Amnesty International. 2008. Critical review instead of complacency. AI's ten point human rights programme for the French Presidency of the European Union, p. 13
[54] Boonstra and Shapovalova. 2010.
[55] Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine.
[56] Boonstra and Shapovalova. 2010.
[57] For conceptual definitions on policy coherence, including its application in the field of human rights, see Desk report 1, Volume 1.

right to food raise a fairly broad and thorny set of policy coherence issues. In the above-mentioned 2010 Communication on food security, the EC recognises these challenges and envisages future reform steps to better take global food security objectives – and their rights implications - into account. Issues of coherence also prop up in Association and Cooperation agreements with third countries. The difficulties encountered by the EU to reconcile the core value of human rights (as expressed in association agreements) with its interests (which are often much less explicit) in a particular country or region has been widely documented (including by civil society organisations and the media). The case of Tunisia is emblematic. Despite a very negative track record on human rights, the EC/EU systematically expanded cooperation and publicly commended the country as a 'model' in 2010. Following the upheaval and the fall of the authoritarian regime, the EC/EU recognised the flaws of the approach followed.

(ii) Evaluation question

Mainstreaming of human rights does not only require good strategies and policies. For mainstreaming to become an operational reality there must also be a dedicated leadership and organisational set-up to steer, manage and monitor this commitment.

Judgment criterion 1.1: Political leadership has sought to expand the space for mainstreaming human rights within the organisation

Overall experiences of donor agencies with mainstreaming cross-cutting issues (e.g. gender, environment, human rights)[58] underline the critical importance of the political leadership to put in place the enabling environment and related institutional arrangements for mainstreaming to be taken seriously across the board.

How well has the political leadership of the EC (i.e. the Commission as a collegial body and the various RELEX Commissioners in their respective departments, before the establishment of the EEAS) fared over the last decade in terms of expanding the space for mainstreaming human rights within the organisation? Stakeholders interviewed agree that the issue of human rights has acquired more prominence during the last decade. There has been no shortage of declarations in favour of human rights, emanating from the political leadership of the EC, which helped to put the issue more firmly on the map as an integral part of EU external action and to create greater awareness among non-specialist staff Commission and in the EU Delegations[59].

However, it is less evident to find clear political support to *specifically promote the mainstreaming of human rights,* particularly in terms of ensuring a consistent implementation at the level of the institution as a whole. The evidence collected suggests that there has been a consistently weak political leadership from the side of the EC to create the institutional conditions within the organisation for mainstreaming human rights. Several indicators have been identified which illustrate this lack of political leadership including:

- *Absence of clear political instructions* to push forward the (complex and institutionally demanding) mainstreaming agenda. The efforts made were rather ad hoc and not underpinned by a clear implementation strategy and roadmap (with well-defined targets, milestones, feedback mechanisms).
- *Creation of a dedicated unit but with limited status and powers*. The RELEX B-1 unit was created as the main vehicle for promoting and mainstreaming human rights. Yet Commission officials across the board tend to agree that the highly committed staff of the Unit faced structural limitations to adequately play this role, including lack of political backing, power and authority to leverage change and compliance (particularly towards the geographical desks). This contributes to the 'sidelining"' and 'ghettoisation' of human rights. Other units dealing with human rights in their portfolio (in DG-DEV and Aidco) were not in an institutional position to redress this situation.

[58] For an interesting example see COWI (2008) Thematic Review of cross-cutting issues. This evaluation provides a comprehensive analysis of mainstreaming several crosscutting issues (including human rights) in Danish development assistance.

[59] For 2,7% of the respondents to the questionnaire human rights occupy a "central position" in the overall strategy and programmes of the EC Delegation; for 56,8% this place is considered "important", while 37,8% indicate that attention is given to human rights yet alongside many other issues.

- *Critical importance of coherence for effective mainstreaming.* Several interviewees observed that EC political leadership does not consistently "carry" the human rights agenda, particularly in its dialogue with partner countries. If the human rights message coming from the top is too vague, too diffuse or inconsistent, it sends the wrong signal through the whole EC institutional machinery and weakens the scope for taking mainstreaming seriously.
- *Strong commitment to human rights… but limited links programming and instruments*. EC officials at both headquarters and in the Delegations visited for this evaluation, pointed to the relative absence of clear, systematic and consistent political guidance on human rights priorities towards a particular country or region that could effectively guide the programming process and ensure the link between EC/EU political priorities and instruments. This is seen as a major "missing link" in the whole EC/EU institutional architecture with negative incidences on the capacity to mainstream human rights
- *Limited political pressure to ensure consistent implementation.* Political declarations in favour of mainstreaming are not systematically transposed into operational measures and benchmarks to facilitate the evaluation of the extent to which mainstreaming has been effectively pursued and produced the desired effects[60].
- *Limited incentives to document/capitalise on what is done with regard to mainstreaming.* It is difficult to find a solid basis of data, information and analysis on what exactly the EC is doing with regard to mainstreaming. Several interviewees link this to the absence of incentives/instructions to document practices and lessons learnt in form of Communications of Staff Working Papers. Political priority was systematically given to come out with new EC documents on other policy issues/themes.

Judgment criterion 1.2: Managerial leadership and human resources are available in line with ambitions reflected in policy and strategy guidelines

One can assume a link between the existence of political leadership in favour of mainstreaming human rights and managerial leadership within the organisation. If strong political pressures from the top are missing, senior managers (i.e. Directors, Heads of Unit, Heads of EC Delegations) may be inclined to give the issue less importance than other pressing delivery concerns (including disbursements). Overall findings indicate that also the managerial leadership has been rather weak when considering the institution as a whole[61]. Specific units dealing with human rights (e.g. former units RELEX B-1, AIDCO E4) did efforts to promote the mainstreaming agenda yet the evaluation team could not find convincing cases of non-specialists Directorates/Units who: (i) had really picked up the issue in a structured and systematic manner; (ii) sought to internalise it; (iii) provided clear guidance as well as incentives to implement this agenda consistently; (iv) ensured monitoring and learning in their respective areas of work. This does not mean that human rights issues were disregarded. Yet the integration of human rights issues was rather ad hoc and not connected to well-defined mainstreaming strategies and consistent managerial attention and follow-up. This picture also emerges from a combined analysis of various parts of the Questionnaire. On the question whether "positive injunctions" are provided for mainstreaming 65,6% responds positively, while 36,4% sees no such incentives. Yet when probing deeper, it appears that the concept of mainstreaming is often interpreted in a narrow way (e.g. equated with mere existence of projects). Only for 12,1% of the EC Delegations mainstreaming of human rights is of "high importance" (see question 6). Other respondents consider the issue moderately important (42,4%) or relevant in a "targeted" way, i.e. when focused on particular rights such as women's and children's rights (Kazakhstan) or other issues that are not too "controversial" (Vietnam, Ethiopia). From other questions one can also deduce the rather narrow scope of mainstreaming as applied in EC delegations. More than 58,% of the respondents were not aware of the existence (or not) of specific assessments on human rights challenges and desirable EC response strategies during the programming process (question 4). When asked about the "most important aspects" of the human rights strategies at country level (question 3), EC Delegations do not mention mainstreaming but only direct actions in relations to mainstreaming (e.g. human rights defenders, gender, dialogue with the government).

[60] This point has been strongly emphasised in a 2009 study carried out on behalf of the European Parliament: 'Human Rights Mainstreaming in EU's External Relations'. This study was undertaken by a team of researchers linked to the European Inter-University Centre for Human Rights and Democratisation (EIUC) .

[61] In this context it is important to make the distinction between the "institution" and "individual staff". EC staff carrying managerial responsibility can be *individually* very committed to human rights mainstreaming but this concern is often not a shared priority within the *institution as a whole*. The difference is particularly visible with regard to Heads of EU Delegations, where the levels of interest/engagement in matters of human rights tend to vary hugely.

Concrete examples of this lack of managerial leadership with regard to ensuring that the institutional conditions are in place within the organisation to effectively mainstream human rights include:

- Unclear *mandates* with regard to mainstreaming of human rights for non-specialist Directorates, units, geographical desks, heads of Delegations.
- Lack of *operational guidance* on how to mainstream human rights. The EU Delegation in Guatemala is fully aware of the central importance of human rights for achieving stability, improved governance and development. It is addressing human rights directly by supporting justice reforms and a wide range of civil society organisations in a particularly constraining environment. It has also sought to include a human rights focus in its various sector programmes and modalities (related to food security, decentralisation, budget support). Yet these efforts are hampered by the lack of practical, concise and users-friendly operational guidance for 'non-specialists technicians' to navigate through these troubled waters[62].
- Limited effectiveness of existing human rights inter-service coordination mechanisms.
- Difficult integration of human rights considerations in programming processes (at country and regional level) despite the existence of programming guidelines. This is reflected in the lack of integrated country strategies with regard to human rights (presenting a long-term view of what EC seeks to achieve, amongst others through a strategic combination of instruments). It is also epitomised by the 'split' that can exist in EU Delegations between the 'political section' and the 'cooperation section' (as exemplified in the Vietnam case study and by the Questionnaire). The recently introduced obligation for EU Delegations to produce a 'local human rights' strategy could be a structural improvement, if their quality and effective application are consistently monitored.
- *Limited quality control systems*. While efforts have been made to elaborate checklists to ensure the integration of human rights in project identification and formulation that can be used by the QSG (including a gender equality screening grid), the situation is less clear with regard to mainstreaming human rights at strategic level from the perspective of the iQSG. Interviews conducted on this issue suggest the iQSG could do more in terms of promoting mainstreaming if the EC would specify its ambitions, policies and operational modalities to achieve this stated commitment.
- Human rights issues do not feature prominently and clearly in *job descriptions and performance criteria* for EC directors/heads of units/heads of Delegation – thus providing limited incentives to invest in mainstreaming processes
- *Human resources* are not necessarily in line with what is needed to effectively mainstream human rights, both at headquarters level and in Delegations. The issue at stake is not necessarily the quantity of staff or the lack of technical capacities as such. It is more about a better prioritisation and organisation of the efforts related to mainstreaming; effective utilisation of existing knowledge within the EC; fruitful collaboration between the dedicated human rights unit and the geographical desks; cross-sectoral and thematic teamwork within EU Delegations; or the mobilisation of expertise from other sources (e.g. Member States, Council of Europe, knowledge institutions, international and local civil society, etc.).

Judgment criterion 1.3: Incentives and trainings for mainstreaming human rights have been provided for EC staff - and possible disincentives have been reduced/avoided

The lack of clear political and managerial leadership does not contribute to an enabling environment for mainstreaming human rights across the board. This may explain why the evaluation team could not find evidence of the existence of a 'package of incentives' provided to non-specialist EC staff in headquarters or Delegations to structurally and systematically invest in mainstreaming operations. Good practices or innovations with regard to mainstreaming – which do occur in several areas - seem therefore more driven by individual commitments and initiatives from the "bottom-up" than by a coherent applied mainstreaming strategy from above. There is also no indication that performance in mainstreaming human rights is rewarded.

[62] There was an explicit demand for such guidance, yet staff insisted on the need to avoid the "manual format", i.e. thick and complex guides that are far too complicated to use (also considering the time constraints on staff).

Contrary to other areas of EC work there are also no clear guidelines on how to network or engage in joint action (e.g. with other donor agencies) on mainstreaming human rights. Again, examples can be found of EC Delegations engaging pro-actively in coordination and the search for an optimal division of labour. Yet these are not primarily inspired and driven by an overall EC mainstreaming strategy promoted across the organisation.

Since 2003 the EC has sought to develop a comprehensive human rights training policy oriented towards its own staff (HQ and Delegations) and other interested stakeholders (from EU Member States, COHOM, etc.). The Master courses, funded through the EIDHR in different parts of the world, make it possible to reach out to a much broader audience of human rights stakeholders. The EC seeks to follow a demand-driven approach to designing and delivering the courses (based on needs annually expressed through an inter-service group approach), to involve outside experts, to offer a mix of general and specific courses dealing with the various forms of rights[63] and to organise the trainings as collective learning events (rather than as formal trainings 'ex cathedra'). On the whole more than 1100 staff members (from different walks of life) have so far received some form of training on human rights. These training courses are perceived to have impacted positively on disseminating a 'culture of human rights' across the organisation. There is a reflection on-going on how to further increase the relevance and outreach of training activities, including through regional seminars (yet with doubts about feasibility and transaction costs).

Judgment criterion 1.4: Existing accountability/quality control systems (e.g. iQSG) attach importance to human rights mainstreaming

There is no specific accountability system at EC/EU level with regard to human rights policies and programmes. The European Parliament has a role to play in terms of demanding accountability, amongst others through its Sub-Committee on human rights. This structure deploys various valuable activities in the field of human rights. Yet its power and capacity to be a full-fledged accountability actor remain limited. Interviews with EC staff indicate that the whole notion of 'accountability' may need to be further defined in the field of human rights, including the responsibilities that the EC/EU may incur before the Court in relation to actions in third countries that may have a negative impact on human rights. Accountability questions also arise in the context of EIDHR funding to civil society organisations, particularly when the beneficiary of this support runs into problems with repressive authorities. What is in these cases the responsibility/accountability of the EC. This is a relatively uncharted domain, which is likely to become more prominent in a post-Lisbon Treaty context.

Quality control on mainstreaming human rights is to be done through the overall structures that exist at EC level for the programming process (including the Country Team Meeting and the inter-service Quality Support Group screening) and for projects/programs' design (i.e. the Office Quality Support Groups' mechanism)[64]. The feedback received on the actual functioning of these various structures for the purpose of mainstreaming human rights is mixed. There are focused quality controls for EIDHR, while in the geographic programs/projects the mainstreaming of human rights is quite systematic for particular rights such as gender; this is linked to the availability of clear EC policies and guidance on gender[65]. There is less evidence of a structured focus on other rights. According to interviewees the quality control concerning the EC response strategies in the framework of the programming processes are not systematic and sophisticated. This is attributed to the rather low position of the human rights agenda in the overall quality control system. Most informants, also at field level, consider that quality control mechanisms exist on paper yet their use responds primarily to an "administrative logic" (i.e. the checklist approach) and much less to a strategic approach to mainstreaming.

[63] In recent years the demand for training on social and economic rights has increased substantially.
[64] For a more elaborated analysis of these structures see Desk Report 2, Volume 1
[65] In 2006 the EC has drafted a handbook, entitled "Toolkit for mainstreaming gender equality in EC development cooperation[65]" in order to provide practical guidance on how to incorporate gender issues into planning at the local level, helping promote equality between women and men. Based on this, EU Delegations are called to fill in a specific Gender Equality Screening Checklist (GESC) for each proposed project at the identification stage.

4.2 EQ 2: Coherence of the EC's human rights policy

EQ 2. To what extent and how has the Commission promoted coherent policies in support of human rights in the framework of EC/EU development cooperation policies and CFSP?

Background

The EC shares with Council a Treaty Obligation to ensure coordination, complementarity and coherence (i.e. the 3Cs – see Annex 9). This evaluation question focuses on the application of the coherence issue with regard to human rights in two critical areas: ***development cooperation and Common Foreign and Security Policy*** *(CFSP)* under the pillar structure of the Maastricht Treaty. The new political and institutional configuration established by the Lisbon Treaty (and the related creation of EEAS) removed the 'pillar structure' and sought to create a more coherent framework for EU external action. However, it is too early to assess the impact of these changes on the ability of the EU to act in the realm of human rights.

Answer

The EC has made efforts to integrate the issue of human rights more firmly into its development cooperation work. Yet in the process it encountered ***various constraints at policy and organisational level*** *to ensure coherence between development cooperation objectives and its commitments towards human rights.*

In the CFSP context, the EC/EU often experienced ***difficulties to reconcile values and interests****. This is particularly the case when major political, economic or security interests are at stake at the level of the Union and/or Member States. In these situations, the Commission is generally not in a position to alter the prevailing configuration of interests and to act as a change agent. At country level the EUD has often no real 'operating space' to push human rights issues in a consistent and significant manner when Member States have other political priorities.*

In many situations, there has been ***a lack of consistent political backing for a coherent EU policy towards human rights****, especially in countries where human rights are most at risk. A coherent human rights policy can only be achieved if there is a real joint EU/Member States strategy. The challenge is to engage MSs on defining such a common agenda on human rights and ensuring a coherent translation at country level, backed up by a clear mandate from the capitals of Member States as well as clear instructions from Brussels to EUDs on how to deal with the human rights agenda.*

The enhanced role of EUDs under the Lisbon Treaty provides a promising structure for a more effective action in the field of human rights. Yet there are also risks: ***the EU can be left largely 'on its own' to deal with sensitive human rights issues while Member States pursue their specific foreign policy interests****.*

Judgment criterion 2.1: The Commission has sought to ensure coherence between its development cooperation objectives and its policy commitments towards human rights

The field missions confirmed the general picture documented in the desk report. While a certain "rapprochement" was noted between the worlds of development cooperation and human rights, most interviewees were of the opinion that the 'divide' still persists between these two agendas. The coherent integration of human rights into policy formulation and implementation processes of development cooperation remains on the whole weak. This is linked to a range of factors:

- The history of EC cooperation[66], whereby ***Community aid*** was supposed to be ***non-political***, its relations with the Third World free of the vestiges of colonialism and distinct from the superpowers. The change came with the Maastricht Treaty (1992) which stated that the development and consolidation of human rights and fundamental freedoms is an objective for *both the CFSP and the EC development cooperation*.
- The long-standing predominance of ***"needs-based"*** approaches to development and the limited success so far of "***rights-based"*** approaches to development (as reflected by the

[66] See Chapter 3.

limited progress achieved with mainstreaming human rights documented in EQ1). As a result, the support to HR is conducted mainly through targeted interventions and not through an integrated strategy that guide the programming and the implementation in all cooperation sectors such as health, education, food, water and sanitation, HIV/AIDS, employment etc..

- The tendency to deal with ***human rights as a "separate issue***" (i.e. the "ghettoisation" of human rights). This is linked to the limited collaboration across geographical and HR units and sections at HQ and in the EUD where human rights specialists/focal points are working too much in isolation, disconnected from other critical functions (see also EQ 1 and EQ10);
- The fear of development staff that too much focus on ***human rights*** will ***complicate the relations with partner countries and hamper the smooth delivery*** and disbursement **of aid**. This dilemma can be found in many aid-dependent countries, particularly those ones with a poor track record on human rights. Ethiopia is a case in point: the EU and the donor community seek to provide basic support to the large group of poor people, while keeping good relations with the Ethiopian government for security and stability reasons. In such a situation, human rights tend to be considered as a separate component of the international cooperation agenda and often put at a lower rank for fear to compromise relations with the government and the implementation of the main development programmes to the poor.
- the sheer complexity of achieving an effective integration of development and human rights - a challenge also experienced by other donor agencies [67].

A ***crucial point in case*** in linking development cooperation and HR policies is the instrument of budget support - general budget support (GBS) and sector budget support (SBS) -, and notably ***general budget support*** as it represented the preferred instrument to deliver EU/EC development during the period of evaluation. It is therefore interesting to examine how the EC used (or not) this instrument as a leverage to promote human rights.

So far the Commission has made a clear distinction between underlying principles of political nature (human rights, democracy and rule of law) and eligibility criteria for budget support (poverty reduction strategy, macroeconomic stability and public financial management reform). The Commission does not explicitly link budget support programs to democratic governance issues that, in the Commission's view, should apply to the entire partnership with a country and be addressed through other political instruments, such as the political dialogue.

In practice, there have been several cases where the EC suspended budget support operations as a result of non-compliance with the underlying principles related to democracy and human rights (e.g. in Honduras, Nicaragua and Ethiopia). However, the EC rarely stopped *all* assistance to a partner country (i.e. Madagascar[68]). In most cases, other channels than budget support were used to continue financing development work.

The evaluation team could observe that there are different views on the nexus between budget support and human rights within the EC. Some support the official line explained above. Others feel that general budget support, more than other aid modalities, is seen as an endorsement of the partner country's overall policy stance. Budget support cooperation therefore requires a high degree of partnership and mutual trust. Partner governments need to be legitimate representatives of the population, respect human rights, be committed to poverty reduction in all its dimensions, pursue sound economic policies and use public resources in a responsible and transparent way. In their view, all provision of budget support needs to be based on a ***deeper assessment*** of the situation regarding democracy, human rights and good governance, including corruption that can vary depending on the regions and countries. Such a review may facilitate closer linkages between ***programming and local human rights strategies.*** Greater synergies could, in turn, also help to reduce the actual divide between EC development concerns and human rights commitments.

This debate has recently gained momentum as some Member States and civil society organizations raised criticism regarding the use of budget support in specific countries and asked for more

[67] This is illustrated by the work of the OECD DAC Human Rights Task Team, which currently conducts a survey among members on experiences, good practices and evaluations of support to human rights approaches in development co-operation.

[68] The suspension of cooperation followed the forcible transfer of power perpetuated by the leader of the opposition Andry Rajoelina on 17 March 2009 and the unilateral transition process embarked upon by the de facto Malagasy authorities. The Council decided that the «*measures do not affect humanitarian and emergency aid and certain projects that directly benefit the population. Instead, today's decision suspends all budgetary aid to Madagascar as well as the implementation of the national indicative programme under the 10th EDF. Operations already under way will continue except for activities and payments directly involving the government and its agencies».*

consideration of *human right and political governance conditions in EC budget support operations*[69] . The democratic turmoil's in Tunisia, Egypt and the situation in other ENP countries brought this issue high on the EU political agenda.

In response to these political developments, the Commission has announced a major policy shift with regard to budget support in the Communication on "The Future Approach to EU Budget Support to Third Countries" that was adopted on 13th October 2011[70].This document upgrades the status of human rights and democratic principles in the context of general budget support programs that have been renamed as *"Good governance and Development contracts";* indeed, these contracts will be granted to partner countries that can demonstrate a commitment to fundamental values (par. 2.2.1)[71]. An additional reference to human rights is given with regard to the performance incentives and conditions: Good governance and Development contracts may explicitly foresee conditions in order to support human rights for the release of the variable tranches (par. 4.5). The EC will have to specify how these new orientations will be concretely operationalised.

A ***second important instrument*** that can be used for the promotion of human rights is ***trade.*** In a recent speech, Commissioner for Trade Karel de Gucht recognised that there are high expectations in this respect mainly because the EU common commercial policy is often seen as an area where tangible interests are to be found[72]. Over the years, the EU has developed a number of trade schemes to promote human rights that are based on both 'carrots' in the form of trade preferences (including the GSP+ referred to in EQ1, footnote 8) and 'sticks' as the economic incentives can be withdrawn if the conditionalities are not respected. The suspension mechanism of the GSP+ was recently used in February 2010 when the commercial benefits were temporarily withdrawn from Sri Lanka following an investigation by the Commission which identified shortcomings in the implementation of three UN human rights Conventions.

Evaluation findings suggest that the drive within the EU to adhere to its founding principles and to use trade as a mechanism for the promotion of human rights is evident but the approach lacks consistency and coherence. Initiatives emerge and develop in an ad hoc way. There is an absence of strategy and procedure to systemise the consideration of human rights and determine their relevance to EU trade activities across the board, to discuss and present different options (e.g. conditionality, prohibition etc.), and to standardise the approach to monitoring and enforcement. Concerns exist about the lack of transparency of the conditions by which countries are awarded GSP+ preferences and calls were made for more clarity on the applicable standards and processes.

The suspension of GSP+ towards Sri Lanka brought to the surface some of the thorny challenges involved in effectively applying such incentive schemes. Doubts were raised about the modalities of investigation and standards of evidence to determine a breach. The EP urged the Commission to review the potential impacts on human rights in the country concerned before taking a decision. The suspension also arose controversy in Sri Lanka, with critical voices being raised in the research community on the "carrot and stick" approach used in EU trade policy. Calls were made for a more "flexible EU approach that takes into account the situation in each individual country rather than imposing a broad-brush approach to democracy building[73]". The EU should practise: "constructive engagement, political dialogue and capacity building in the region, by working closely with its partners, rather than resorting to punitive sanctions, which are neither consistently applied, nor found to be at all effective in democracy building[74]".

The present GSP regulation operates from 1 January 2009 to 31 December 2011. A recent comprehensive mid-term review concluded that "it is too early to tell whether the GSP+ will become an

[69] This happened in the framework of a public consultation launched by the EC on the future of budget support (see *European Commission's Green Paper "The Future of EU Budget Support to Third Countries", COM (2010)586).* The Member States include Austria, Denmark, Finland, Ireland, Germany, the Netherlands and Sweden.
[70] Communication of the European Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions, COM(2011) 638 final of 13.10.2011.
[71] «Commitment to the fundamental values of human rights, democracy and rule of law is essential for the establishment of any partnership and cooperation between the EU and third countries. General budget support is seen, by its very nature, as an implicit recognition that the partner country's overall policy stance and political governance is on track. Therefore, general budget support should be provided where there is trust and confidence that aid will be spent pursuing the values and objectives to which the EU subscribes, and on which partner countries commit to move towards meeting international standards», Ibid., par. 2.2.1 "*Promoting human rights and democratic values".*
[72] De Gucht, K. Trade policy and human rights. Speech by the European Commissioner for Trade delivered at the S&D Conference" "Can trade policy improve human rights?". Brussels, 13 October 2010, p. 2.
[73] Missing source of the quotation.
[74] Dr. Kelegama, S., Executive Director of the Institute of Policy Studies, Sri Lanka. Interview given to The Island Financial review

effective mechanism promoting sustainable development and good governance". It has been effective in promoting the ratifications of the 27 Conventions but de jure implementation beyond ratification faces several constraints and the outcomes are even more difficult to identify – there may be some positive effects in the sphere of gender equality but no effects in other spheres, such as corruption, civil liberties, etc[75]. The current public consultation for the new regulation due in 2012 asks whether the suspension mechanism should be strengthened, for instance by introducing benchmarks that must be met before beneficiary countries are granted preferences and, in this case, what form this should take and the added value in terms of sustainable development[76].

In the above-quoted speech Commissioner De Gucht admitted that more could be done in using trade policy for human rights, yet he also warned against too high expectations: "often, to address human rights problems trade policy is not the first-best instrument, as evidenced by many episodes of trade sanctions. And secondly, trade policy is also supposed to serve a range of other goals, including the EU's own prosperity". Furthermore, there are "many minefields to cross – at risk to life and limb - to ensure we do not set up perverse incentives or lead to the opposite results from our objectives". He pleaded for a trade and human rights agenda to be "coherent", "transparent", "predictable" and "feasible[77]". This summary of future challenges for EU trade as a tool to promote human largely corresponds with the messages collected during the evaluation.

Judgment criterion 2.2: The Commission has promoted a coherent application of human rights principles and policy objectives in the CFSP

The foreign policy of the Union is a process of integrating policies and actions of the Member States towards third countries at Union level with a view to protecting their common interests (political, economic and security-related) as well as to responding to global demands (linked to the status of the EU as a global player).

Human rights became integrated in the TEU at the same time as the CFSP with the Treaties of Maastricht and Amsterdam. The CFSP was supposed to develop into a *common* foreign policy of the Union, providing greater leverage as well as "politics of scale" (in terms of carrying out joint foreign policy actions at lower costs and risks than when Member States act on their own). Under the Maastricht Treaty, the CFSP became the so-called *second pillar* of the Union, reflecting its *intergovernmental* nature and institutional location *outside* the Community policies with their particular mechanisms and decision-making processes. In the logic of the second pillar, the Council was invested with the power to define guidelines for the CFSP within an intergovernmental approach to foreign policy-making.

Human rights were included as a key principle/objective of EU external action in the TEU, thus providing the EC/EU with a mandate "*to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms".* Lisbon Treaty clearly states in *art.21:* "The Union's action on the international scene shall be guided by [...]: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity [...]. This has major implications also for the EUDs, whose role has gradually shifted from a concentration on development cooperation to a much wider political agenda in the framework of the CFSP.

The issue of EU coherence on human rights in its external action has been widely debated and documented, particularly through the advocacy work of human rights NGOs or by research institutes[78]. It tends to prop up again each time mixed signals are sent around by the EC/EU in relation to specific country situations. A recent case reported in the media was the visit of the Uzbek President to Brussels, which unleashed a stream of criticism from media and NGOs on the precedence given to hard-nose EU political, economic and security interests above a coherent application of EU human rights policies towards a "serial rights abuser"[79].

[75] CARIS, ibid, pp. 11
[76] Europa, 2010, Public Consultation exercise on the revision and updating of the European Union's scheme of Generalised System of Preferences (the GSP scheme)
[77] De Gucht, K, ibid, p. 4.
[78] For understandable reasons the official sources of information on coherence issues with regard to human rights in EU external action are very scarce.
[79] Tisdall, S. 2011. Why does the EU give credibility to such dictators as Islam Karimov? The Guardian, 26 January 2011.

The evaluation team collected evidence of *inconsistencies* in EU's external human rights policy through various sources[80]:

- The *gap between rhetoric and practice*, particularly towards "EU-friendly" states (e.g. the Arab regimes of Algeria, Egypt and Jordan) and powerful states (e.g. Russia, China). The most recent Human Rights Watch's Annual World Report provides a sobering dissection of the application of the EU human rights policy. It argues that the "ritualistic support of 'dialogue' and co-operation' with repressive governments is too often an excuse for doing nothing about human rights". Even when the EU issues a statement "it is often not backed by a comprehensive strategy".
- Closely linked to this is the question of the "*double standards*". This is particularly visible in the application of the human rights clauses, which have been included in every post-1995 co-operation agreement with third countries. Looking at the addressees of bold EU actions and sanctions, these have tended to include primarily "economically weak or strategically relatively unimportant countries […] whereas human rights violations in important countries are treated much more benevolently"[81]. A clear disadvantage of the CFSP framework for the promotion and protection of human rights is that most Member States' positions are watered down in order to agree on the lowest common denominator (particularly when one or more Member States oppose bold action due to strong national interests).
- The legitimacy and credibility of the EU human rights policy is also affected when the Union fails to address *human rights abuses by Member States* (the so-called "internal-external" gap). Despite the existence of many European human rights instruments, numerous problems persist in EU Member States (for example in the area of discrimination, Roma, sexual orientation, restrictions on religious freedom, rights of asylum-seekers, police brutality, restrictions on press freedoms). The EU has numerous bodies, instruments and mechanisms that 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, the Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the 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. The internal scrutiny on EU human rights violations by the European Court of Human Rights (ECHR) made possible by the Lisbon Treaty, can improve the situation, but so far the contradiction exists and this is increasingly threatening the EU's credibility and impact through dialogues and other human rights instruments with third countries.
- *Doubts about the effectiveness of negative measures* can be another source of inconsistency. The EU provides incentives to third countries for the implementation of human rights policies (e.g. increased development aid, special funding programmes such as the EIDHR and trade measures) and can apply sanctions in case of human rights' violations (visa restrictions, reduced development aid and trade). Those are mainly used – with different levels of effectiveness - in aid dependent countries, for example in Africa (Niger, Guinea Bissau, Sierra Leone, Togo, Cameroon, Comoros, Côte d'Ivoire, Liberia and Zimbabwe all were sanctioned), but are of limited impact in countries such as China or resource-rich countries that are powerful enough to withstand EU pressure.
- Another criticism concerns the *lack of comprehensiveness* of the EU's human rights policy since no clear criteria have been established to determine when action under the CFSP should be taken.

This is the background against which the evaluation team has further investigated the role of the Commission in the promotion of coherence in the CFSP with regard to human rights at country level, mainly through five field missions.

[80] Including documentary analysis, interviews, field missions and workshops
[81] See Lampe, K., ibid, p. 113.

- An interesting illustration of this point comes from the approach adopted by the EU Delegation in ***Vietnam*** on the issue of human rights. As evidenced in the mission report and in the questionnaire, the EU Delegation starts from the premise that "there is not so much the Commission can do to promote human rights, in particular the more sensitive political rights, freedom of the press and civil society, as well as the issue of anti-corruption", amongst others because "government ownership and sovereignty have to be respected" and "the Delegation has to constantly take care […] not to provide any affront to the Government"[82]. From a '*realpolitik'* point of view this prudent approach can be understood. Yet it sets uneasily with the prevailing political EC/EU discourse that puts human rights at the centre of its foreign policy. Other EU Delegations, particularly those ones operating in authoritarian regimes, are equally struggling to square this circle.

- Another determining factor for the EC's ability to act as a change agent is the ***political space*** available to push a human rights agenda forward in a CFSP context where strong Union's and particular national interests can be at play. The ***Ethiopia*** case study provides a sobering example of how the defence of human rights as a core EU value can be hampered by geopolitical and security interests. The EU Delegation has a longstanding tradition of being concerned about the poor human rights record of the Ethiopian regime as evidenced in successive independent reports[83]. It has sought to use the limited space available to exploit the Cotonou provisions on support to non-state actors (articles 4-8) and support local civil society organisations that work directly or indirectly on human rights issues through a dedicated fund (see EQ 5). It has sought to engage for human rights defenders and suspended its general budget support following the brutal repression by the regime of societal protest after the 2005 elections. Yet it proves difficult for the Commission to go much further in terms of pushing for a more consistent EU human rights approach. The field visit clearly revealed that major geopolitical and security concerns, combined with fears to jeopardise the delivery of development funds to a highly aid-dependent and poverty stricken country, prevent the EU and other key donors to defend a clear line on human rights and to put pressure on the government. According to several sources, this leniency incites the government to an increasingly authoritarian behaviour, as reflected by the restrictive civil society law of 2009 (which renders virtually impossible any independent work on human rights) as well as by the organized repression around the 2010 elections (which prevented the emergence of a credible opposition and resulted in 99,6% victory for the ruling party).

- The case of Ethiopia does not stand on its own. There are other well-documented cases where the EU finds it difficult to reconcile values and interests when it comes to promoting human rights even in advanced partnership contexts. The ***Morocco*** mission shows that the EU has not sufficiently used its political leverage to push for faster change on the human rights, rule of law and democratisation front, and has settled for a slow pace. The EU is perceived to be more motivated in its relations with Morocco by other interests (security, immigration, trade and fisheries) than by a deep commitment to human rights and democratisation in the country. These inconsistencies explain why many southern governments criticise the EU for "double standards". In these situations, the Commission is not in a position to alter the configuration of interests at stake and to act as a change agent.

- The evaluation team also found examples where the EC has managed to exploit the available room for manoeuvre to diligently push a more consistent EU human rights agenda even in difficult contexts where the Union has major interests to defend (related to commerce, security, energy). In ***Kazakhstan,*** for instance, the Commission is appreciated by EU Member States for its various initiatives on human rights (which seek to strategically use windows of opportunities in a very 'closed' environment) as well as for its coordination efforts. The Commission also played a most useful broker role in mobilising the various EU institutions to come up with a firm political statement condemning a (parliamentary driven) bill to dispense with presidential elections until 2020 in favour of the current ruler. The efforts of the EU Delegation, backed up by Member States, proved to be highly instrumental to activate 'Brussels' and generate a timely response form the highest level that contributed to reverse the controversial bill. Other examples were collected as well of well-targeted Commission strategies aimed at influencing the EU system to adopt more coherent human rights

[82] See answers to question 12.
[83] The latest Human Rights Watch Report 2010 provides abundant evidence of the increasingly deteriorated human rights situation in the country and the reluctance of the key international actors (including the EU) to confront the government over its policies.

approaches. They heavily rely on the existence of political courage, analytical capacity and good tactics at the level of the Commission to optimally exploit all the avenues available to push for consistent human rights agenda.

How to address these inconsistencies in a realistic manner? EU and Member States representatives interviewed called for ***high political backing and clear instructions from political decision makers in headquarters.*** Currently, there is a clearly defined normative framework as well as high-level political declarations to underpin concrete actions in the field of human rights. What is less clear is how these policy statements can be effectively implemented at country level. What has been often lacking so far is a proper political backing at the level of the capitals from EU Member States and EC headquarters. Yet in their view, the EU agenda on human rights can only be achieved if there is a real joint EU/MS policy. The real challenge is therefore *to better engage Member States on a common agenda, backed up by clear implementation mandates and instructions from the centre.* This is also important to avoid the risk contained in the new role of EUD set by Lisbon of being left "largely alone" in dealing with sensitive issue such as HR without a proper political backing from Member States.

An example of this state of affairs can be found in Ethiopia with regard to the EU Delegation work related to the guidelines on human rights defenders. The EU leads the coordination of the implementation of this process as it concerns a common EU agenda. However, at present these guidelines are not well known or acted upon at the level of the Embassies of Member States due to a lack of communication from their respective central governments. As a result the implementation of the ***guidelines is perceived as a European Union initiative*** and not as a shared commitment (even if they are based on Council's decisions). The EUDs' main concern is how they can, together with other actors, do something pragmatic in such hostile environments The recent initiative of headquarters to formulate specific EU *HR local strategy* agreed with Member States is considered as a major step forward to strengthen the engagement of Member States.

Judgment criterion 2.3: The Commission has been proactive to foster complementarity (based on comparative advantage) with Member States

Europe has been projecting itself as a frontrunner in the promotion of human rights worldwide. This raises not only challenges of coherence (as analyzed in JC. 2.2. above) but also of complementarity. In order to optimally use all the leverage power and supportive capacity of the EU it is crucially important to also ensure an adequate division of tasks between the EC and EU Member States, based on their respective comparative advantages. How effective has the EC been in fostering this type of complementarity?

The EC generally assumes an important coordination role on EU action in the field of human rights. At country level many EU Delegations take the lead in organising various fora or working groups on human rights, bringing together Member States and other international actors.

These coordination structures provide an opportunity to also organize an effective complementarity between the EC and Member States when dealing with human rights. The evaluation team could observe good practices in this respect, primarily in terms of ensuring an adequate flow of information on "who does what" on human rights (Vietnam). This may facilitate a more strategic and joined-up of support programmes in favour of human rights activists (Kazakhstan, Guatemala).

However, no evidence was found of a comprehensive strategy – at HQ level or within EU delegations – in order to organize complementarity in the field of human rights.

Judgment criterion 2.4 The Commission role in promoting coherent application of HR in International Fora (African Union, UNG)

Within evaluation question 2, it seems relevant to examine the role of the Commission in promoting a coordinated and coherent EU approach on human rights issues (i) in the framework of the partnership and dialogue with the AU and (ii) in the International Fora (focused on UN).

(i) The African Union

The African Union (AU) was created in 2002 with an expanded mandate compared to its predecessor. This encompassed an increased role in addressing governance, democracy and human rights across the continent. From the outset, the EC manifested an interest to develop a strategic partnership with this new pan-African body, including on the issue of human rights. In this context, the EC contributed

to the establishment of a structured EU-AU dialogue on human rights[84] and to the inclusion of a dedicated partnership on democratic governance and human rights in the new Joint Africa-EU Strategy adopted in 2007. Yet how influential and effective is the EC in fostering a coherent EU input for the dialogue on human rights with the AU?

Two different tracks have to be differentiated. First, there is the structured EU-AU dialogue on human rights. It focuses on overall policies, reciprocal developments in the area of human rights, the implementation of join commitments and increasingly on the coordination of positions in international fora. It does *not* deal with country specific situations. Interviewees stress that this tends to be a fruitful dialogue, amongst others because European actors (particularly the Commission) have adopted a constructive approach in this dialogue, seeking to build trust and moving forward where politically possible while associating the civil society to the process. This constructive approach has made it possible to put core human rights issues on the agenda, to deepen the dialogue and concretise shared values beyond broad principles and to improve coordination between EU-AU in UN bodies (e.g. the recent Joint Statement against Torture). Yet in this first track, the dialogue takes place at such a general level that internal EU coherence is not perceived to be a major issue.

The story is different when it comes to the second track, i.e. the EC coordination with the EU in crisis situations (e.g. election related violence, unconstitutional changes of government, etc.). In this scenario a wide range of actors (from Africa and Europe) are set to intervene in the highly politicised processes that take place (at different levels) to solve the crisis. The EC is but one player in this complex arena. What really happens in these processes is usually not documented, so it is difficult to assess the specific contribution of the EC in terms of promoting a coherent EU response.

The existence of a full-fledged EU Delegation to the AU is generally seen as a major asset, considering its proximity and access to key AU bodies dealing with peace and security matters. Interviewees suggest the role of the Commission (through the EU Special Representative based in Addis Ababa, Ethiopia) is strong when it manages to gather EU Member States behind an African approach (i.e. alignment) or when it comes up with a consistent and timely proposal for the launch of an Article 96 consultation process, as foreseen under the Cotonou Agreement. The initiative for CFSP restrictive measures does not necessarily come from the Commission but such an initiative would be discussed in the Africa Working Group where the Commission can express its opinion[85] and seek to influence the EU decision-making process by a firm stand on the respect for human rights.

The case of Niger was several times mentioned as an example of a pro-active EC approach to a crisis situation involving violation of basic principles of democracy and human rights. Together with some other EU Member States, the EC sent out an unequivocal message to the then President who tried to manipulate the constitution to get a third term and repress any form of opposition. The prospect of discontinuing cooperation was clearly used as a diplomatic weapon to pressure the incumbent President to comply with the essential elements of the Cotonou Agreement[86]. This firm political stance contrasted with the more lenient approach adopted by some Member States towards the crisis, as they sought to protect their economic interests in the country. This case illustrates that the EC on its own cannot 'force' more coherence at EU level, but it can exploit available margins of manoeuvre to influence a better outcome, amongst others by being consistent in its own cooperation.

(ii) The EU contribution to a coherent application of human rights policies at UN Forums

The European Union has grown increasingly united on human rights issues within the United Nations, but simultaneously incurred significant loss of support from non-EU States. The EU's ambition to achieve a united stance in UN human rights bodies entails the risk of opting for lowest common denominator positions that lead to lack of initiative, and leave little room for coalition-building with countries from other regions.

The report on EU action with regard to Human Rights and Democracy in the World (July 2008-December 2009)[87] records a number of diplomatic successes on issues discussed at the relevant sessions of the UN General Assembly and the UN Human Rights Council, including with regard to a moratorium on the death penalty and the rights of the child. On other issues, such as defamation of religions or the concept of traditional values (discussed at the Human Rights Council), resolutions

[84] The first round of this institutionalized senior level dialogue took place in Brussels in 2008 and has since been held regularly in alternating locations (Brussels or Addis Ababa).
[85] Article 96 proposals can be made by the Commission and related decisions do not need unanimity in the Council.
[86] See Declaration of Commissioner for Development K. De Gucht on situation in Niger of 11 August 2009.
[87] EU doc. 8363/1/10 Rev.1, 106-115.

were adopted notwithstanding the EU's opposition. On country resolutions (North Korea, Burma, Iran, Democratic Republic of Congo, Sri Lanka, Occupied Territories), results were equally mixed. The report notes an improvement in the dialogue with the Group of 77 and the non-aligned countries on ESC rights: the EU was able to support resolutions on the establishment of an Optional Protocol to the ICESCR, the right to development and the right to food at the General Assembly. At a special session of the UN Human Rights Council, however, the EU abstained on a resolution on the impact of the global economic and financial crisis on the enjoyment of human rights. The Human Rights and Democracy in the World report argues that this was necessary "as it is important that the Human Rights Council be able to focus on its core tasks"[88].

It has been argued that the European Union would become more effective in achieving its human rights objectives at the Human Rights Council, if it would adopt a more self-critical approach at the Council, and revise its policies addressing some of the main concerns raised by the countries of the Global South, including racism, migration, climate change and ESC rights[89].

Obviously, both at the General Assembly and at the Human Rights Council, the European Union is faced with the a number of States that are hardly supportive of any international action on human rights, because they are state-oriented rather than victim oriented. So the need very much remains for the EU, in opposition to such countries, to vigorously defend and fund[90] the independence of the Office of the High Commissioner for Human Rights and the activities of the special procedure mandate holders.

On the other hand, if one takes the line that the EU needs to build coalitions at the Human Rights Council with non-Western countries in order to achieve its priorities, it is not difficult to identify a number of issues where a change in EU policy would be beneficial to coalition-building, and also contribute to an improved realization of human rights. EU internal human rights problems that are singled out time and again at the United Nations (for instance when EU Member States are subject to Universal Periodic Review) include: racial discrimination, discrimination of religious minorities, the human rights of the Roma, migration policies (including forced eviction policies) and the framing of social divisions within European societies as security concerns. The lack of ratification by EU Member States of what is considered by the Office of the High Commissioner as one of the UN core human rights conventions, i.e. the UN Convention on Migrant Workers, gives an argument to other countries for not ratifying core conventions that are crucial to EU human rights policies. The ratification by the EU of UN Convention on the rights of persons with disabilities on 5 January 2011 is a positive step as it is the first time that the EU accepts direct obligations under a human rights treaty. The EU submits itself to the same human rights obligations than some of countries it criticizes, thus allowing for a more reciprocal relationship.

4.3 EQ 3: Engagement with partner governments and adaptability of EC responses

EQ 3. How has the Commission engaged with partner governments on the promotion of human rights, identified the relevant entry points, support strategies, and adapted EC responses to different country contexts (conflict, post conflict and fragile countries)?

Background

The effectiveness and impact of EC interventions in third countries are largely determined by prevailing political and institutional conditions, particularly the openness of the partner government to address human rights. More often than not, the EC/EU has to push a human rights agenda in 'hostile environments'. This puts a premium on identifying suitable engagement strategies adapted to the specific context. This EQ will seek to address the EC capacity for formulating and implementing such country-specific response strategy, focusing in particular on the relation with (reluctant) partner governments at national level.

88 EU doc. 8363/1/10 Rev.1, 112.
89[1] T. Rathgeber, "Dialogues as a Challenge: The EU in the Human Rights Council 2007 and 2008", European Yearbook on Human Rights 2009. Graz (2009), 156 (article at 147-158).
90[2] Under the European Instrument for Democracy and Human Rights, the EU provides funding "in accordance with EU policy priorities" to appropriate UN agencies, bodies and mechanisms. This includes an annual contribution to support operations of the Office of the UN High Commissioner for Human Rights. E.g. see European Instrument for Democracy and Human Rights Strategy Paper 2011 – 2013, EU doc. C (2010) 2432 (21 April 2010), par.82.

Answer

*There has been a **slow but steady progression** in the quality of the context analysis and country specific strategies that are in many ways a precondition for meaningful EC interventions. This reflects the growing weight given to many Delegations to the issue human rights. Pressures from headquarters to define comprehensive local human rights strategies provide an additional impetus, though it remains to be seen how the quality control of these strategies will be done and what concrete effects will be given to them on the ground.*

There are substantial differences of approach among EUDs, including on the desirable scope and intensity of engagement with national governments and the role of the Commission as pro-active 'change agent'.

Political dialogue is seen as an essential tool to push forward human rights at country level though the levels of effectiveness and impact vary hugely.

Involving civil society in such processes is crucial but subject to many hindrances.

Overall levels of expertise to engage with national governments have increased through structural changes (designation focal point), yet there is still a major deficit of practical guidance on how to intervene in (difficult) local contexts.

Smart partnerships have been developed with Member States and specialised UN agencies to increase leverage though their purpose, outreach and impact also tends to vary substantially.

The rapid response capacity of the EC to changing conditions is largely confined to diplomatic tools as the procedures regulating financial assistance are not flexible enough to intervene quickly, with notable exceptions (re-granting and special assistance to HRDs).

Judgment criterion 3.1: The Commission has sought to define country-specific strategies to engage with national governments on human rights in a short and long-term framework

This judgment criterion seeks to assess how the EC positions itself in the complex arena of human rights. Does it pay enough attention to context analysis (as a precondition to detect window of opportunities)? Does it provide support to the development of home-grown improvements of human rights as well as to properly identified 'drivers of change'? How qualitative is the dialogue with the government?

The evaluation team found a mix of experiences on how Delegations deal with the above questions, reflecting the hugely varied contexts in which the EC operates. This makes it difficult to come up with clear-cut statements. Yet the following aspects merit to be highlighted:

- *Growing sophistication of the human rights analysis and response strategies*. There is clearly a positive evolution in terms of the quality of the context analysis (see also EQ 9) and the human rights strategies, though again with important differences among Delegations[91]. This is partly linked to dynamics in the field (e.g. the growing participation of non-state actors in assessment or dialogue processes) and partly to pressure from 'Brussels', which over the years has been requesting Delegations to formulate specific strategies, first for human rights defenders and recently more comprehensive local human rights strategies. This step provided an incentive to probe deeper into the real challenges related to human rights in a given country (beyond the formal façade) and to specify the possible added value of EC (using its various instruments). Yet this is clearly work in progress. Stakeholders interviewed expressed the hope that these local strategies would be thoroughly assessed on their quality, processed in a non-bureaucratic manner and effectively used as 'strategic compass' for relevant action in the field.
- *Confusion on roles*. As in previous evaluations dealing with EC support to political reforms[92], it was again observed that EUDs tend to interpret their role as 'change agent' in quite different ways. Some EUDs adopt a pro-active approach by engaging, trying to move beyond the comfort zone and taking risks. Others play the game more formally, remain with the

[91] The Questionnaire reveals that 31% of the respondents claim not to have a specific country strategy regarding the promotion of human rights.
[92] See the 2005 Evaluation on EC support to good governance or the 2008 report on EC aid delivered through civil society.

boundaries drawn by the government, respond in a reactive way and are rather risk-averse. Still others have a clear change agenda, yet have to manoeuvre discretely and tend to focus their efforts on a limited set of feasible achievements. These important differences in strategic approach regarding EC roles to be played appear to be relatively delinked from the specific political conditions on the ground. One can find bold and pro-active approaches by EU Delegations to dealing with human rights even in the most hostile environments (e.g. Zimbabwe, Yemen). In contrast, reference can be made to the very timid approach adopted by the EC/EU in North Africa until the Arab Spring – a political stance that was highly criticised by the civil societies from Europe and the region.

- *Quality of the dialogue.* Also in this case a huge mix of different experiences was noticed, yet the overall message is clearly that political dialogue is an essential tool to discuss human rights with partner governments. According to the questionnaire, 48,3% of the respondents feel that the EC has used "to a great extent" the political dialogue in an efficient and effective manner, while 51,7% believe this tool has only been "somehow" productive[93]. Evidence was collected on both good practices (e.g. Kazakhstan and its choice for organising a more decentralised, iterative political dialogue process, involving civil society) and frustrations about the nature, structure and format of the process (Ethiopia, Vietnam). The involvement of civil society is generally recognised to be critical (including the identification of priorities and target EC support to the real 'drivers of change'). From the questionnaire it appears that in 58,6% of the cases the civil society is only "somehow" involved and in 6% "not at all"[94]. This also leads to resentment among civil society actors. In relation to the question on the most important criticism received by EUDs on the coherence of their human rights action, the lack of support to civil society comes out as the most often mentioned weakness[95].

Judgment criterion 3.2: The Commission has invested in its internal capacity to engage with national governments on human rights (in terms of guidelines, tools and expertise)

The main finding here is that the EC – like other donors - is still confronted with the challenge of providing practical guidance that can be of use in hugely different country contexts. The questionnaire clearly confirms this central message. While there is appreciation for the human rights' guidelines, they are considered as general policy documents, declarations of good intentions, providing a broad framework for the EU's external action. Yet they are not seen as particularly helpful in terms of practical application for EUDs who need to adapt to "local expectations, pressures, diplomatic/political positions" (EUD India), let alone for those who have to work in environments "where human rights are an uncomfortable subject and dialogue with the counterpart is limited" (EUD Ethiopia). While relevant with regard to the topics covered, most guidelines remain "vague and oriented towards policy level while lacking practical tools to implement them or specific country-oriented focus which makes it difficult to adapt them to the country-specific focus" (EUD Yemen)[96]. Similar observations were made with regard to the lack of practical guidance for mainstreaming human rights (Mission report Guatemala).

The designation of focal points for human rights (and more recently also for human rights defenders) is widely seen as a major improvement in terms of structurally reinforcing levels of EC expertise. The questionnaire indicates that 97% of the EC Delegations involved have someone specifically in charge for human rights. In 18% of the cases it is a 'focal point' while in 40% of Delegations there is a project officer combining human rights with other responsibilities. Yet further work is required to enhance their effectiveness. This highly political, sensitive function is too often entrusted to younger people without providing sufficient political support from the hierarchy or ensuring linkages with the political section or other relevant units. It is seldom a full-time job with the risk that most time is spent to the management of the thematic lines on human rights. The frequent rotation of focal points makes it difficult to build an institutional memory and structured capacity to intervene in a knowledge-intensive and evolving field like human rights.

Judgment criterion 3.3: The Commission has sought to increase its leverage on national governments by developing smart partnerships with other donor agencies and UN systems

[93] See Question 8
[94] See Question 8
[95] See Question 7
[96] See Question 1

The different evaluation sources reveal a plethora of coordination fora, platforms, working groups and mechanisms to address human rights in third countries. Their nature, objectives, composition and process modalities vary hugely as does the role of the Commission (e.g. initiator, lead coordinator/chair, and member). Cooperation is quite systematic with Member States and specialised UN agencies, less with USAID. More often the cooperation with UN family organisations is more at programme/project level than on strategic common approaches or on the on the implementation of UN human rights treaties. The cooperation is greater with agencies such as UNDP and UNICEF than with the office of the High Commissioner for Human Rights which is not present in all countries.

There is also a clear concern to involve civil society organisations as much as possible. The questionnaire portrays this diversity of situations.

As far as the use of these partnerships for enhancing leverage on national governments is concerned, different practices are noted. Some of the coordination platforms seem primarily oriented towards exchanging information on "who does what" (also in terms of funding). Others see it as their task to promote a societal debate on human rights with all actors (EUD Salvador, Mission report Kazakhstan) or to increase the collective capacity to act decisively in a particular area (e.g. HRDs in Guatemala; gender issues in Sierra Leone and Pakistan; women's role in peace building or prevention of child recruitment in armed conflicts in Colombia).

An interesting case is the approach adopted in Belarus. Since development of civil society is a cornerstone of EU policy towards the country and considering the hostile local environment, a specific three-tier mechanism was set up to effectively exercise leverage on this sensitive agenda through collective action[97].

As in other areas related to human rights interventions, there is limited documented evidence of the effectiveness and impact of these smart partnerships. The field missions suggest that much depends on the level of engagement of participating members, the political leadership exercised as well as the capacities that can be mobilised to push the right levers at the right time.

The EC did not systematically refer and create strong link for joint actions at policy and cooperation level with actors which are more active and vocal in the protection and promotion of human rights in a given country. These can be also a non-Member States' donor and their partner organisations. In Vietnam, for instance, the approach of Switzerland was reported to be visible and effective. The Swiss Embassy has been successful in establishing good relations with Government departments, and was able to address sensitive issues in dialogue and through technical cooperation projects. Switzerland funds projects of CSOs including on sensitive issues, such as the death penalty, torture, detention and prisoners.

A closer approach with other influential States is also beneficial for the effectiveness of démarches and declarations.

Judgment criterion 3.4: Capacity of the Commission to respond to a changing national policy environment, especially in conflict, post conflict context and with regards to fragile states.

The EU capacity to react in a short term to changing local situations resides to a great extent with public diplomacy tools, in particular démarches, confidential consultations and declarations. Examples were found whereby the EC/EU effectively used these tools to swiftly react to unfolding events in the country (e.g. the EUD efforts to mobilize the Brussels diplomacy to react expeditiously against a proposed new bill aimed at introducing a Presidency for life in Kazakhstan).

In general the financing instruments have not the flexibility to respond rapidly to changing national conditions or to human rights emergencies due to the financial procedures that regulate them.

In the framework of the EIDHR, the objective 1 of the EIDHR is addressed to *Enhancing respect for human rights and fundamental freedoms in countries and regions where they are most at risk*. The focus is on situations where there is a serious lack of fundamental freedoms, where human rights defenders are under most pressure, where civil society operates with difficulty and where there is little room for political pluralism. However, the use of this tool is contingent upon the mechanism of *Call for Proposal*s; hence about 2 years are needed to put interventions into practice.

[97] The EUD leads the dialogue with Member States, the UN for all agencies and there is an 'open method of coordination' among key interested donors on specific issues (e.g. media freedom). Interestingly, the EC felt it could not participate in the group on the topic of 'democratic development' as it could not support political parties

There are two main exceptions where the EC response can be more flexible. The first is the ***Re-granting*** which aims to indirectly reach local organizations active in field of human rights by financing intermediary organisations (specialized international NGOs), who finance the sub-beneficiaries (need of an organisation that has already a contract with the EU).

Besides this possibility, the European Commission may also provide ***ad hoc financial direct support to human rights defenders in urgent cases.*** Art. 9.1 of EIDHR Regulation provides that: "The Commission may allocate small grants on an ad hoc basis to [individual] human rights defenders responding to urgent protection". On this basis, the EIDHR Annual Action Plans for 2007, 2009 and 2010 have reserved a €100,000 financial envelope each for the Commission, whether at Headquarters level or in Delegations/European External Action Service (EEAS) in order to allocate small grants of up to €10,000 per grant to human rights defenders in need of urgent protection or assistance. Another €100,000 may be allotted to service providers through procurement contracts (including framework contracts), to provide transport facilities, accommodation, etc. in the shortest possible delays. Due to the nature of these actions, the small amounts, the emergency of the situations and the relative confidentiality with regard to the implemented activities, simplified rules for contracting are applied.

This direct support scheme for HRDs is centrally managed by the Commission and was for the first time used by the EU Delegation in Honduras in the beginning of 2010. Following the *coup d'état* that led to the ousting of President Zelaya in 2009, the human rights situation in the country worsened severely and violence against human rights defenders were a matter of serious concern. In this context, the Delegation decided, after obtaining the political endorsement of DG Relex (now EEAS), to support three local human rights organizations with longstanding experience in the defense of human rights in order to cover for their pressing financial needs.

4.4 EQ 4: Dialogue and partnerships with regional organizations and civil society organizations

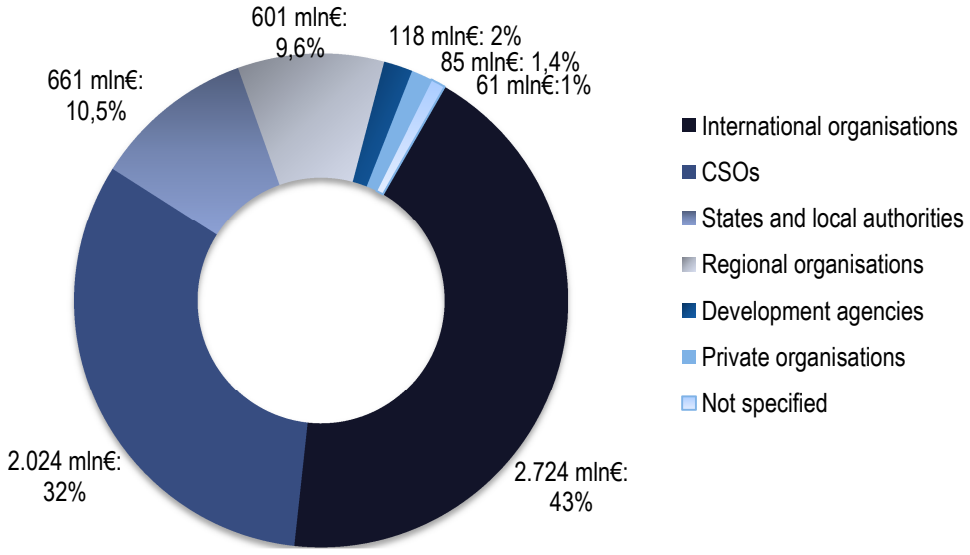
EQ 4. To what extent and how has the EC developed dialogue and partnerships relations with regional organizations as well as civil society organizations to enhance the value of its human rights strategies and programmes in relation to the achievement of its different objectives?

Background

The Commission worked with 3.400 different contracting parties for implementing interventions in the field of human rights over the period 2000-2010 as documented in the inventory of EC financial contributions (volume 3). In order to grasp the relative importance of these contractors based on the financial amount granted by the EC, these contractors have been classified according to 6 different categories: i) international organisations, ii) regional organisations, iii) states and local authorities (including parliamentary bodies and national human rights institutions), iv) development agencies, v) civil society organizations (CSOs) and vi) private organisations.

Graph 1 shows the results of this research, according to which the main contracting parties were the international organizations, which received 2.724 mln €, i.e. 43% of the overall amount contracted by the Commission in the field of human rights. Secondly we can find ***CSOs*** with 2.024 mln € (32%), while national governments and ***regional organizations*** occupy the third place by receiving 661 mln€ and 601 mln€, i.e. respectively 10,5% and 9,6% of the overall aid provided. Private organizations and development agencies occupy the last places in the ranking with 118 mln€ (2%) and 85 mln€ (1,4%).

Graph 1 – Overall amounts planned and relative breakdown by recipient (between 2000 and 2010 and in mln €)



Source: CRIS and DRN analysis

The importance of the international organisations (IOs) in this ranking is substantially influenced by the EC financial contributions received by these institutions via multi-donor Trust Funds (TF). The most relevant TF considered are the Law and Order Trust Fund for Afghanistan (LOFTA) and the International Reconstruction Fund Facility for Iraq (IRFFI), which have main components dedicated to the reestablishment of law and security, strengthening good governance, support to the constitutional process and to elections.

In addition, the EC aid to electoral processes, institutional building and democratic reforms in non-member countries are often channelled through UN Organisations, notably the UNDP that use CSOs to implement its interventions. A strategic partnership and a Financial and Administrative Agreement (FAFA) regulate the relation between the EU/EC and the IO. However, sometimes actions supporting HR through IOs in hostile countries are questioned by the EC, as observed by the evaluation team in Ethiopia in relation to the implementation by UNDP of the Democratic Institutions Program (DIP). Yet a specific assessment of the international organisations' role as EU/EC partner of its human rights strategies and programmes is not the objective of this evaluation.

The focus here is on the EC strategic partnerships with civil society and regional organisations.

Answer

a) With regard to civil society

Civil society organisations (CSOs) are vital allies in the promotion of human rights. Over the years, the EU has supported a huge diversity of organisations working on a wide range of political, social, economic and cultural rights. There is a well-documented set of positive experiences with dialogue and financial support for projects (particularly through the EIDHR) with evidence of impact at various levels.

The challenge in the coming years is ***to further deepen the strategic partnership between EU and CSOs****. While the EU has provided a critical lifeline support to many CSOs involved in human rights, the approaches used also display limitations[98]. It has been observed that the EU often lacks a comprehensive and clearly spelled out strategy to engage with civil society – beyond projects - in different country contexts. Ill-adapted procedures and funding modalities compound the problem. The support generally takes the form of funding for small projects to be executed in a limited time frame (while improvements of human rights require concerted efforts and societal struggles over a longer*

97 These were highlighted in evaluations of EIDHR projects as well as in the 2008 Evaluation of "EC Aid delivery through civil society organisations".

period of time). Under these conditions it is also difficult to provide smart forms of institutional development support that help to structure/consolidate civil society – as a viable sector and related set of actors. These and other issues have been reconfirmed during missions and consultations included the recently organised "Structured Dialogue on the involvement of civil society and local authorities in EC development cooperation".

b) With regard to regional organisations

The EC/EU has promoted strategic partnerships with several regional organisations to move forward on issues of common interest that are regional or global in nature included the promotion of human rights, democracy, governance, security and peace.

Globally regional organisation received 11% of the total amount of the EU funds on HR related issues during the evaluation period. The kind of dialogue, engagement and financial contribution towards the organizations in the different regions however vary substantially.

*While the overall architecture for the policy dialogue with the regional organizations is well developed and generally provides a trustworthy arena for facing common challenges**, levels of empowerment of regional bodies dealing with human rights remains rather limited**. This holds particularly true for the African Union (AU) and related bodies such as the African Commission on Human and Peoples' Rights and the African Court. Overall cooperation between the EC and regional institutions on human rights could be further enhanced as these bodies present a potential added value (as norm entrepreneurs) and tend to enjoy in principle greater levels of legitimacy in the eyes of their members than external actors such as the EU.*

Judgment criterion 4.1: The Commission engages in dialogue on human rights with relevant civil society organisations in third countries and provides support that fosters their empowerment and viability

The European Commission has a longstanding practice of dialogue with civil society, included in the field of human rights and democracy that takes different consultation forms at headquarters and country level. These are privileged arena to present issues of concerns requiring EU/EC action. The dialogue with civil society has been formalized and structured in a variety of type of dialogues.

Among them is the "*EU NGO Forum on Human Rights"* - a formal consultation with representatives of EU, the EU Presidency, Member States, the EU Parliament and civil society. This consultation has been launched since 1999 in Brussels. The Forum focuses on human rights issues of concern for the EU and the international community at large. It sets up specific thematic workshops that produce a set of recommendations agreed upon in a general session. Recently the EC initiated a *dedicated structured dialogue on human rights and democracy* which was part of a enhancing broader 'Structured Dialogue' run by the European Commission with the civil society and local authorities around the world. The first regional seminar of this kind has been convened for the ENPI in Amman (29 June – 1 July 2010) on a choice of location linked to the fact that the largest share of EIDHR projects goes to this region. The main drawback observed in this positive picture is the limited account of the outcomes by the EC which did not follow-up the recommendations elaborated during the EU-NGO Forum organised in Brussels. On the other hand, positive results are noted at the level of the structured dialogue on human rights which is part of a broader process which gathered different stakeholders, namely Civil Society and Local Authorities Organizations, the European Parliament, EU Member States, the European Commission and EU Delegations with the aim of increasing the effectiveness of all actors involved in EU development cooperation by finding a common understanding on the main issues linked to CSOs and Local Authorities. The structured dialogue was successfully completed this year as confirmed by the final report of the final Conference in Budapest[99].

Specific points of concerns related to the worrying deterioration of human rights conditions in a growing number of countries have been raised. CSO and EC agreed that there is growing sophistication in the repressive methods used by certain governments, such as the imposition of greater administrative burdens on CSOs, stronger barriers for foreign funding to local NGOs, systematic violations against Human Rights Defenders (HRD), the proliferation of Government-operated NGOs (GONGOs) that are replacing genuine NGOs not only at home but also in international fora. The number of truly 'autonomous' organisations remain limited particularly when it comes to engage in political issues such as the defence of human rights. There is clearly more space

[99] https://webgate.ec.europa.eu/fpfis/mwikis/aidco/images/e/ea/FINAL_CONCLUDING_PAPER.pdf

available to push forward issues such as women's rights or children's rights, and sometimes it is the only possible area for direct and visible civil society work.

Field missions (Kazakhstan, Vietnam, Ethiopia) confirm the political and institutional fragility of the independent civil society sector involved in the promotion of human rights. In such a constrained environment, the overall support provided by the EC was generally considered to be as "vital". This holds true not only for the consistent financial support provided over the past years to the human rights community of CSOs (mainly though the EIDHR), but also for the EU political backup received, directly or indirectly. With regard to the latter, CSOs are particularly appreciative about the EU's systematic attempts to open-up the human rights dialogue to civil society, the démarches against new laws that threaten the space for human rights and fundamental freedoms as well as the interventions towards human rights defenders. The financial support received through EIDHR represents a "lifeline" for several CSOs involved in human rights, especially those ones that are not connected to international networks and related sources of finance.

Stakeholders interviewed expressed satisfaction with the quality of the EC support provided, it was recognized that a lot has been done to provide financial support through various instruments and that the EIDHR, as an independent instrument, has a specific added value. Strong points include: (i) the thematic relevance of the projects; (ii) the quality of the policy dialogue with the EC[100]; (iii) the support over a longer period of time (through a succession of projects); (iv) the promotion of joint learning (e.g. through national and regional seminars) as well as networking among CSOs; (v) the support to small yet professional research institutes that study the evolution of civil society and provide important capacity building services.

The field missions also registered perceived weaknesses in EC funding for human rights organisations. These relate mainly to (i) the complexity of the procedures to access funds and report for their use (particularly for smaller NGOs; (ii) the high transactions costs involved in dealing with EC; (iii) the short-term nature of the funding provided leaving limited scope for institutional development of beneficiary organisations; (iv) the tendency to privilege projects targeting socio-economic rights; (v) the still limited openings to participate and obtain funding through the geographic instruments. The EU was encouraged to accept financial risks when it comes in particular to supporting human rights defenders working in difficult environments, and to protecting their families. Beneficiary civil society organizations on their part pointed out that they should proactively use the already existing flexibility instruments and reinforce the sustainability of actions.

A number of good practices were identified in less constrained environments, such as efficient civil society consultation processes to identify priorities or support to the development of a national strategy. Morocco is a case in point. The EUD has used the space provided by the ENP to effectively facilitate the dialogue among different stakeholders and to facilitate information flows between them. The framework of the structured dialogue provides the forum for an on-going exchange that contributes to shape the agenda and structure societal demands on the government regarding issues on human rights and democratisation. The box below illustrates this "*virtuous circle"* of dialogue.

Box 2 - Good practice: "Collective Monitoring of the EU-Morocco Action Plan by Civil society"

The project entitled "Collective Monitoring of the EU-Morocco Action Plan by Civil society" implemented by the Moroccan Euro-Mediterranean NGO Network with EIDHR funding matches the objective of the EU to increase civil society involvement in ENP monitoring. This innovative project was launched shortly after Morocco became the first country in the Southern Mediterranean region to benefit from the advanced status in its relations with the EU, in October 2008. With this two-year "collective monitoring project", the Moroccan Euro-Mediterranean NGO Network is enabling civil society to participate in various stages of the Morocco-EU political dialogue in the framework of the ENP. About 50 civil society organisations in Morocco have produced an annual evaluation report of the Morocco-EU Action Plan in 2009 and 2010.

In order to increase the effectiveness of this monitoring exercise, the Moroccan Euro-Mediterranean NGO Network has also developed a number of capacity building activities for these organisations on the ENP mechanisms, EU institutions, as well as on reporting and monitoring activities, etc. The evaluation report on the Morocco-EU Action Plan is the result of an intensive 4-months civil society internal consultation process. The consultation started with a plenary meeting of the network to decide upon the main topics to be addressed, the evaluation methodology, to appoint eight thematic commissions, their members,

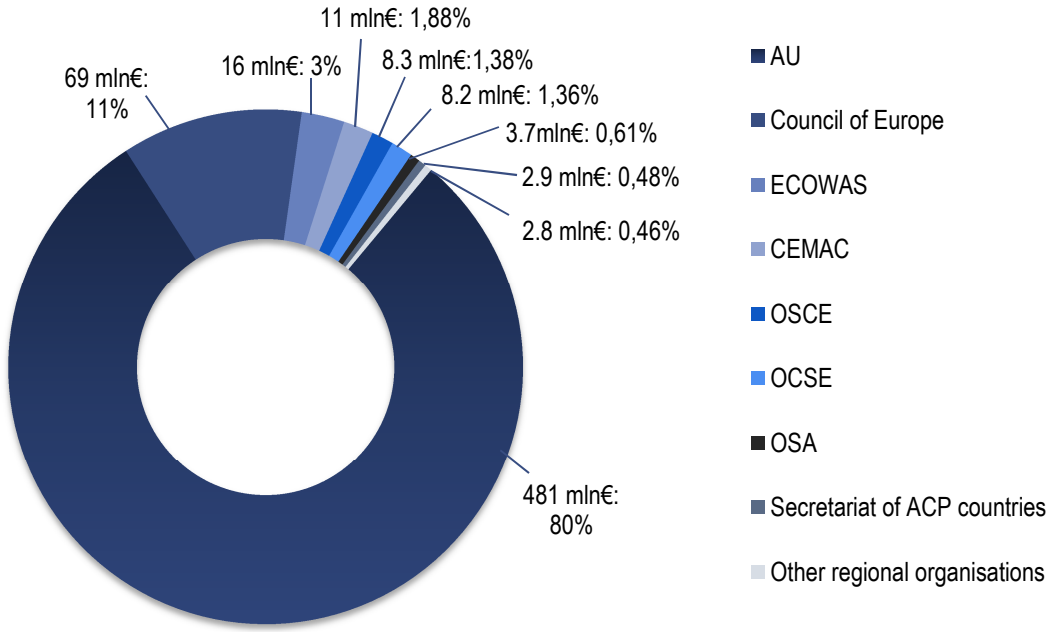
[100] The dialogue on administrative matters related to reporting and accounting obligations was considered by some CSOs to be less fruitful, amongst other because of the "top-down" attitude displayed by the EC officials involved.

rapporteurs and moderators. The eight thematic commissions then hold their working sessions and afterwards a wrap-up plenary session led to the adoption of the final report. This consultation involved civil society at large since the Moroccan Euro-Mediterranean NGO Network is a national structure composed of more than 50 non-governmental non- profit organisations and trade unions, working primarily in the areas of the protection of HR and fundamental freedom, economic social and cultural rights, youth, environment as well as rule of law. Sources: EUD Rabat

Judgment criterion 4.2: The Commission has established strategic partnerships with regional organisations that contribute to their empowerment

The EU has promoted strategic partnerships with several regional organisations for the promotion of human rights, democracy, governance, security and peace[101]. In many case the role of the EU in building regional strategies for HR has been essential. The kind of dialogue, engagement and especially financial contribution towards the organization in the different regions however vary substantially as indicated by graph 2.

Graph 2 – HR commitments and relative breakdown by main regional organizations (2000- 2010)



Source: CRIS and DRN analysis
(*) AU: African Union; ECOWAS: Economic Community of West African States; CEMAC: Communauté économique et monétaire de l'Afrique Centrale; OSCE: Organization for Security and Co-operation in Europe; OECD: Organization for Economic Co-operation and Development; OAS: Organization of American States

From the analysis of the EC funded activities included in the inventory (volume 3) we can observe that the regional organizations are important partners in the promotion of human rights, yet they receive a limited amount of the overall EC HR financing during the evaluation period (2000-2010), i.e. €604,119 corresponding to 9,63% of the total amount. Regional organisations are supported by the EC through a variety of interventions targeted at:

- institutional and capacity development, such as the support to the African Union (AU), Economic Community of Central African States (ECCAS) and Economic Community of West African States (ECOWAS) in building their own capacity in the area of conflict prevention and resolution; the set-up of the ECOWAS Standby Force (ESF); the establishment of the early warning mechanism for Central Africa (MARAC), etc.)

[101] The list and the description of the EU partnership and dialogue with regional organizations is in Annex 11.

- technical assistance, for instance support for formulating regional policies/policy guidelines and priorities on specific thematic areas;
- financial assistance for the implementation of regional programs/initiatives (like the ECOWAS Conflict Prevention Framework; the AU peacekeeping missions in Sudan and Somalia; the operation of the ECCAS multinational force (FOMUC) in the Central African Republic; etc.);
- logistic support (organisation of conferences, meetings, working groups, seminars on specific topics and meetings).

While the overall architecture for the policy dialogue with the regional organizations is relatively well developed and provides a trustworthy arena for facing common challenges, tangible results for an effective institutional empowerment of HR system of protection as results of the EU interventions has proved more difficult to achieve.

This finding is confirmed by the results of the field mission in Ethiopia in relation to the EC support provided to the African Union which received 80% of the EC financial contribution to regional organisations (ROs) during the period of the evaluation. The EU support of 55 million Euros for capacity building to AU has been essential to build a HR Pan African strategy. The strategy is a key tool for developing an African driven process in the HR and governance fields. The best practice in the AU-EU relation on HR is at the level of *High level political dialogue.* The dialogue is deep and can bring to the attention difficult subjects. In the HR matters AU and EU reached important common achievements, as for instance a *joint statement against torture and children soldiers*. To this concern though, African Union representatives raised some criticism in relation to the level of the EU participation to the dialogue. The EU did not participate with the same high level of representatives and this can affect future relationships.

A weak point is the empowerment of the specific HR regional court and the specific HR bodies, namely the *African Commission on Human and Peoples' Rights and the African Court (AfCHPR).* Crisis situations show the weakness of the HR Commission and the Court. It is difficult for these bodies to obtain directly EC funding due to AU and EC administrative constraints. Concrete allocations of the 55 million EC support programme resulted from complex political and institutional decision-making processes within the AU. This may explain why for 2011 no financial contribution was earmarked to the HR strategy and the Institutions. From the EC side, EIDHR cannot be applied due to the mechanism of call for proposals. Direct agreements are also not possible since the AfCHPR has a weak capacity and failed in the 4-pillar assessment which allows the EC to use this kind of procedure. The central question for the future is how to effectively support the development of a solid African architecture on governance, including a stronger HR Commission and Court. The reinforcement of these institutions is in the interest of the EU as HR issues could be more directly addressed through peer reviews. This, in turn, could make relations with the EU less conflict-ridden while helping to avoid double standards.

An additional overall challenge for the EC/EU in respect to partnerships with ROs on HR issues is how to better use the added value of the regional system of protection. Regional organizations take up an intermediate position in the international human rights regime. Effective human rights protection depends primarily on the availability of remedies at the domestic level. The global level is essential in maintaining human rights as a concept of global relevance, but does not provide a human rights court requiring States to provide reparation for human rights violations. Regional systems (at least in Africa, the Americas and Europe) do provide courts that can act when domestic remedies have failed, while at the normative level may provide protection against human rights challenges specific to the particular region. While remaining within the limits set by global human rights law, each of the regional human rights conventions has specific characteristics that reflect the differences between the regions: an emphasis on the freedom of each individual in the European Convention; groundbreaking jurisprudence of the Inter-American Court on indigenous rights; and a concern for the post-colonial situations of peoples within multiethnic societies in the African system.

From a political perspective, the regional approach builds on trust and values shared by like-minded states, resulting in an acceptance of forms of monitoring of their domestic human rights situation that they are reluctant to accept at the global level. In sum, ideally, regional human rights mechanisms allow addressing failures in the domestic protection of human rights and enable an infusion of a welcome degree of plurality within the limits set by global norms.

Cooperation between regional organizations on human rights is not very developed and supported by the EU/EC. Clearly, regional human rights courts influence each other: both the Inter-American Court

and the African Commission refer regularly and explicitly to the case law of ***the European Court of Human rights***; the reverse is less prevalent. In addition, if the constituent documents of the relevant regional organizations define human rights as a task of the organization, there is no reason why political cooperation on human rights should not be possible.

Box 3 - Good practice: IA system of rights' protection

The Inter-American system of rights protection has developed into one of the more active and creative regional spaces for human rights protection in the last two decades. Despite limited resources, there has been a process of consolidation of the Inter-American system of rights protection as its work has come to be important both at the domestic and regional level in advancing rights issues. Both through the work of the Inter-American Commission of Human Rights and a rapidly growing body of pro-human rights jurisprudence in the Inter-American Court, the Inter-American system has become a meaningful framework that has concrete impact on domestic politics, legislation and judicial processes in Latin America

A number of rulings and recommendations have become established references in Latin America in relation to different rights issues and how they play out at the national level. They shape national legislative processes as the signatory countries are bound by their commitments to the IA system and the American Convention. Cases have included Court decisions on amnesties by which human rights abuses committed under military rule would be left untried, where amnesties were found to be incompatible with the American Convention, to rulings which have compelled states to award compensation to victims as a result of state led violations against rights, to more recent cases where the Court has ruled on contemporary rights issues in relation to freedom of speech and indigenous rights in relation to land claims. Decisions such as these, combined with the body of recommendations from the Commission, the advisory opinions that the Court can issue on points of law and the compatibility of domestic legislation with the American Convention, has made of the Inter-American system a relevant regional body that states cannot ignore in Latin America. Increasingly these decisions and documents are beginning to have an impact on domestic judicial reasoning and jurisprudence. Domestic courts are increasingly expected to – and inclined to – take note of the Inter-American system, contributing to changing patterns of judicial decision-making on rights issues in some cases

On the relationship between the European Court of Human Rights and the IACHR, the literature suggests that a key issue is the degree to which the two bodies take into consideration their respective jurisprudence in their own legal reasoning. This mutual jurisprudential dialogue, which is not formal, is beginning to constitute a growing body of international jurisprudence on human rights issues that is not meaningless. It is relevant then that, as part of the EU commitment to human rights, supports the dialogue across regional rights instruments. The EU and Latin America are the most established, but emerging bodies in other regions are likely to become relevant points of reference. The EU can play a key role in facilitating exchange and dialogue across regional bodies. This is an area which is still very weak and is limited to conversations between international litigation lawyers. Butit is not sufficiently part of the broader public discussion on human rights

4.5 EQ 5: EC instruments' complementarity

EQ 5. To what extent and how has the EC ensured a complementary use of the various instruments (geographic and thematic) available to supporting human rights?

Background

Ensuring complementarity in the field of development cooperation is a Treaty obligation, also to be applied in the field of human rights. Here "complementarity" is intended in the use of the various instruments the EC has at its disposal to promote human rights (i.e the geographic and thematic instruments, as well as the political dialogue). This EQ will seek to understand to what extent the EC manages to combine these various instruments and exploit their synergy in a given context with a view to optimising relevance, effectiveness and impact of its human rights strategies.

Answer

The EU/EC has at its disposal a variety of instruments of financial and non-spending nature to support its human rights policy. However evidence collected suggests that ***the articulation between various EC instruments is still limited****, thus reducing the scope for synergies across thematic and geographical instruments to enhance relevance and impact of EC actions on human rights. Despite notable exceptions,* ***there is not a well developed strategy for human rights at local level and at headquarters to favour such a strategic complementarity on instruments****. In a similar vein, it could be observed that human rights dialogues are generally not strategically linked to financial instruments; hence they do not reinforce each other.*

Direct support to HR has mainly been channelled through the thematic instruments, notably the ***EIDHR*** *which has a very good track record. It is directly relevant for addressing major human rights challenges and is easy to adapt to the context of the country; it allows the EC to work on sensitive issues with organisations that are independent from governments. However, in hostile countries the EIDHR faces* ***political constraints*** *and the national authorities de facto reserve the right to refuse or block projects that address highly problematic human rights matters. As a result, EC actions are* ***diverted to less controversial areas*** *(e.g. 'soft' human rights issues linked to the rights of children, women, handicapped and minorities)* ***or abandoned altogether*** *(Ethiopia). In these situations, which tend to be quite prevalent, a more strategic approach is required for selecting appropriate instruments (beyond EIDHR) to push forward the human rights agenda.*

In this context, it is promising to note a growing interest at EC level to better use the potential of geographic instruments to promote human rights, especially those programmes that are geared to structural reforms in the public or justice sectors or in terms of promoting decentralisation and governance. The task at hand will be to give stronger visibility and content to the human rights component in these reform programmes.

Judgment criterion 5.1: The Commission has elaborated strategies (at both headquarters and Delegation level) to promote and facilitate the combined use of instruments and their synergy

Over the past years increasing attention has been paid to improving coherence and synergy between the geographical programmes (DCI, EDF, ENPI and IPA) and thematic instruments and programmes (EIDHR, Instrument for Stability, NSA & LA and Investing in people) to support human rights.

However various evaluation sources (e.g. country missions, interviews, survey) show that there is not yet an explicit strategy to facilitate the combined used of the instruments. The EC agenda on human rights is generally not integrated into bilateral programming and there is a limited coordination between the relevant units and sections at HQ and in the EU Delegations dealing with the various instruments that could potentially be used to promote human rights.

The key question for the EC is not whether to use a thematic instrument or to use a geographic instrument, but rather ***how to effectively combine the two instruments***. What matters is to properly assess the human rights situation in a country in coordination with all relevant actors and partners; to analyse what is needed; and then to match it with what is feasible in terms of support strategies (through various instruments). This implies a well-defined 'localised' human rights strategy based on a deep knowledge of contextual conditions and linked to the overall country programming.

Positive examples of combining instruments have been observed at field level. The Morocco case study suggests that the ENPI provides an enabling framework for strategically using thematic instruments to support human rights programming funded through the ENPI. Notably, one thematic project involved supporting an assessment by the *Reseau Euromed* of progress achieved against the ENP Action Plan in relation to human rights issues. It is relevant to note that this was the consequence of efforts by the Delegation to coordinate across the geographic and thematic instruments and to build up a rather strong country knowledge and institutional memory regarding the evolution of the ENP *and* the political and human rights situation.

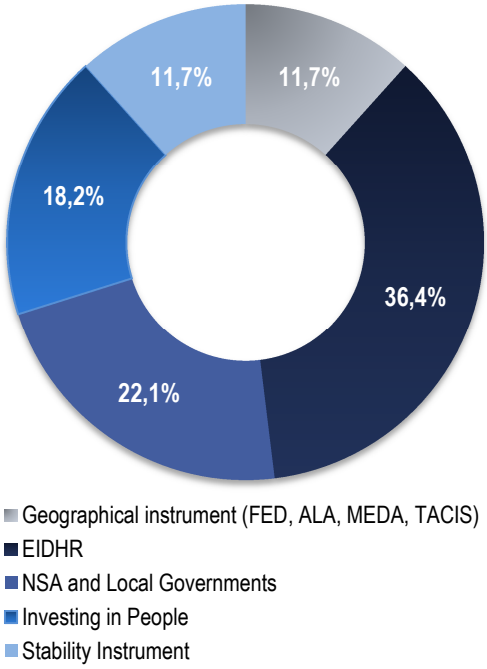
The legal basis of most EC/EU thematic and geographical instruments spells out a basic framework to organize complementarity. The main principle is that geographical instruments should be devoted to support governments and national state institutions, while thematic instruments should be geared towards civil society and local authorities. This rather formalistic approach makes sense to organize the complementarity of instruments. Yet in practice most interviewees stressed the need for a more sophisticated approach to combining instruments, linked to a solid analysis of local contexts and

related windows of opportunity. This would make it possible for the EC to calibrate its human rights support, including in 'hostile' environments that make it difficult to engage with independent civil society organisations. This was confirmed by the regional 'structured dialogue' seminar in Jordan with human rights organisations[102] and by the field missions. Underlying this plea is the recognition by many interlocutors that in order to make a dent the EC/EU needs a stronger *political commitment to human rights* in addition to the financial support (or a greater 'protagonismo politico' in the words of a civil society actor in Guatemala). Seminar participants and interviewers judged that the EU was not exploiting the full potential of its political clout to influence governments that are disrespectful of human rights.

EUD responses to the questionnaire provide interesting indications on the advantages and constraints of each of the existing instruments (see figure 3).

Figure 3 - What kind of financial instruments are best suited to supporting HR?

What kind of financial instruments are best suited to supporting HR-NSAs?		
Answer	**No. Responses**	**%**
Geographical instrument (FED, ALA, MEDA, TACIS)	9	11,7%
EIDHR	28	36,4%
NSA and Local Governments	17	22,1%
Investing in People	14	18,2%
Stability Instrument	9	11,7%
* Total Responses 28	77	



Not surprisingly, the thematic instruments, and the ***EIDHR*** in particular, are seen as the most useful channels. This is linked to a number of pragmatic reasons: (i) the possibility to use EIDHR independently from the consent of third countries governments, particularly in sensitive political contexts; (ii) its potential to reach local actors who are struggling in the frontline and facing the most risky situation; (iii) the relevance of the objectives pursued by these thematic instruments; (iv) the space left for local programming and thus for targeting very specific problems in a particular country or region; (v) the low grant amount which allows to reach out to genuine grass root initiatives and (vi) the fairly large awareness among local actors of these instruments (since the EU is the only donor with a specific, structured funding opportunity in the field of human rights).

However, evidence was also collected on the various structural limitations in the use of the EIDHR which impact negatively on its capacity to influence the human rights situation in a given country:

- the relatively small size of the allocation;
- the short duration of the projects supported;
- the lack of sustainability in countries with chronic or protracted human rights problems;
- the resistance of authoritarian partner governments to allow independent funding for human rights activities, which manifests itself in increasingly restrictive legislation limiting the freedom

[102] The European Commission convened in Amman on 29 June – 1 July 2010 the first regional seminar on the "human rights and democracy support initiative to the structured dialogue on the involvement of civil society and local authorities (CSOs & LA) in EC external cooperation".

of association; in the imposition of greater administrative burdens on CSOs that want to register; in ever stronger barriers to and control of foreign funding to local NGOs; or in systematic violations against Human Rights Defenders (e.g. Ethiopia, Belarus, Vietnam, Tunisia or Syria).

The thematic budget lines on "***NSA and local authorities"*** and ***"Investing in people"*** focus less on sensitive human rights issues but rather target vulnerable sectors: children, women, informal workers or key sectors to the enjoyment of social and economic rights, such as health, education, decent work, or emerging issues, such as culture and development.

EC officials consulted in the field stressed the importance of the ***"Instrument of Stability"*** as it allows giving a quicker and more flexible response than other instruments in crisis and post- crisis situations where human rights and democracy are in danger. Positive features include the possibility to have projects targeted (without CfP) to a variety of stakeholders as well as the relatively large size of the projects. The short-term implementation period is considered a problem.

There is a growing awareness at EC level on the importance of the ***geographic instruments*** to promote human rights, particularly for the substantial funds involved and the possibility to engage with a long-term commitment. The geographical instruments also provide more scope for the EU to be more present and influential at country level as a player exercising leverage to improve the human rights situation.

Yet the field missions and interviews reveal the difficulty of integrating human rights in the geographical programming. A first challenge for the EC is to cross the rubicon and to fully exploit the potential of geographic instruments. All too often the thematic instruments are used as an "easy refuge" or "alibi" not to engage directly with governments. A quote from a civil society representative interviewed in Kazakhstan captures well this crucial point: "*The EC support for our projects has been most valuable. Yet this frontline work will not suffice to achieve major breakthroughs. In our work we are confronted with systemic barriers to promote human rights, such as high levels of corruption, administrative blockages and lack of regulations. A global player like the EU, endowed with political power and a longstanding experience in building functioning institutions, could do more to push the governments for changing the rules of the game, improving regulations, enhancing accountability, etc… The EC is already involved in many of these reforms but could use them in a more political way as trigger to advance the cause of human rights".*

A second challenge in this context is to adopt less technocratic approaches when supporting structural programmes such as ***public sector reform, decentralisation, justice sector and security reforms.*** At present the EC support to judicial reforms, even in country with advance status of partnership[103], focuses mostly on administrative improvements (increasing the number of courts, reducing delays and caseloads) and the revision of some of the legal codes or on increasing the judicial budget. There is generally less attention to address more sensitive issues which are crucial for promoting human rights, such as judicial independence, legal aid, capacity support to civil society and legal bodies in order to contribute to the empowerment and capabilities of citizens (right-bearers) to claim their rights

Among the geographical instruments special attention should be devoted to aid modalities such as ***General*** *and* ***Sector Budget Support*** and their potential to address human rights issues. The contribution of this instrument has been assessed examined in EQ2 (page 23). Here a concrete example if offered on how the EC sought to optimally use sector budget support to iustice in pushing forward a well-defined human rights agenda.

Box 4 - Good practice: Sector Policy Support Programme "Access to justice and Promotion of Constitutional Rights" in South Africa

The EC supports the South Africa's reform programme in the justice sector. In agreement with the Department of Justice, the EC has directed its support primarily to non-state actors which are involved in the human rights work. This is broadly done for two purposes and in two different ways. First, the EC provides sector budget support to the Department of Justice. Government has committed, under this programme, to support a range of civil society organizations.

This programme component also intends to strengthen the interactions between governmental departments and the independent organisations that are active in this area. Dialogue among the EC,

[103] Evidences are from the mission in Morocco (Ministry of Justice reform action plan 2008-2012) and analysis of the Inventory.

government and specialised civil society organisations has resulted in a second component of the overall sector support programme. All three recognised that civil society organisations also play roles that government may not like, and hence will have difficulties in supporting financially and should remain independent. Some of the work and focus of civil society organizations may bring them even in conflict with state actors including the Department of Justice. Litigation cases, advocacy work and lobbying activities are obvious areas where civil society cannot operate within the remit of a formal partnership with the Department of Justice or through funding directly received from the Department.

Such "independent support for CSOs" is guaranteed through a separately managed programme by the EU Delegation in Pretoria. It creates a climate of trust between the different state and non-state actors by facilitating dialogue among multiple stakeholders, developing transparent management systems, and flexibly using the various tools it has at its disposal.

One the whole one can conclude that in many countries the EC has made *valuable contributions* to promoting human rights through the creative use of instruments and the action of highly committed staff. The degree of commitment and success varies greatly from country to country. Nevertheless, this was not part of a structured strategy but represents more a way to find *ad-hoc solutions to actual problems*.

Feedback from field missions, seminars and interviews confirmed that the overall environment for working on human rights is "very difficult", particularly for addressing civil, political rights and fundamental freedoms. There is clearly more space available to push forward issues such as women's rights or children's rights and government's concern to display a modern image on the economic front also means that there are openings to address socio-economic rights. The EC rarely has the organisational strength and political mandate to overcome these bottlenecks. Examples can be documented at different level (Vietnam, Egypt, and Tunisia).

Nevertheless, the EC has a good track record in reinforcing the support to "non sensitive" human rights, using a mix of thematic and geographical tools to remain engaged in difficult environments. *Ethiopia* offers a case in point. It shows the potential of using the diversity of EU instruments to promote the HR agenda in hostile countries (see Box 5).

Box 5 – Example: Ethiopia

In February 2009 the government of Ethiopia further restricted the law regulating the involvement of civil society[104]. It drastically reduced the amount of foreign funding Ethiopian organisation can receive while stipulating that only Ethiopian organisations are allowed to carry out activities on specific governance, human rights, justice, matters and in general on advocacy issues.

The most tangible consequence of the new legislation is the withdrawal of the already small community of CSOs participating in governance related activities and assuming watchdog /advocacy function. The donor community is no longer able to continue supporting civil society in those fields. The majority of the EU cooperation programme in the governance and HR are affected by the law as well, particularly the EIDHR.

Yet the EU was able to go on supporting CSOs though an EDF funding programme: the Civil Society Fund (CSF) which aims at improving civil society capacities of Ethiopian non state actors to engage in the development and democratisation process. After lengthy discussions with the government the funding of this Delegation flagship programme has been declared „domestic", thus enabling the organisations to benefit from it.

The tripartite structure of the programme (i.e. based on a Project Steering Committee composed by representative of the government, civil society and the EC) made this special treatment possible. Whilst this programme achieved mixed impact it can be considered a good practice, exemplifying the EU"s potential comparative advantage in supporting NSAs -compared other development partners.

Judgment criterion 5.2: The Commission has taken measures to overcome institutional bottlenecks against a combined use of instruments and has created incentives for improved complementarity

[104] The Government introduced the Charities and Societies Proclamation law differentiating between "Foreign" and Ethiopian Resident" organisations, "Foreign" organisation are allowed receiving unlimited amount of funding from foreign sources, and "Ethiopian" charities which are allowed to receive a maximum amount of 10% from foreign sources

The combination of instruments is a challenge in many areas of EC/EU cooperation (as evidenced in several thematic and country strategy evaluations). Yet the issue is particularly acute in the field of human rights, considering the hostile environments in many partner countries to push forward human rights and therefore the potential added value that could result from a combined use of the panoply of instruments at the disposal of the EC/EU. The ability to use diplomatic tools, trade as well as a wide range of financial tools constitutes a clear comparative advantage of the EC/EU in relation to what other bilateral donors can do.

Judgment criteria 5.1 shows that the Commission increasingly seeks to innovate the combined use of instruments yet these good practices are far from being properly institutionalized. The evaluation team found no evidence of a clearly defined strategy at headquarters level to overcome *institutional bottlenecks* against a combined use of instruments or structured attempts to provide the right incentives to EUDs to move along this path.

This deficit ought not to be surprising. It follows quite logically from the limited EC/EU political and managerial attention given to mainstreaming human rights. It confirms the tendency to deal with human rights as a separate issue and the existence of too many institutional 'silos' that hamper an effective combination of the various instruments. More fundamentally it reveals the lack of a clear political agenda at EU level to translate broad political pledges in favor of human rights into 'joint EU strategies' backed up by strong mandates and instructions to ensure effective and coherent implementation on the ground.

The current push to produce local human rights strategy may provide an important window of opportunity to focus more on how all the EC/EU instruments could be effectively deployed in a particular context to generate a relevant response strategy and enhance the chances of sustainable impact.

4.6 EQ 6: Progress achieved through human rights' dialogues and programming process

EQ 6. To what extent and how have the EC/EU human rights dialogues and programming processes (at national/regional level) contributed to advance towards respect for human rights in third countries?

Background

Policy and political dialogues are central to the EU approach to human right promotion in third countries. As stated in the Council Conclusions of the 25 June 2001 «The Council reaffirms the importance it attaches to its human rights dialogue with third states as a key tool in promoting human rights worldwide».

The EU has established nearly 40 dialogues focused on human rights. These forms of engagement are broadly defined as 'non financial instruments' in the Term of Reference of this evaluation and the team has outlined the main types of EU non-financial instruments in Annex 6. EQ 6 focuses on the impact of EC/EU human rights dialogues that currently take four different formats:

- structured human rights dialogues or capital-based dialogues (high political level, former involvement of the Troika on the European side before Lisbon);
- dialogues conducted in dedicated subcommittees under Association Agreements, Partnership and Cooperation Agreements or Cooperation Agreements, in particular in the context of the European Neighborhood Policy;
- local human rights dialogues (conducted at country level);
- Consultations on human rights issues.

- human rights are sometimes also discussed in *dialogues under the provisions of the art 8 of the Cotonou Agreement* between the EU and the countries of Africa, the Caribbean and the Pacific[105].

The different formats of dialogues reflect the diverse kind of EU partnerships with non-member countries. Dialogues are usually confidential and the evidence of the evaluation is based mainly on information collected from missions in countries with different institutional set-up of dialogues. The case studies seek to address the following issues: (i) objectives, scope and institutional set-up of the human rights dialogue; (ii) the quality of the dialogue (in terms of content, process and actors involved); (iii) the strategies used to meaningfully involve civil society in the human rights dialogue process; (iv) the follow-up provided to the outcome of the human rights dialogue (in terms of monitoring, link with the implementation of related instruments); (v) the coherence between EC/EU stance on human rights (as a core value in the EU external action)[106].

Answer

The impact of the various human rights dialogues are difficult to measure, partly because they tend to be veiled in secrecy. Generally they are not linked to specific HR commitments and to the HR strategy, but represent a formal platform for the EU to express concern on a number of ad-hoc issues and to seek information about human rights developments in the country concerned.

On many issues, the dialogues are not likely to generate immediate change but to contribute to establishing a favourable environment for gradual or experimental improvements. Progress is therefore rather slow. Yet, they are considered important to keep national governments engaged on HR issues.

Three major weaknesses are noted.

*- Firstly, the dialogues are not **always underpinned by a coherent and shared EU political agenda** (as specific geopolitical, economic and security interests clash with the promotion of human rights as a core value). This also explains the often observed lack of clear benchmarks that can be followed-up (at implementation level) and monitored (in terms of actual outcomes).*

*- Secondly, the format of political dialogues tends to be **highly formalised**, providing **limited space to have a thorough, multi-actor and evidence-based discussion of progress achieved**.*

*- Thirdly, the political dialogue is generally **not adequately connected to cooperation interventions**. Without a clear EU political engagement and the related willingness to connect the dialogue outcomes to concrete actions, it is difficult to have a proper implementation of HR programmes, including EIDHR projects in hostile environments. All this tends to seriously affect the overall credibility, relevance and impact of EC/EU support to human rights.*

Judgment criterion 6.1. Human rights dialogues promoted/facilitated by the EC have contributed to progress towards respect for human rights in third countries

HR dialogues have a formalized structure and are organized generally twice a year. The participation from EU side and the national authorities varies depending on the specific format. With the Lisbon Treaty the role of the Presidency is replaced by the Head of Delegations, who have seen their political role considerably strengthened. At county level the dialogue is chaired for the EU by the Head of Delegation accompanied by political officers and EU MSs Ambassadors are invited; at the capital level senior European officials (from the Commission Delegation and Headquarter, the Council and EU Presidency) attend. Often the EU counterpart is the Minister of Foreign Affairs, but also line ministries can take part as well as a wide range of local actors (including representatives from Constitutional Council, the Supreme Court, Central Electoral commission and the National Human Rights Institutions).

Feedback received from meeting in different countries indicates that such formal exchanges do have ***an added value in putting key concerns on the table*** in an open way. Yet the levels of real interactive debate are relatively limited, taking into account the short duration of the meeting and the

[105] Article 8 commits the parties to engage in "comprehensive, balanced and deep" dialogue to "foster mutual understanding" and "shall also encompass a regular assessment of the developments concerning the respect for human rights, democratic principles, the rule of law and good governance".
[106] See Annex 7 "Dialogue" which includes the matrix used to assess the dialogues at country level.

predominance of a "question-answer" approach to the dialogue. It was also reported that the authorities are quite sophisticated in "drowning" sensitive issues, as in Kazakhstan or Vietnam, by providing technical details and figures in relation to on-going reform processes (which are difficult to contradict in this type of settings) or by re-affirming their intention to address the matter "as soon as possible".

All this clearly suggests that these formal ***HR dialogues also have important limitations***. In recognition of this the EU Delegation in ***Kazakhstan*** has been keen to complement the official dialogue with more regular "local dialogues" on human rights. It thus launched an innovative experiment in 2009 aimed at facilitating in-depth discussion on human rights issues between various local stakeholders. Interestingly, the EC has documented this experience[107], which makes it possible to draw the following lessons:

- The success of a constructive multi-actor local dialogue on human rights depends heavily on the choice of an adequate methodology. The EU Delegation developed such a smart and strategic approach to the planned dialogue. Firstly, it sought to embed the dialogue in national policy frameworks that could provide useful "points of interaction" with the EU. The most important was the Kazakhstan state programme "Path to Europe", which pushes for closer cooperation with Europe (including institutional and legal improvements based on European models). The Action Plan of the programme contains no less than 38 points that are related to Justice and Home Affairs and HR issues. Secondly, it carefully managed the delicate question of participants, ensuring the presence of the OSCE as well as three civil society groups with proven expertise (in order to build confidence only these CSOs were initially invited). Thirdly, it acted as a facilitator of the overall process, pushing for agreement on principles for the dialogue, as well as on focused agendas for the various meetings. When needed, it played the role of 'mediator' between state and non-state actors involved. Fourthly, it opted for a relatively simple format for the dialogues (based on short introduction by the Delegation, brief presentations by local participants and then an open debate) with agendas that could be adapted to changing local conditions.
- The process lasted from January to April 2009 and was organised in the form of weekly meetings. In total ten (10) gatherings were convened, two of a preparatory nature, eight on a wide range of HR issues. Two critical challenges were to ensure participation of state actors (particularly the Ministry of Foreign Affairs) at sufficient levels of seniority as well as to mobilise enough relevant expertise on the topic(s) covered.
- The role of the EU Delegation was crucial for this first attempt to organise a tripartite dialogue on HR. It required both political skills and time to manage such a sensitive and complex dialogue process. The mediating role proved to be particularly critical, as both sets of local actors tend to have quite diverging approaches towards discussing HR issues – with the Kazakhstan authorities adopting a macro perspective and focusing on legal and bureaucratic aspects while the CSOs concentrated on implementation issues and micro-realties (often citing individual cases).
- On the whole, the experiment was considered to be as a major success from three major angles: (i) the creation of space for local actors to discuss HR issues in a constructive manner; (ii) the establishment of a closer link between dialogue on HR and programming processes of the EU financial support instruments[108]; (iii) enhanced visibility for the EU (as the dialogue allowed the EU Delegation to deepen existing contacts and develop relations with new government agencies, many of whom had not been in contact with the EU before).

The main advantage would to put in place a true "process" of dialogue in addition to the official one on HR responding to the following criteria: (i) decentralised to the local level; (ii) iterative (no fixed planning but an open possibility to convene regular meetings when opportune in a given context); (iii) focused on jointly defined priority topics of mutual interest; (iv) pro-active support by EU Delegation helped by a Task Force of interested EU Members; (v) 'nourished' in a more systematic way by CSO inputs generated through auditions and direct dialogue; (vi) a stronger link between dialogue and programming; (vii) result-oriented.

[107] An "Assessment Paper' was produced by the EU on the 'EU-Kazakhstan: Local Dialogue on Human Rights 2009'.
[108] EU Delegation staff from the operation sections participated in the dialogues

Judgment criterion 6.2.& 6.3 The quality of the programming process has helped to identify relevant support strategies and thereby to contribute to progress towards respect for human rights in third countries and useful synergies are created and nurtured between dialogue and programming instruments

Evidence from the evaluation illustrates that HR are on the foreign policy agenda of the EU, however dialogues in most of the countries are not related to commitments to specific HR results and are not guided by a clear common EU/MSs strategy, but more based on discussions on ad-hoc issues. Civil society cannot participate directly in dialogue but are often consulted during the preparatory meetings; the situations vary a lot depending on the overall relation between the government and the civil society in a country.

The link with the technical cooperation is generally weak; the political and operational sections in many EUDs do not exchange in relation to dialogues that are considered public diplomacy tools to be used in the CFSP context separately from cooperation programme. Thus, dialogues are expression of the EU political commitment in the HR areas. Stakeholders interviewed at different level considered that EU was not exploiting the full potential of its political influence and felt there has been insufficient political backing from EU representatives especially in the countries where HR are most in danger. The EU/EC did not use the UPR recommendations to create an opening for a human rights debate with government authorities and non-State actors in situations where HRs are most at risk.

The situation is different for dialogues conducted in the framework of Association or Partnership agreements where it has been noted a better integration in the programming and implementation processes. Despite these constraints dialogues are considered important ***to keep governments engaged*** in HR especially in hostile environments, as already highlighted.

Different example has been documented during the missions.

- The political dialogue has a limited impact in ***Ethiopia***, as the dialogue is being held only with the Prime Minister. Human rights are high on the agenda, but the nature and structure of the dialogue does not allow achieving much. The dialogue between the EU and the Ethiopian government is carried out under the *Article 8 of the Cotonou Agreement*. EU Heads of Missions and the government meet every six months for the regular policy dialogue. The Ethiopian authorities are keen on improving their international visibility, but at the same time take a formalistic view of dialogue. In general, policy dialogue under the Article 8 has not allowed for an in depth discussion on human rights or even on governance matters. As a result, benchmarking or targets for human rights have not been discussed or agreed. The key factor for an effective dialogue is again the political backing at EU Member States' level and a joint EU/MSs policy: without a political engagement it is difficult to have a proper implementation of the programme or EIDHR projects. The HR strategy should be adapted to the context situation, using in the best way the instruments available. No point in trying to impose HR discussion as such. Many hostile or authoritarian governments are strong and not easily opened to new ideas in general and specifically in accepting to discuss HR issues. The Lisbon treaty is providing a new impetus to make the best use of the combined importance of the EU and MSs in their respective cooperation in Ethiopia. The EUD took the leadership in preparing concrete proposals for the format and the substance of the future dialogue sessions, but it is too early to see the outcomes.
- Human rights topics in ***Vietnam*** are still politically sensitive, notably civil and political rights, even though many donors have by now engaged in dialogue processes with the government. The EU strategy of HR put emphasis on discrete way to engage with the government also through informal discussions, not just though dialogue with government since there are some sensitive themes that cannot be touched during formal events, such as dead penalty. HR are not high on the political agenda, the main point of the relation between the EU and Vietnam is the integration of the country in the international arena (there are 9 different dialogues in Vietnam).The EU HR dialogue is taking place twice a year, it is confidential and kept inside the political section, it is not considered for designing a focused cooperation strategy together with the operational staff. In the CSP there is not much on HR, they are not integrated into the bilateral strategy and the HR dialogue is not linked to the technical cooperation tools, hence they cannot reinforced each other. The EUD takes a low profile position, but is very good in coordination and sharing information. Some MSs are more active and have also bilateral HR dialogue with the government (i.e. Sweden, Denmark, and Ireland). Some Member States suggested an annual EU Dialogue followed by technical sessions to link the political and

cooperation level with priorities selected on the basis of a common HR strategy. The EU champion in this context is Sweden that has a bilateral HR dialogue linked to technical cooperation. Also other donors follow the same approach of integrating technical cooperation and dialogue: Australia and the United States. The US dialogue, in particular, is backed at the high political level in Washington (by the Secretary of State Clinton).

- An exception in the framework of the hostile environment is the work of the EUD in ***Yemen***[109]***,*** where consultations with CSO prior to political dialogue sessions are regular, ensuring the involvement of CSO (indirect) in the political dialogue. The political dialogue is structured and focuses mainly on HR issues. The EU political pressure has proved to be effective to address HR concerns with the Yemeni authorities - sometimes more effectively than national lobbies.
- ***Morocco*** represents in principle a relatively friendly environment for the promotion of human rights for the EU. It is of particular interest for the evaluation precisely because of its privileged position among the ENP countries under which it has received special treatment, most recently through the 'advanced status' since 2008. Within the ENP framework, Morocco was among the first countries in the Middle East and North Africa (MENA) region to sign a Neighbourhood Action Plan in 2005. In this document the promotion of democracy, rule of law and human rights is identified as central to the governance commitments undertaken under the ENP relationship. This includes undertaking reforms noted in the chapters of 'democracy and the rule of law' and 'human rights and fundamental freedoms'[110]. Within the political dialogue that takes place under ENP, the sub-committee for human rights deals with the related issues. Through this, it was noted in a number of interviews that the EU at Delegation level was quite constant in its efforts to engage CSOs at an informal level, even if the EU could not represent formally the CSO positions, but it could channel information flows between different stakeholders. Indirectly this contributes to the different levels of political pressure, it was noted, that bear on the political process, and that results in concrete if piecemeal achievements on rights issues. However, the disappointing progress and the lack of meaningful change has put in question the true commitment of the EU to use the political dialogue within the ENP to push for faster and more concrete and effective political reforms.

Dialogues with more powerful country as well are characterised by the same features of formalities and lack of engagement on specific HR commitments, as the one with China (box 6).

Box 6 - *The EU's structured human rights dialogues with China*[111]

In 1994, the EU accepted a proposal from China to engage in a regular dialogue on human rights. For China this was a means to avoid critical motions in the UN Human Rights Commission. Since 1995, with few exceptions, the EU-China human rights dialogue has taken place once every six months, alternately in China and in Europe. The formal dialogue has been complemented by EU-China human rights legal seminars bringing together officials, academics and representatives of the NGO community

The dialogue has been a way to expose Chinese officials to international human rights standards and EU practices. It has allowed the Commission to identify human rights co-operation priorities and for both sides to agree on future projects. On the other hand, the dialogue remains an incremental process which aims to generate long-term improvement. Although the impact of the dialogue is difficult to measure, positive steps have come out of the process, such as China's greater engagement with UN human rights mechanisms (for example invitations to the UN High Commissioner for Human Rights and to UN Special Rapporteurs, signing of the International Covenant on Civil and Political Rights, signing and ratification of the International Covenant on Economic, Social and Cultural Rights).

EU partners carried out a comprehensive evaluation of this dialogue. The EU Council of Ministers concluded that the dialogue and its related legal seminars remain useful instruments to engage China on human rights and are likely to trigger positive change in the long run.

[109] Evidence extracted from the reply to the questionnaire (Annex 5).
[110] See ENP Action Plan, EMHRN 2007; and Kausch, 2008.
[111] The EU and China – reconciling interests and values in an age of interdependence**,** Uwe Wissenbach.

4.7 EQ 7: Progress achieved through human rights' guidelines

EQ 7. To what extent and how have EC efforts to ensure an effective application of EU human rights guidelines contributed to progress towards respect for human rights in third countries?

Background

The EU human rights guidelines provide the general framework for EU action in a specific area towards third countries[112], as well as in multilateral human rights fora such as the United Nations. These are not creating new legal obligations, but aim at providing practical tools for EU missions to be used in contacts with third countries at the bilateral and multilateral levels. The issues identified in the guidelines are also prioritized in the EIDHR. The EU now has formulated eight human rights guidelines[113] primarily focused on political rights.

This evaluation question seeks to assess the impact of the EU human rights guidelines. Yet this opens a wide field of investigation. In order to keep the workload under control and to ensure the depth of analysis, a decision was taken with the Reference Group to limit the focus of this EQ to two guidelines, i.e. respectively related to the human rights defenders and the death penalty.

Answer

On HRD:

The EC has gradually developed quite a sophisticated policy framework and related set of instruments to support ***human rights defenders (HRD****s). The guidelines on HRDs were instrumental to provide additional structure, sense of purpose, coherence and legitimacy to the actions undertaken before. The EC has invested in popularising the guidelines, including through regional seminars. The sheer existence of the guidelines has facilitated dialogue and coordination among EC and Member States (as exemplified by the good practice of the 'Grupo Filtro' in Guatemala), improved the focus of aid spent on HRDs through the EIDHR and globally helped to ensure a speedy and relevant support to HRDs across the world. Future challenges include* ***the opportunity to better integrate HRD support into the overall human rights strategies****.*

On death penalty:

The ***fight against death penalty*** *is high on the political EU agenda, the main outcome is reached at the diplomatic level where the resolution on the global moratorium presented by the EU at the General Assembly reached 108 acceptance votes. EIDHR on this matter has a good track record as well. The main challenge for the EU is* ***to take action on this subject in authoritarian countries or in those ones where death penalty is supported by the public opinion****. In these contexts death penalty is not a subject for discussion with national governments and cannot even be raised at the official dialogue level.*

Judgment criterion 7.1: The EC has used the various means at its disposal to promote/facilitate an effective application of the human rights guidelines

The guidelines on both the death penalty and the human rights defenders foresee a wide range of actions and instruments that can be deployed by EU institutions and EU Member States to reach the objectives set in the guidelines. This first judgment criterion examines how intensively and strategically these guidelines have been used during the evaluation period.

a) With regard to the EU guidelines on Human Rights Defenders (HRDs)

The evaluation team found evidence of an increasingly strong political backing and a diversified set of practices in favour of HRDs across the globe. The questionnaire indicates that a majority of

[112] The EU Human rights guidelines do not apply within the European Union. There is, for instance, no specific protection mechanism for human rights defenders working on territories of EU Member States.
[113] Dealing respectively with death penalty; torture and other cruel, inhuman or degrading treatment or punishment; human rights dialogues; children and armed conflict; human rights defenders; promotion and protection of the rights of the child; violence against women and girls and combating all forms of discrimination against them; promoting compliance with International Humanitarian Law.

respondents consider the guidelines on HRDs adopted under the Irish presidency (2005) as one of the most important policy documents in support of human rights[114]. According to interviewees, a strong feature of the HRD guidelines is that they are quite specific in terms of local actors targeted and modalities of intervention to be used. By definition working with HRDs requires strong collaboration with civil society, both local organisations and international human rights organisations (who provide direct support to HRDs and engage in advocacy work on their behalf, including towards the EU)[115]. The various EU Reports on Human Rights provide testimony of the growing activism of the EC/EU in this area.

The 2006 Council Conclusions recognised that the guidelines *"have provided a structure, purpose and a consciousness of action which was previously lacking"*[116]. They also spelled out sixty-four recommendations to improve awareness and effective application, including the elaboration of 'local implementation strategies' (in close cooperation with local human rights activists) and the designation a 'focal point' for HRDs. By the end of 2010, 74 meetings with human rights activists had been held, 70 local strategies on HRDs were adopted and 84 EU Liaison Officers appointed[117]. The EU's political commitment to support HRDs is reflected in dedicated funding as well, primarily through EIDHR (with thematic and regional NGOs as main implementing agencies). The activities that are funded cover a wide range of preventive protection measures and rapid reaction mechanisms[118].

While the implementation of the EU guidelines is clearly a shared responsibility of all EU Missions, the EC has increasingly been able to play useful roles and provide a specific added value in different countries including through:

- *Facilitating enhanced dialogue and coordination* with EU Member States on HRDs with a view to sharing the burden of collecting information and carrying out an analysis on HRD conditions, agreeing on a division of tasks with regard to trial observation (especially in large countries such as Russia through an optimal use of existing diplomatic structures of Member States), rationalising the support schemes to HRDs, strengthening the collective capacity to rapid and targeted EU responses and exercising leverage on country governments. A good practice in this respect is the 'Grupo Foro' in Guatemala (see Box 7).

Box 7 - Strengthening joint action for HRDs: the experience of the Grupo Filtro in Guatemala

The situation of HRDs is quite dramatic in Guatemala. The targets of government-related groups and informal death squads include activists for political rights as well as as (indigenous) people defending their fundamental economic, social, cultural and environmental rights. The EC in Guatemala has quite an impressive portfolio in support of these human rights activists (through the EIDHR).

On top of it, an original formula was devised to ensure greater leverage in protecting HRDs against the myriad forms of repression they face. As a combined EU effort – with the EUD in Guatemala providing essential backup services - a mechanism was put in place that would allow for a more refined, well-informed and more collective action in favour of HRDs. It relies heavily on specialised local civil society organisations to carry out a first 'filter' of those cases that merit protection (based on an in-depth knowledge of the local situation). Following this initial 'selection' the Grupo Filtro brings together all the key external players from the EU, specialised UN agencies as well as non-EU Member States (such as Norway) to determine appropriate action. This architecture is also linked to justice institutions specifically set-up to analyse violence against HRDs.

This approach has allowed the international community involved to greatly improve its capacities to assess the situation of HRDs, target those most in need of help and exercise more leverage on the government. It has also structurally strengthened the links between donor community and local civil society while improving overall impact of EU action towards HRDs. During the field mission concerns were expressed as to the capacity of the Grupo Filtro to act decisively towards HRDs involved in areas where Member States may have major interests and on the sustainability of the whole construction.

[114] See question 1 on the Quality of the overall EU policy framework.
[115] For an example see Front Line (2011), "A Brief Evaluation of the Implementation of the EU Guidelines on Human Rights Defenders in 2010". The report indicates that Front Line raised more than 100 cases of HRDs at risk over 2010 with the EU and the Member States. Positive feedback (on related démarches, statements, trial observation, meetings with HRDS and their lawyers) were received for around one third of the cases. This suggests there is scope for improving the systematic feedback on HRDs.
[116] Council Conclusions on the first review of the implementation of the EU Guidelines on Human Rights Defenders, Brussels, 7 June 2006.
[117] European Union. 2011. Annual Report on Human Rights and Democracy in the World in 2010, p. 30.
[118] Further innovations are planned, including a 'European Shelter Initiative' –a network of European municipalities that could temporarily provide a safe place for HRDs.

- *Targeted advocacy work* by RELEX-B1 to push for the implementation of the Council instructions to develop "local strategies" and appoint a "focal point" on HRDs.
- *Smart use of the EIDHR to protect and support HRDs*. A majority of stakeholders consulted during the five missions felt the EC had a comparative advantage in relation to EU Member States in terms of providing financial support to HRDs. This is particularly the case through the new EIDHR that entered into force on January 1, 2008. The EIDHR has a strong focus on providing support to HRDs, as evidenced in the EIDHR Strategy paper 2007-2010 (and more particularly in its Objective 3) leading the EC to be the most important donor in this field. The first call for proposals was launched in 2007, which resulted in the selection of 11 civil society projects providing support to HRDs[119]. An independent evaluation of these projects was carried out in 2010[120], which recognised the high relevance and impact of various projects – a positive outcome partly linked to the "flexibility, openness and responsiveness" observed in the management of the HRD programme. Further improvements were advocated in terms of strategic management of the resources, more procedural flexibility in terms of funding[121] and stronger strategic partnerships of a political nature with the beneficiary.
- *Supporting awareness building and training*. The EC has sought to increase overall awareness through providing further training at HQ level and especially in the field, amongst others by financially supporting FrontLine to organise regional workshops with EU diplomats and HRDs on the implementation of the EU guidelines[122]. There is a strong commitment at the level of the EC to invest more in this type of activities, possibly by assuming a more direct role in the organisation and delivery of these workshops and training events.

Despite these positive trends, further steps are needed to fully integrate HRDs in a global EC/EU human rights strategy. In a resolution adopted on 17 June 2010 the European Parliament expressed concerns about "the lack of implementation of the EU guidelines on HDRs" (par. 9). It urged the EU and Member States "to make better use of all existing tools and develop new complementary mechanisms" (par 3). It also insisted on the need to better reflect major aspects of the local implementation strategies in "Country Strategy Papers, National Indicative Programmes, ENP Action Plans, Annual Action Programmes of the EIDHR and the Instrument for Stability (par. 16).

NGO critiques on the implementation of the guidelines on human rights defenders, emanating from organizations such as Amnesty International and Frontline, tend to focus on: (i) the lack of awareness of the guidelines in country[123]; (ii) the quality of local implementation strategies – which can vary substantially[124] - and the effective functioning of the focal points for HRDs; (iii) the existence and strength of networking among EU missions and (iv) the need for publicly available data about the implementation of the guidelines .

b) With regard to the EU guidelines on death penalty

The EU put the fight to death penalty (DP) as a priority on the HR policy Agenda. The EU is the leading institutional actor and largest donor to fight against the death penalty. This commitment is outlined clearly in the EU guidelines which constitutes the framework for the EU actions. Public diplomacy is the main tool to implement these guidelines complemented by the EIDHR projects. Guidelines on the death penalty also provide importantly that "EU Heads of Mission should include an

[119] The beneficiary organizations ranged from large international human rights structures, to specialized global organizations, smaller regional initiatives or organizations with sector approaches. The projects addressed a wide range of themes, activities and target groups, including direct assistance to defenders; permanent emergency response services; training activities; monitoring and international alerts; strengthening national and international protection mechanisms; creating networks and capacity building of local organizations.
[120] Hansen, A. SOFRECO. May 2010. Evaluation and Recommendations on EIDHR Support to HRDs. FWC Contract nr 2009/226296. EuropeAid/127054/C/SER/Multi
[121] For instance by foreseeing direct grants and fund local organisations that are not formally registered or using the system of re-granting to reach out to local organisations.
[122] Such workshops were thus organized in Cairo (December 2009), Bahrain (June 2010) and Cambodia (September 2010) some of which were attended by several EU Ambassadors.
[123] According to a 2009 study published by IDEA on the Human Rights Defenders' guidelines, "there is little awareness of the guidelines throughout the Asian region, let alone successful instances of their implementation". See E. Gill*, Human rights defenders and democracy building: an Asian perspective*. Stockholm: IDEA, 8.
[124] In the Desk report 2, Volume 1, a comparative analysis was made of different local implementation strategies that can be consulted on the web. The quality varies considerably. Some focus almost exclusively on organizational issues and do not attempt an analysis of the local situation with regard to human rights. Others (such as the case of Nepal) are quite sophisticated in terms of analysis of local realities and in possible response strategies.

analysis of the application and use of the death penalty and the effect of EU action in this respect in their human rights reports, including in the human rights fact sheets".

The European position towards DP is generally considered unequivocal, more transparent and less subject to accusations of double standards. The EC's support to projects in countries as diverse as the USA and China are a testimony to this.

The documentation related to the implementation of these guidelines is confidential; hence it was difficult to collect evidences to assess their effectiveness included at country level. Some results can be in any case presented.

The EU had a good track record of positive outcomes both at the level of diplomatic actions, notably at the UN General Assembly and though the EIDHR projects. However there have been limitations as well. Limits are related to the local contexts in which EU operates, hence short-tem achievements are in those countries difficult to be reached. We should be realistic on the capacity of the EU to implement these guidelines and influence governments in authoritarian/hostile countries or where there is a wide acceptance of death penalty by the public opinion; in these cases it became for the EU a long-term engagement linked to cultural challenge as well.

The implementation of the guidelines is based on three pillars characterized by a different level of achievements: 1) bilateral relations and actions with third countries; 2) actions in multilateral Institutions; 3) interventions funded under the EIDHR.

Bilateral relations

- Individual cases EU may intervene in individual death penalty cases which violate minimum standards. The action is to be considered on a case by case basis. In 2009 alone, the EU issued statements on over 30 individual cases and carried out more than 30 other actions in favour of individuals at risk of execution.
- Démarches/Consultations The highest number of EU démarches in 2010 has been with Iran and US. However, positive results are difficult to obtain in hostile countries and in general they are really on ad-hoc basis.
- Local Implementation Strategy (LIS) The LIS are applied on ad hoc basis and the documentation is confidential. The EU elaborated LIS on death penalty in the following countries: United States, Japan, Iraq and the Caribbean.
- *The EU LIS in the Caribbean* is very much based on the fact that Governments claim on the high crime rate to justify death penalty which is highly popular in those countries. The EU is engaging with low profile actions in those countries through *démarches* and *confidential conversations* and with indirect interventions such as the financing of *judicial reforms and the capacity building for the police* in order to help preventing crimes and reduce corruptions.
- Activities of academic nature in countries with sophisticated legal systems such as Japan. Academic activities are specific to DP guidelines and are important to promote awareness on this subject.
- Dialogue Death penalty is systematically raised in the different kind of dialogues with third countries, where relevant. The limitation regards the possibility to tackle officially this issue during the dialogues; in hostile/authoritarian countries this is hardly possible, as documented during the country missions (Ethiopia, Vietnam).

Actions in multilateral Institutions

- General Assembly. It is the most important UN fora in which the EU called for a global moratorium of the death penalty. The number of global trend of abolitionist countries around the world is increasing each year; in 2010 there have been 108 votes.
- HRC - Universal Peer Review. EU intervenes in this context to put pressure on countries but the effects of this action are not immediate as for other kind of interventions.
- Council of Europe. This is a very important forum for the EU for reaching specific countries such as Belarus (even if is not a member of the Council) or Russia (where death penalty is not formally legally abolished)

Financial Instrument: EIDHR

- The EIDHR allocated in 2009 over € 8 million to 16 deaths abolitionist projects around the world. In 2010 EC approved 5 projects on this matter (2 in a difficult country such as Yemen) for a global amount of € 1.8 million. The projects monitor conditions under which the death penalty is used and the application of international minimum standards. They also provide assistance for prisoners, support legal and constitutional reforms to restrict or abolish the death penalty and promote the signature, ratification and implementation of the Second Optional Protocol to the International Covenant on Civil and Political Rights (or similar regional instruments). In addition they provide training, research and studies, advocacy to the public, organize awareness-raising campaigns, build capacity as well as develop scientific approaches to expose miscarriage of justice. A significant added value in working on death penalty projects is that they permit access to sensitive problem areas such as torture, conditions of detention and fair trials (for more details see the evaluation report in Annex 13)
- The EU can count on a success story in the United State in Illinois where the State Chamber proposed the abolition of death penalty to the governor who is considering this request. In total 5 projects are implemented in the United States
- An important achievement is the inclusion in the EIDHR Strategy Papers, from 2007, of performance indicators for the death penalty projects which make them more result-oriented, specifically they include: i) increase in government commitments on ending or restricting the use of the death penalty (laws, ratification of international standards, moratoria, etc); ii) legal changes (number of capital offences, exclusion of the mentally ill, right of appeal, etc); iii) improvement in the conditions of detention for people at risk of, or awaiting, execution; iv) the implementation of criminal procedures and trial practice which enhance the right to a fair trial; v) enhanced availability of public information about the death penalty, death sentences, executions, conditions of detention, etc..

However there are no indications on the lesson learned in the chapter of the 2011-2013 strategy paper or in the evaluation reports on death penalty that those indicators have been effectively used.

Judgment criterion 7.2: EC efforts to ensure an effective implementation have contributed to progress towards respect for human rights in third countries

a) With regard to the EU guidelines on Human Rights Defenders (HRDs)

EC staff interviewed recognised that the existence of the guidelines had provided the EC/EU with greater legitimacy to intervene in this sensitive area, fostered much closer interaction between EU diplomats and also contributed to turning HRDs into interlocutors of the EU. In the five countries visited, civil society organisations consulted were globally positive about the actions of the EC/EU in favour of HRDs. However, several interviewees made the point that the EU could display a bolder political approach in case of violations of human rights and use more effectively all its instruments. Reference was made in this context to the Association Agreements with third countries, which, in their view, could be much more explicit and conditional with regard to human rights (Guatemala, Morocco, Kazakhstan).

It is difficult, though, to assess the real impact of the guidelines and the implementation strategies (when they exist) on human rights violations. A May 2007 Amnesty International study on the implementation of the EU guidelines on Human Rights Defenders argues that nobody is able to know their impact, because of the confidentiality of some of the instruments used in implementing the guidelines, and because no system appears to exist within the EU at the central level to track efforts made in the implementation of the guidelines. The problem is compounded by the lack of clear performance indicators[125] – such as those used for the EIDHR Strategy towards HRDs – that tend to be very general.

In a 2008 follow-up document *European Union: Rising to the Challenge of Protecting Human Rights Defenders*, the organization identified the lack of consistency across EU countries and the selectivity in relation to third countries[126] as major challenges. During the Guatemala mission, one of the

[125] Those used in the EIDHR Strategy towards HRDs tend to be very general and of limited use for monitoring and evaluation purposes.
[126] In the document Amnesty International calls upon the EU to "*publicly denounce violations against HRDs in "friendly" countries like Tunisia in the same way it does in "unfriendly" ones like Syria. Selective implementation undermines the credibility*

participating Embassies to the 'Grupo Filtro' observed that 'selectivity' was also a risk at the level of the individual HRDs in the sense that specific EU Member States may be less keen to ensure effective action when the human rights violation is linked to economic areas where they have particular interests.

b) With regard to the EU guidelines on Death Penalty

Evidence from the field missions confirms the difficulties of the EU in intervening on this subject in authoritarian countries or in those where death penalty is supported by public opinion.

In *Ethiopia* death penalty is not an issue of discussion for the policy dialogue under the "article 8 of Cotonou". Death penalty is not even debated in the informal meetings with government representatives and on donor's coordination meetings on governance and human rights. Death penalty guidelines are not implemented and no projects are financed on this issue in the country.

However death penalty exists in Ethiopia for a large number of crimes. The government is smart in presenting data: officially the reality illustrates that capital punishment has been practically abolished and a death sentence was last carried out in August 2007. However, accurate numbers of death sentences are not known. There are local newspapers that report of people sentenced to death, but it is difficult to have evidence of the actual situation, especially nowadays that the restrictive legislation of 2009 (*Charities and Society Proclamation*) has practically abolished the possibility for independent organisations to monitor HR violations, included death sentences. The EU Troika in 2009 carried out démarches regarding the dead penalty. In response the government has defended its policy.

In *Vietnam* as well some sensitive themes such as death penalty are not touched by the EU in official dialogues. Death penalty by EU is treated much more on an indirect way and during informal consultations. Death sentences are treated as state secrets and it not easy to have information on this issue. EU coordinates the exchange information with Member States that more are active in following the situation thanks to information provided by HR defenders.

Thanks also to international pressure, from the 1st January 2010 Vietnam has consistently reduced the number of capital offence cases, death penalty is however retained for drug trading, transportation and storage. Seventy-five percent of deputies in the National Assembly endorsed the amendments to the penal code. However, even with the latest amendments the country still has 21 crimes on its statutes that are punishable by death. The EC/EU also contributed to influence the political process that would have led to the reapplication of the death penalty in Guatemala, as requested by the Congress in 2010. International (EU) pressure helped to ensure that the President vetoed such new law.

4.8 EQ 8: Empowerment of national governments, regional organisations and civil society

EQ 8. To what extent and how have EC supported capacity development programmes (through thematic and geographic instruments), targeted at national governments, regional organisations and civil society contributed to empowering/enabling these actors to promote human rights

Answer

The Commission has devoted considerable amount of funds (35% of the total) to support the capacity development (CD) of various actors in the HR related areas worldwide, notably the civil society, national institutions and regional organisations.

Human rights capacity development implies that activities should be directed towards strengthening the capacities of rights holders to make their claims, and of duty bearers to meet their obligations. However, the EC strategy to capacity development has not been systematic in supporting the capabilities of the relevant stakeholders to work across demand and supply side mechanisms.

of the EU's efforts everywhere. It also allows measures to be easily countered by repressive governments as being politically motivated, thereby also leaving the HRDs concerned vulnerable to criticism" (p.15).

a) With regard to CSOs:

The EC support to the capacity of the CSOs (demand side) has been very important both to strengthen the institutional capacity and to enhance the awareness on a concrete set of rights. The challenge is now ***to focus more on legal empowerment*** *as this helps to identify opportunities and necessary capabilities to use/activate the existing institutional systems and the domestic mechanisms of redress.*

b) With regard to national governments:

On the government side, the EC support was mainly technically focused on the institutional capacity of national bodies, on the development of national HR policies or on awareness rising. Generally, ***the CD strategy was not integrated in the global reform process of the duty bearers*** *(supply side) such as the reform of justice or decentralisation, even if positive examples have been encountered (South Africa). Supply side actors (judges, prosecutors, police) can in many cases benefit from better forms of HR capacity development which goes beyond awareness rising of HR declarations and normative principles, to handle issues such as due process and domestic dynamics of rights violations.*

The EC did well in supporting local administrations deal with HR, but these interventions were limited to cases where local authorities are, at least in principle, the actors ideally placed to engage directly with communities and civil society on the achievement of human rights at the local level.

c) With regard to regional organisations:

The CD interventions on regional organisations have been directed mainly at strengthening regional institutions or at supporting the implementation of ad-hoc regional initiatives. The EC support to HR regional judicial systems has been minor. This sometimes was due to administrative constrains as, for instance, in the case of African Court (see EQ4 for details).

Financial overview

Over the period 2000-2010, €2.2 mln, i.e. 35% of HR total funding, were committed by the EC to finance capacity building development programmes: below is a summary of the main figures on capacity building activities for national governments, regional organisations, CSOs and other beneficiaries.

Judgment criterion 8.1: EC capacity development programmes have contributed to enabling national governments to better discharge their obligations as duty bearers with regard to human rights (through thematic and geographic instruments)

As comes out in Graph 1, (on p. 36) over the years 2000-2010, state and local authorities received €661 mln and an important percentage of this amount, €463 mln, covers capacity building activities.

EC funding is intended as a general support, mainly through technical assistance activities, to strengthen the capacity of national institutions as such, and of training officials as well, to support the design of HR national policies and to promote awareness on human rights and democratic principles. Here below some examples from the inventory (volume 3).

- Finance the work of institutions that are expressly mandated to promote the respect of human rights and fundamental freedoms; this is the case of the Human Rights Commission in Rwanda (2002 and 2004), in Mexico (2003), in Kenya (2005) and in the Philippines (2006), or of the National Council for Human Rights and Women in Egypt (2006).
- Assist national and local authorities of partner countries through the provision of policy advice in the preparation and/or implementation of specific human rights' strategies and policies. Several projects can be mentioned in this regard, such as: "*Support to Policing of Gender Based Violence in Dar es Salaam and Zanzibar*" (Tanzania, 2009); "*Projet de renforcement des capacités du district de Ngoma dans la mise en oeuvre des mécanismes de prévention et de lutte contre la violence faite aux femmes*" (Rwanda, 2008); "*Support to the implementation of Kulluna al Urdun - We are all Jordan*" (Jordan, 2006);
- Raise awareness on human rights through: (i) the setting-up of independent mechanisms or institutions that are meant to promote awareness raising activities to increase human rights' opportunities, like the "*Observatorio Participativo: de la e-exclusion à la e-inclusion*" (Latin America, 2009) and the "*Human Rights Organisation of Morocco"* (2005); (ii) the support to

advocacy, public campaigns and seminars, such as the "*Public campaign to combat against racism, xenophobia anti-semitism and ethic discrimination*" (Russia, 2003) and "*Programma Lucha contra las esclusiones*" (Guatemala, 2005).

- Train national and local officials to make them familiar with international human rights standards, democratic principles, etc. through several activities, such as peer learning, training workshops, good practice sharing, etc. From the inventory there are various examples of this support: "*Projet de sensibilisation et de formation en éducation à la citoyenneté*" (Haiti, 2006); "P*rogramme for training in Ugandan prisons*" (2007); "*Eastern Sudan Elections Observation Capacity Building Initiative*" (Sudan, 2009).
- Support to the general functioning and activities of national institutions in order to promote democratic principles, such *as the National* Electoral *Commission of Madagascar* (2004), the *Legislative Assemblies* of Sudan (2008) and Gabon (2008).

On the government side, there is a sense of limited benefits as a result of capacity development interventions supported by the EC. This type of support was mostly technically focused on general interventions to empower institutions and regional bodies. The EC support on specific judicial topic, such as interventions towards judges, remained a question mark, because unless meaning judicial reform takes place the CD for legal actors in these situations is likely to remain fairly unsubstantial. Evidence on this can be found in the field mission in Morocco: CD programming for judges took place, but in no way it seemed to have made any difference. During an interview carried out with a lower level judge, he confirmed to have no knowledge of CD opportunities for judges in the country. There, if capacity building activities are taking place, this is happening in a restricted or very ad hoc way.

Capacity development cannot substitute itself for the necessary political and institutional reforms, but it can be used strategically to mobilise actors once the reforms are underway, to maximise the awareness and capabilities of key actors on demand and supply side around the opportunities offered by new institutions, new powers of standing, new judicial review or other oversight mechanisms (such as those that might be granted to a Human Rights Ombudsman). But for this, CD needs to be strategically designed in order to maximise context specific opportunities for change and transformation as these evolve.

Capacity development efforts need to respond to context-specific opportunities, where the efforts to achieve progress on human rights is most likely to work. Human rights claims inevitably originate at a local site. Although human rights norms (in constitutions or in international law) are couched in a global language, human rights *claims* refer to events that take place *somewhere* in a specific geographic location. It is a safe assumption to think that a human rights claim will develop in response to a practice in the immediate surroundings of the claimant(s) that is experienced as a threat to their dignity. When mounting a defence against a threat to dignity, individuals or groups have a choice to resort to human rights or not. In any case, awareness of human rights is required, and presumably a belief that the appeal to human rights may be effective. Awareness presumes a degree of exposure to the idea of human rights, either as moral principles, or as laws. The belief that human rights may be effective depends both on elements within the affected community (such as available resources, but also perceptions as to how duty holders might respond) and on external factors, such as the availability of allies among local authorities or of an independent review of claims made.

Local human rights claims, which form the basis of human rights action, usually start in the local area. When human rights claims emerge, the first public agents that claimants encounter are almost inevitably local as well, and so local authorities are ideally placed to engage directly with rural communities, social movements and civil society on the achievement of human rights at the local level. It has been argued that local governments can be natural allies of international institutions in the defence of human rights and can help them function with greater legitimacy and effectiveness[127]. These local authorities may be local governments and their administration, lawmakers (assuming that a degree of regulatory power was devolved), judges and human rights institutions.

Judgment criterion 8.2: EC capacity development programmes have contributed to enabling regional organisations to promote human rights at regional level

Capacity building activities to regional organisations represented €331 mln (55% of the HR funding to regional organisations). Such activities mainly concerned:

[127] A. Papisca, « Human rights in the glocal space of politics » in K. De Feyter, S. Parmentier, C. Timmerman, G. Ulrich (Eds.) (2011) , *The local relevance of human rights.* Cambridge: Cambridge University Press, 104.

- institutional capacity-building, including capacity strengthening of the AU to promote democracy, governance and human rights in Africa or support to the Economic Community of Central African States and the Economic Community of West African States in building their own capacity in the area of conflict prevention and resolution;
- support to the implementation of regional programmes/initiatives, like the ECOWAS Conflict Prevention Framework; the AU peacekeeping missions in Sudan and Somalia; the operation of the CEMAC multinational force (FOMUC) in the Central African Republic;
- support to projects that are intended to empower vulnerable groups of the population. Examples of such activities are the projects financed to OSCE and the Secretariat of the Pacific Community: "*Mainstreaming Empowering and Networking Roma as Full Participants in Post-Crisis Management Good Governance and Development of a Sustainable Civil Society" (2000) "Empowering disadvantaged groups through human rights and equality training*" (*2009);*

*EC intervention at regional level has been important but more target*ed on general regional institutional empowerment or on the implementation of ad-hoc regional initiatives. The importance of supporting the regional HR judicial systems has been underestimated. Regional courts, for instance, are accessible to individuals, and can take binding decisions on establishing violations and providing a remedy at national level as well. Capacity Development may also be about activating regional mechanisms of control to achieve change at the national or sub-national levels.

Judgment criterion 8.3: EC capacity development programmes have contributed to empowering and enabling civil society organisations in third countries to defend, protect, promote and lobby for the respect of human rights

The impact of the capacity building instrument on civil society varies depending on the possibility for the EC to implement HR interventions to support these actors in a specific country. Where it is difficult to implement EIDHR projects on sensitive civil and political rights (i.e. Vietnam) or to support independent civil society organisations (i.e. Ethiopia, Belarus), the capacity development impact to civil society is inevitably limited.

The EC support through thematic and geographical instruments has generally been very valuable for the capacity development of CSOs and NGOs. This was identified as very important over the medium term among those organisations that were interviewed in *Morocco*, where it had led to enhanced capabilities and awareness around concrete sets of rights. Women's groups had used it effectively as one important example to mobilise women around political rights of representation and participation. The same came through from the disabilities rights group.

Capacity development for societal actors can also include more strategic and politically informed awareness raising and building of capabilities to engage with existing institutional mechanisms of redress (many new institutions also emerging in Least Developed Countries) – such as national human rights commissions, new constitutional courts and political dynamics. The focus depends on the nature of national specific institutions and constitutional provisions of standing, justiciability of rights, etc. Legal empowerment has become a useful area for CD in this respect, as it helps to identify opportunities and the necessary capabilities to use/activate mechanisms of redress against rights claims.

Another important point raised by CSOs from ENPI countries[128] is the participation of the civil society to HR dialogue processes. They recognized that in order to be treated as equal partners in those dialogue processes, they need to increase their capacity to understand the process and the issues at stake; hence, this constitutes an area for improving EC intervention on capacity building.

EC efforts to enhance the capacity of the civil society in dealing with HR have also been relevant in financial terms. Capacity building activities represent an important share of the overall EC support to CSOs (€1.4 mln) and cover a broad spectrum of activities from advocacy for the promotion of HR to capacity strengthening for protecting rights or the empowerment of vulnerable groups. Below a summary of the main activities and a selection of projects to illustrate examples in each area:

[128] Regional seminar in Amman (Structured Dialogue, Initiative to support Democracy and Human Rights), June 2010, see Annex 14.

- Capacity building for empowering marginalised groups, minorities, indigenous people, refugees and asylum seeker, e.g. "*Strengthening of NGO capacity to protect and promote human rights of vulnerable population in Kyrgyzstan"* (2004); *"Enhancing the Capacity of Local Civil Society Groups to Claim Civil and Political Rights in Nigeria's Niger Delta Region"* (2008).
- Capacity building for supporting the rights of women and children, e.g. "*The Lefaek Project: Children's rights promotion and capacity building"* (2001); *Strengthening the capacity of two 'Village Business Incubators' (VBI) to promote rural women participation in the labour market in Jordan and Syria* (2008).
- Promotion of the NGO advocacy role for the support to civil and political liberties, e.g. "*Strengthening Social and Institutional Capacity for the promotion, defence, and full attainment of civil and political rights in Colombia",* (2002); *"Building Capacity for Policy Debate in Armenia"* (2008).
- Capacity building for the promotion of peace, such as "*Conflict Resolution and Peace-building in Nepal: A Project Proposal for Capacity Building"* (2005); *"On the footsteps of Karimojong: Awareness-raising and capacity development for peace building and protection of human rights of out-migrant Karimojong"* (2008).
- Capacity building to cope with human rights violations, like "*Increasing the Capacity of Sierra Leone society to address Violations of Human Rights and Humanitarian Law"* (2002); *"Capacity Building to prevent and combat trafficking in human beings"* (Latin America 2008).

4.9 EQ 9: Promotion of human rights through EC geographic programmes

EQ 9. To what extent and how have EC supported geographic programmes (directly or indirectly dealing with human rights) contributed to promoting human rights in third countries?

Background

This evaluation question deals with the effectiveness and impact of EC support channelled through geographic programmes. In order to ensure a realistic and feasible focus, three judgment criteria have been chosen. The first looks at the quality of the human rights analysis underpinning these programmes. The second zooms in the contribution of the geographic programmes in terms of improving the human rights situation, with evidence primarily drawn from the field missions. The third judgment criterion seeks to assess the extent to which the EC promotes the effective implementation of the Universal Periodic Review (UPR) recommendations through its geographic programmes.

Answer

In order for the geographic programmes to have impact, Delegations need to properly assess the human rights context, determine promising windows of opportunities and tailor country strategies around these. In addition to this, they need to be willing to fully use the potential of geographic instruments – and that is quite a challenging thing in hostile environments as the agreement of the governments involved is required.

The evaluation team found ***evidence of a growing sophistication of EC approaches*** *to analysing human rights situations in country strategy papers and a related preparedness to better use geographic instruments. Yet* ***examples of direct support programmes to human rights remain rather limited so far****.*

Probably the most important entry point are structural governance reform programmes (e.g. justice and security reform) as they offer the potential to help (indirectly) creating a more conducive environment for human rights. The EC is increasingly investing in this area but ***first generation support programmes tend to pay a less than optimal attention to the human rights component****. The second generation of support programmes should normally integrate human rights more forcefully in the overall reform package.*

The linkages between EC action and support to the effective implementation of UPR recommendations remain, till to date, rather limited.

Judgment criterion 9.1: Planning processes of supported geographic programmes took into consideration the specific country context, stakeholders and conditions

A solid human rights analysis can be considered as an important tool to ensure that geographic instruments are effectively used to promote human rights (directly or indirectly). How strong is that analysis in programming processes, both of overall country strategies and specific geographic programmes?

The EC has defined a 'Framework' providing a harmonised format for the Country Strategy Papers (CSPs)[129]. It requires an analysis of the governance and human rights situation. While reviewing a set of CSPs, the evaluation team found that these were generally well drafted and based on a valid assessment of the situation on the ground[130]. The focus tends to be primarily on civil and political rights, though in the section on the country's social situation one may also find information on the status and rights of vulnerable groups, such as women, children and minorities.

Despite the overall good quality of the Strategy Papers, there are certain aspects that are crucial for planning the human rights strategy and that deserve more careful consideration. These include:

- *The country's position and track record with regard to UN human rights conventions*. The revised CSP Framework of 2006 expressly recognizes that the government's position with regard to the most relevant international conventions should be included in the Strategy Papers. However the information presented in the analytical section of the CSPs often fails to provide a realistic and comprehensive overview of the country's situation. This is due to (i) a preference for rather descriptive approaches; (ii) a perceived reluctance to address politically sensitive issues upfront[131] (as this may cause friction in the dialogue with partner countries); (iii) the sheer complexity of making a relevant in-depth analysis on political evolutions, particularly in fragile states or in relation to the development-security; and (iv) the limited integration of broader dimensions related to human rights such as migration[132]. The net result is that many CSPs lack a strategic, forward-looking perspective that could guide programming processes[133]. In the ACP context this deficit in analysis is partly addressed through adding two annexes to the CSP. The first annex records all conventions signed and ratified. The second one is derived from the 'Governance Initiative'[134] launched for the ACP under the 10th EDF. This Facility required the elaboration of a 'Governance Profile' for each partner country in the form of a matrix presenting a list of commitments made by the government, including on human rights. They provide some further analysis of the reform preparedness of governments. However, the quality of the profiles tends to differ and other weaknesses were also noted in the use of the tool[135]. There are no similar annexes for the CSPs regarding the other regions. This means that there is no harmonised information throughout the SPs as far as this theme is concerned.
- *Limited attention for the key UN human rights mechanisms.* The Universal Periodic Review (UPR), the reports of the UN Special Rapporteur and the UN High Commissioner of Human Rights on the situation of human rights represent three essential mechanisms to monitor and recommend solutions to observed weaknesses.

[129] The CSP Framework for drafting CSPs was first drawn up in 2000 and revised in 2006.
[130] The analysis has taken into account the strategy papers of first and second generation for 20 countries, namely Afghanistan, Belarus, Bolivia, Burundi, China, Colombia, DRC, Ethiopia, Georgia, Guatemala, Kazakhstan, Indonesia, Jamaica, Jordan, Morocco, Pakistan, Sri Lanka, Sudan, Uganda, Vietnam.
[131] This was for instance observed for the presentation of the conflict's root causes in Colombia, Ivory Coast and Uganda, of the situation of IDPs in East Timor and of refugees in Bhutan, Lebanon, Syria and Yemen
[132] The revised CSP Framework requires a "*Migration Profile*" that should be drawn up for all countries in which migration could influence development prospects. Eight out of the twenty EC strategy papers taken into account contain a specific migration profile, namely the SPs for Bolivia, Burundi, Colombia, DRC, Ethiopia, Guatemala, Jamaica, Uganda
[133] In the questionnaire the Yemen Delegation indicated that some assessments of the human rights situation were made (with the assistance of HQ). Yet the EC response strategy on human rights was not really addressed in the CSP (i.e. analysis was limited to project aspects) but through a dedicated human rights strategy developed later, bringing together projects, cooperation and policy.
[134] The Governance Initiative was launched in 2006. It aimed at supporting governance reforms in the ACP, amongst others through an 'Incentive Tranche' (for which an envelope of 2,7 billion Euro was available).
[135] In 2011 an independent support study was carried out on the overall implementation of the 'Governance Initiative'. It also looked at the effectiveness of the tools used, including the Governance Profiles. These were found to provide relevant general background information, yet the underlying analysis was often weak, resulting in a rather static view on the human rights situation. The limited update of the Profiles further compounded the problem.

- The EU has expressed a firm political commitment in favour of the whole UPR process. During meetings of the Human Rights Council, EC officials have repeatedly stressed the importance of integrating the UPR into the programming processes in order to redress possible implementation gaps, including to targeted call for proposals under the thematic instruments. In the case of the UPR, the EC programming fiche on human rights (2008)[136] makes an explicit request to include a reference to this mechanism.
- Yet these clear policy instructions do not appear to be followed in practice. In the sample of CSPs reviewed there is only a single case (Colombia) that takes into account one of these mechanisms. Also during the MTR process for both ACP and DCI countries, the UPR reviews and recommendations were only considered in three documents (Colombia, Pakistan and Uruguay).

The evaluation team also collected evidence of good practices in terms of human rights analysis in CSPs. Distinctive quality features of these CSPs include: (i) the existence of a comprehensive overview of the human rights situation (Afghanistan); (ii) the focus on core human rights challenges in a given context (Bolivia, Belarus); (iil) the elaboration of annexes on specific human rights issues (e.g. Uganda and DRC on impact civil war on human rights or Guatemala on (youth and social violence); (iv) the attention given to the ongoing policy and reform agenda of the partner country as entry point for the identification of an appropriate EC's response strategy (Afghanistan); (v) the effective participation of non-state actors involved in human rights (Colombia[137], Kazakhstan, Guatemala, Sri Lanka, Yemen, Cambodia, Belarus)[138]; (vi) the definition of specific roles for non-state actors dealing with human rights (i.e. as dialogue partner or implementing actor)[139].

A sound human rights analysis is also important further down the line in the programming process, i.e. the identification and formulation phases. With regard to the thematic instruments, the evaluation team found evidence of good practices in ensuring a "virtuous circle" between a well-designed (multi-actor) dialogue on human rights, the identification of human rights priorities and the subsequent elaboration of well-targeted Call for Proposals (Kazakhstan). Increasingly, human rights organizations are associated to the identification of priorities for the thematic instruments, thus adding to their strategic relevance.

The quality of human rights analysis is less evident in geographic programmes that focus on major governance reforms (e.g. justice sector) or on sectors not directly related to human rights (e.g. health, water and sanitation programmes). This is closely linked to the relatively limited advances made in mainstreaming human rights, as documented in evaluation question 1. Delegation staff encountered during the field missions emphasized that they are increasingly aware of the critical importance of human rights in their work, yet poorly equipped to fully integrate this dimension in sector programmes including by reserving funds and mobilizing implementation capacities (Guatemala, Kazakhstan). In other cases, political factors may explain the limited human rights focus and analysis in geographic programmes. Interviewees referred to the example of the EC support to security and policy reforms to Tunisia before the upheaval. Despite the well-documented authoritarian nature of the Ben Ali regime, the EC support programme in this very sensitive did not include a solid human rights analysis and conditionality. Critics argue that this type of aid may even have contributed to enhance the capacity of the government to repress human rights activists.

Judgment criterion 9.2: EC supported geographic programmes have contributed to progress towards respect for human rights in third countries

Within the geographic instrument, three types of programmes need to be distinguished:

- programmes that are directly and principally concerned with the promotion of human rights;

[136] The programming fiche is available on the iQSG external website at: http://ec.europa.eu/development/how/iqsg/tools_fiches_en.cfm

[137] The response of the EU Delegation Colombia includes a sobering note on the quality of the participatory process, which is said to be "sometimes more of a window dressing activity" and is "only partially useful".

[138] Both the field missions and the questionnaire reveal a growing attention to involving human rights organizations in programming processes, though evidence also suggests that this good practice is not yet institutionalized across the board. Thus 61,1% of the respondents to the Questionnaire did not know whether human rights organizations were involved, while 16,7% answered negatively.

[139] According to the Questionnaire in 28,8% of the cases the CSPs foresees an important role for non-state actors involved in human rights as 'dialogue partner' while 25,7% focus on their role as 'implementation actor'

- programmes that target structural reforms which impact on human rights (e.g. EC support programmes in favour of justice reforms):
- programmes that target development priorities and that could (or not) include human rights issues (e.g. sector programmes in health, education, social cohesion, local development).

In the first category one finds, not surprisingly, a relatively limited amount of programmes that are unequivocally framed under the label "human rights"[140]. This is linked to the EC preference of dealing with human rights through thematic instruments, particularly though the EIDHR. Many third countries also tend to resist the inclusion of dedicated human rights programmes in the geographic instruments. In the ACP countries, several capacity building programmes geared towards non-state actors (based on articles 4-8 of the Cotonou Agreement) have a component targeting human rights organisations (e.g. the PASOC in Mauritania), yet the scope of these actions is generally limited. During the fieldwork the evaluation team could examine more closely the impact of two geographic programmes dealing directly with human rights (see Box 8 with impact lessons from Morocco).

Box 8 - Using the geographic instruments to promote human rights: lessons learnt from Morocco

Morocco: Programme d'appui au plan national en matiere de democratie et droits de l'homme PA-PANDDH (with 2million euros) was supported by the EU and aimed to reinforce the transition to democracy and development of a rule of law in Morocco.

The program is relevant as it crystallizes a number of features of the approach to human rights promotion within the political context of Morocco, and the EU's role in that. Through concrete achievements it signals a cumulative process of progressive change that can be said to be taking place (including in relation to the political consensus about the need for change, and the intent of a degree of participative engagement with civil society), while at the same time reflecting many of the political, organizational and institutional challenges of advancing the human rights and rule of law agenda in political context of Morocco.
The program involved providing support to the Moroccan government to elaborate a national human rights plan. The program was executed through the Centre de Documentation, d'Information et de Formation en Droits de l'Homme (CDIFDH), attached to the Conseil Consultatif des Droits de l'Homme (CCDH).
With the finalization of the PANDDH in 2010, and its endorsement by the government in 2011, Morocco becomes the 27th country to have one. It is the first ENP country to have one. According to interviews, the PANDDH reflects a cumulative process of improved knowledge and capabilities among a range of stakeholders. These include the Moroccan government and human rights and related CSOs and NGOs that were consulted. It was also stressed that the PANDDH above all is the outcome of a Moroccan process, aligned with Morocco's particular political history, and reflecting Morocco's very concrete pathway to progress on human rights issues.
Problems that were noted during the field work included issues of limited capacity, and the challenges of achieving progress given political constraints and resistance. Nonetheless, the PANDDH was also seen to represent an important step in the incremental process of bringing Morocco in line with international norms on human rights. The EU was acknowledged as having played a key role. The 'advanced status' through including that Morocco must align with the Council of Europe and European Court jurisprudence will, it was suggested, made a difference to the commitment to speed up progress on human rights and rule of law, as reflected in this concrete outcome of the geographic instrument.
Of course, as noted in a number of interviews, signing up government plans of intent may have the effect of ticking the box of positive engagement on human rights in the EU-Morocco relation, but in practice result in limited impact on the ground for the Moroccan population. Moreover, additional interviews with CSOs noted that the CCDH and CDIFDH, while being generally respected, are nonetheless seen to be too close to the government, and unable to voice criticism on human rights issues. Nonetheless, it provides an additional space through which to exert concrete pressure on concrete rights and rule of law measures, including by CSOs that were consulted.

The second category of programmes is expanding rapidly as the EC got more engaged in supporting major governance reforms in third countries, particularly the justice sector[141]. These programmes targeted at structural reforms (e.g. improving the rule of law or the access to justice) can have a major bearing on the situation of human rights situations in a country. Yet the impact of this support will depend heavily on the quality of the human rights analysis during the design phase; the inclusion of a

[140] See Volume 3: Inventory. It should however be observed that human rights components can be 'hidden' under other labels such as programmes geared at 'governance' and 'democracy'.
[141] See Volume 3 "Inventory".

solid human rights focus in the programme as well as on the political and institutional capacities displayed by the EC during implementation, including the effective use of policy dialogue. Box 9 summarises evidence collected on the impact that justice reform programmes may have on the respect for human rights, drawn from the field missions (Guatemala and Kazakhstan) as well as other evaluative material[142].

Box 9 - Impact of justice reform programmes on human rights

Vietnam: Justice Partnership Programme (JPP), EU financial contribution 8 Mln. (total amount 18 Mln. Euro)

Support to justice is very important since it represents a window of opportunity for backing significant reforms, such as justice, notably in hostile environment where HR are politically sensitive in the country and the EC cannot finance directly independent organizations working on civil and political rights.

JPP is a joint program between the Government of Vietnam, Government of Denmark, Government and Sweden and the European Union to support justice sector reform in Vietnam. The JPP objective is based on Vietnam Judicial Reform Strategy: The JPP has a component for local CSOPs, the Justice Initiative Facilitation Fund (JIFF) aiming to build capacity of Non-State Actors to promote access to justice and judicial reforms and to contribute to enhancement of awareness of rights.

The first round of call to CSOs in Vietnam in 2010 was quite successful with about 70 non-state actor applicants (both NGOs and mass organizations) from around the country. Many proposals aim to support vulnerable groups such as women and ethnic minorities. This year's the call will gives priority to NGOs working at provincial levels outside Hanoi, which represent a big achievement for Vietnam.

This programme is a lesson learned from different point of view: i) show the political strength of the EU and MSs when dealing together in sensitive areas such as HR. EUD finance a joint programme with other MSs that are more active and have also a more advance bilateral HR dialogue with GoV (Sweden, Denmark); ii) illustrate a case of link between the political and cooperation level, the programme has been discussed during dialogues followed by technical session; iii) civil society (notably national and local CSOs working in HR related areas are reached in an indirect way; iv) activities are directed towards strengthening the capacities of rights holders to make their claims, and of duty bearers to meet their obligations.

The third category of geographic programmes also offers great potential to include human rights aspects. Yet the limited degree of advancement in 'mainstreaming' human rights in traditional development programmes (see evaluation question 1) inevitably also reduces the opportunities to impact on the human rights situation through these programmes.

Judgment criterion 9.3: Role of the EU in the implementation of the UPR

The Universal Periodic Review (UPR) is an intergovernmental process whose first objective is "the improvement of the human rights situation on the ground"[143]. It is based on a specific set of procedures and phases, articulated around a review cycle of four years (2007-2011)[144]. In principle all UN Member States should have passed through the UPR before the end of 2011. The second UPR cycle, from 2012 onwards, should "focus, inter alia, on the implementation of the preceding outcome".

Before considering the role of the EU in the implementation of the UPR it is important to stress three specific features of the UPR mechanism:

- states under review are free to accept or reject recommendations; a clear obligation to implement only exists for recommendations that were accepted by the State under review;
- according to HRC Resolution 5/1 the outcome of the UPR should be implemented primarily by the state concerned and, as appropriate, by other relevant stakeholders. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with, and with the consent of, the country concerned. Logically, the task of supporting implementation falls first and foremost to UN institutions providing technical assistance on human rights issues;

[142] For instance the DEVCO workshop on justice and security system reform in EU external aid held Brussels on 16-20 May 2011
[143] Human Rights Council resolution 5/1 of 18 June 2007, par. 4,a.
[144] For a more detailed analysis of the UPR process see Annex 12.

- no facility exists at the UN level to proactively gather information on how states are implementing the UPR outcome at the local level, nor have guidelines been adopted to define expectations vis-à-vis the process of implementation. The assessment role has been not attributed to any existing institution or new mechanism, and no resources have been allocated to provide for an assessment function.

In 2010, during the interactive dialogue with the High Commissioner for Human Rights at the Human Rights Council, the EU suggested that OHCHR should invest in a strategy to support the states' follow-up on UPR recommendations, and involve other key UN actors and UN field presences. In the same statement, the EU declared that it increasingly discusses UPR recommendations in its human rights dialogues and consultations with partner countries, including with a view to considering possible initiatives through EU assistance and development cooperation[145].

However, it proved difficult to track EC funding and development cooperation *directly* linked to the implementation of UPR. There are also no EC sources available providing aggregated data on this type of support. One explanatory factor is that the UPR process is too young for clear connections to be made with EC programming. Furthermore, it is not evident that the EU external human rights policy should generally focus on supporting UPR outcomes at this particular moment in time. Given the weaknesses of the UPR process, recommendations originating from other parts of the UN human rights system (such as the treaty monitoring bodies and the special rapporteurs) may be much more pertinent in addressing the human rights situation on the ground. They may also be of higher relevance for the purpose of informing the human rights activities of EU missions. This situation prevails in Guatemala, where the EC and Member States have quite a substantial portfolio of human rights activities. The EC refers to the UPR but this is only one source of inspiration for its human rights activities. EC support programmes to fight impunity and to reform the justice system seek to address issues mentioned in the UPR but are not considered as a direct implementation strategy derived from the UPR and aligned to its specific process requirements.

4.10 EQ 10: EC institutional capacity to deliver

EQ 10. To what extent and how has the Commission developed its internal capacities to deal effectively and efficiently with human rights, ensured political leadership and contributed to establish an overall institutional architecture conducive for human rights in EU external action?

Background

It is not sufficient to look at efforts of the EC to enhance its internal organisation and capacity for mainstreaming human rights within its own organisation (as examined in EQ 1). The issue of institutional capacity to deliver has broader dimensions that need to be assessed as well. These relate to: (i) the overall EC capacity to deal effectively with the various dimensions of the human rights agenda (beyond mainstreaming); (ii) the existence of sufficient political/managerial leadership for promoting the human rights agenda towards the other key EU actors of the 'institutional triangle'[146] as well as the (iii) willingness and capacity to (pro-actively) invest in the overall EU architecture for human rights, particularly in the current Post-Lisbon/EEAS context.

This is the remit of EQ 10 that will consider each of these three dimensions. It should however be stressed that collecting evidence on these matters is not an easy thing to do taking into account the complexity of the EU institutional architecture for dealing with human rights; the opacity of the internal decision-making processes; and the lack of written (accessible) information and analysis on how the EC manages human rights internally (beyond formal mandates) and on how the 'triangle' actually works.

[145] EU Statement of 4 March 2010 available at http://www.europa-eu-un.com/articles/fr/article_10318_fr.htm
[146] Annex 2 provides a formal description of the existing institutional architecture for dealing with human rights for the period covered by the evaluation. It focuses on the mandates of the various actors of the 'institutional triangle' – constituted by the Council, the Commission and the European Parliament- and the basic task division between these players. It looks at how the Commission is organised internally to manage its human rights policies and commitments, both at headquarters level and in EC Delegations. It also considers existing arrangements for coordination such as the COHOM and other Working Groups at the level of the Council as well as the roles and structures for addressing human rights at the level of the European Parliament.

Answer

There are clear signs on the wall that the EC has developed more capacity to deal effectively with human rights, including through 'learning by doing' and training.

Promising good practices have emerged on how to better share the burden of information gathering and knowledge in human rights related issues. Yet the EC capacity to deal with human rights is a tricky issue. It is not just a matter of quantity and quality of skills, but also of ***setting clear priorities, promoting collaboration between specialist HR units and other staff and effective forms of collaboration and networking****.*

It furthermore appears that the EC has not been pro-actively sought ***to promote a more conducive institutional architecture for human rights in EU external action****.*

Judgment criterion 10.1: The Commission has sufficient levels of capacity (at HQ and in Delegations) to manage the various dimensions of its human rights policy (political dialogue, programming, support to implementation, monitoring and evaluation)

Over the years, efforts have been made to build capacity/expertise to deal with human rights at EC level (HQ and Delegations). Institutional innovations have been introduced (e.g. the designation of a focal point for human rights in Delegations). The questionnaire[147] reveals that capacity has mainly been built through "learning by doing" (28,6% of the respondents), by mobilising internal expertise (20,6%) and through training courses (14,5%). The field missions confirm the positive impact of the 'focal points' in terms of enhancing the profile of human rights, ensuring a more systematic follow-up, promoting mainstreaming as well as engaging with human rights actors in country. There is generally also a high appreciation for the way in which the Delegation operates the EIDHR (Kazakhstan, Morocco) or engages with human rights defenders (Guatemala). In some Delegations the interest in and the expertise on human rights issues is clearly more spread across the board (Kazakhstan, Morocco) than in others (Vietnam).

The issue of capacity is seen as a tricky one by several interviewees at HQ level. In their view, a meaningful debate on the overall EC delivery capacity should be considered in a holistic way, i.e. beyond the mere aspect of quantity and quality staff. Key 'structural' factors or conditions largely determine the EC delivery capacity. These include inter alia:

- *The patchy development of the EU policy framework for dealing with human rights*. It was not the result of an intelligent design but the product of a wide range of ad hoc initiatives (e.g. from successive Presidencies) leading to a proliferation of guidelines, human rights dialogues, instruments (with or without a reference to human rights), policy commitments (e.g. to rights-based approaches in particular sectors reflecting evolving international agendas) as well as (rather demanding) engagement in the multilateral system. Operating efficiently and effectively in such a complex arena is not an evident thing to achieve for the EC. This also affects the EC Delegations that, according to an interviewee, are "inundated" with guidelines and instructions on human rights that they are not in a position to absorb".
- *Weak prioritisation*. It was recurrently observed that the available capacities at EC level tend to be systematically "over-stretched" because of weak priority-setting process linked to an objective evaluation of the added value of the work involved (the proliferation of human rights dialogues was often mentioned as a case in point).
- *Limited collaboration across units.* This is another, widely recognised structural impediment to an effective use of existing capacities. Examples include the relative isolation of the dedicated human rights unit (RELEX B-1 in the structure before the Lisbon Treaty) and of 'focal points' at the level of the EU Delegations.
- *Scope to better use existing capacity and to share the burden with other actors*. It is generally acknowledged that engaging with human rights is technically demanding, knowledge-intensive and context-sensitive. It requires capacity to analyse evolving local contexts and detect potential windows of opportunities, to work with various actors, and to connect various streams of work (e.g. foreign policy and development cooperation). All this puts a premium on (i) effectively mobilising various sources of expertise; (ii) strategic partnerships to organise an

[147] See question 11.

effective task division with EU Member States and international organisations; and (iii) an optimal utilisation of available local sources of knowledge and expertise (particularly local civil society organisations). Member States (i.e. the issue of complementarity and division of tasks, particularly at the field level). On each of these three challenges, the evaluation team found a mixture of good practices and missed opportunities for joint action. Thus, while 'focal points' constitute a structural improvement, their effective utilization stands to be improved[148]. The questionnaire shows that some Delegations do have sufficient internal resources with enough knowledge yet "these are always properly used"[149]. Other Delegations saw the availability of "more specialized staff" or an "improved institutional set-up for promoting human rights within Delegations" as key challenges for improving overall performance[150]. During the field visits, good practices were identified with regard to joint action and burden sharing on complex human rights issues (e.g. the 'Grupo Foro' for human rights defenders in Guatemala[151]). Yet many EC interviewees recognised that additional efforts could be made to better exploit existing windows of opportunities for collective action. The same holds true for the use of local sources of expertise. The insights and inputs of local actors (particularly independent civil society organisations) are considered to be vital by most EC officials interviewed during the field visits. In Kazakhstan and Morocco we found innovative practices of mobilising local (activist) expertise. In Guatemala the above mentioned Grupo Foro also relies extensively on specialist local knowledge for its work related to human rights defenders, yet in other sectors local respondents felt the EC tended to privilege too much expatriate expertise (e.g. in the justice sector). From a broader perspective it should be noted that the evaluation team could not find evidence of the existence of a comprehensive and integrated capacity building strategy with regard to human rights at the level of the Commission.

Judgment criterion 10.2: The Commission has displayed leadership in the implementation of its overall human rights policy towards the Council, Member States and the European Parliament

This judgement criterion refers to the capacity of the EC to act as a 'change agent' in pushing forward the human rights agenda in its relations with the Council and Member States in a CFSP context and with the European Parliament. This proved also a tricky issue to tackle from an evaluative point of view as processes whereby the EC 'expresses voice" or 'pushes for coherence' are generally not documented and visible.

The ability to play the role of pro-active change agent depends on many factors. One key element is the political and managerial leadership that the Commission itself displays in integrating human rights issues in its *own* cooperation activities. If the topic is not high on the agenda within the organisation, it is unlikely that the Commission will adopt a high profile on the matter 'externally'. The evaluation question 1, which looked at the institutional conditions for mainstreaming human rights (see above), concluded that the overall leadership of the EC was quite weak in terms of consistently promoting/mainstreaming the human rights agenda in its cooperation processes. This, inevitably, also affects the overall capacity of the EC to influence the behaviour of the other EU institutions of the triangle.

Stakeholders consulted are of the opinion that the EC has not engaged strategically with the COHOM in terms of trying to influence the agenda or pushing for more joint action between Committees (e.g. COHOM and COARF). The COHOM continues to function on the logic of achieving a 'minimum common denominator' around the interests of Member States. The EC is also not perceived to have been pro-actively looking for alliances with the EP to push for a more consistent EU human rights approach. If anything, the EP generally was the key driver for ensuring an effective implementation of stated EC/EU objectives with regard to human rights and demanding accountability. The Lisbon Treaty enhances the power of the EP and this may also impact positively on the overall coherence of EU policies on human rights. This holds particularly true for the new EP competence to consent on the conclusion of international agreements. A critical test will be the conclusion of the revised EU-Morocco

[148] This point was made by several focal points consulted. They felt their expertise was often less than optimally used due (i) the limited priority given to human rights in the overall work of the Delegation; (ii) the low institutional status of focal points; and (iii) the tendency to exclude them from political decision-making processes on human rights issues.
[149] See the response by the EU Delegation in Columbia (comment attached to Question 11).
[150] See Question 12 on "Main obstacles and challenges for an effective human rights strategy.
[151] This Commission-driven initiative seeks to organize a much more efficient global response to the issue of human rights defenders through joint action (all along the process) by the Commission, Member States and specialized international organizations. For more details see mission report Guatemala.

Fisheries Partnership Agreement, where the EP can potentially play a useful role to ensure that the deal also benefits the population of the Western Sahara.

JC 10.3: The Commission has actively supported the further consolidation of the overall EU institutional architecture for human rights

This is another judgment criterion that does not lend itself easily for collecting hard data. Interviews at headquarters suggest there have been 'champions' within the EC to advocate for a stronger overall EU architecture to deal with human rights. These champions could be found among dedicated human rights units (such as RELEX B-1, or E4 within Aidco). Yet their influencing power seems to have been limited. The evaluation team did not find evidence pointing to the existence of a clear political agenda and strategy within the Commission to raise the issue of the EU institutional architecture for human rights in a consistent and systematic way. The EC seems to have adopted a rather low-profile attitude in this regard. This is reflected, amongst others, in the limited data, field-based evidence and evaluation material collected over the last ten years with regard to the actual functioning of the system. There have been no major public debates on the issue or broad-based consultations, instigated by the Commission. The strengths and weaknesses of the prevailing architecture have not been the subject of key EC policy documents. All this suggests the voice of the EC to push for change was there but expressed in a rather timid manner, without sufficient political backing (probably reflecting the "ghetto-isation" of human rights referred to before).

The ratification of the Lisbon Treaty and the related establishment of the EEAS created expectations for a more consistent integration of human rights in foreign policy and development cooperation. Yet during the initial phase of designing the EU's new diplomatic body, major concerns were raised that the planned "service won't have the structure or capacity even to maintain the EU's current impact in this area"[152]. It is difficult to assess the influence of the EC in the political decision-making on the place of human rights in the new institutional set-up for external action. It is also too early to assess the strength of the structures that were finally put in place.

5. OVERALL ASSESSMENT, CONCLUSIONS AND LESSONS LEARNT

5.1 Overall assessment (all EQs combined)

The overall ***track record*** of the EC in promoting human rights as a 'core value' of the Union in its external action has been ***mixed*** over the past decade. On the positive side, the EC has sought to place human rights more firmly on the map as an integral part of the EU external action. In many countries, the EC has made ***relevant*** contributions to promoting this agenda at various levels through the use of funding and non-funding instruments. Evidence of results (outcomes) as well as (intermediate) ***impact*** have been identified in relation to both the promotion and protection of human rights (see specific conclusion 6 below). In terms of process, these positive effects were generally achieved because the EC smartly positioned itself (with Member States and other actors) in a given context to push forward a realistic human rights agenda, skilfully using its political clout, leverage capacity and different instruments through the action of dedicated officials or supporting units at headquarters level.

Yet EC action has also been structurally hampered in terms of results/impact by several systemic ***constraints*** including:

- insufficient use of high-level EU political leverage (particularly in countries where major interests are at stake);
- the lack of a clearly spelled out and effectively implemented "joint" strategy between the EC and Member States adapted to different country contexts;
- the tendency to 'ghetto-ise' human rights;
- the limited Commission leadership at political and managerial level to push for the mainstreaming of human rights in all aspects of cooperation;
- a wide range of downstream implementation problems (including at procedural level);

[152] Amnesty International. December 2010. *Don't short-change human rights.* Background paper on human rights in the EEAS.

- inadequate knowledge, capacities and incentives to act effectively on a sensitive manner such as human rights.

This has major consequences for the ***effectiveness and efficiency*** of the overall EC actions in the field of human rights. The EC/EU does not optimally use its potential power and leverage when it comes to promoting human rights. High-level political statements and declarations in favour of human rights are not systematically and consistently translated into effective implementation strategies. The positive dynamics generated by EC supported programmes and projects are often not taken further and/or strategically linked to other reform processes (e.g. in the justice sector) that could enhance the overall impact on human rights. Opportunities to support societal forces struggling to localise human rights (beyond legalistic and normative approaches) are not fully exploited. The incentives that the EC/EU uses to push forward its human rights agenda are often too limited to effectively pressure or encourage partner countries. Inconsistencies and double standards are still prominent in EU external action. As a result, the EC/EU increasingly faces a credibility gap in its human rights action. The Arab Spring has illustrated the ambiguity of the EC/EU approach to human rights and triggered a soul-searching exercise on the need for a more coherent EC/EU policy.

Below, this overall assessment is further elaborated in six inter-related conclusions.

5.2 Main conclusions

1) The profile of human rights has been enhanced at EC/EU level

Over the last decade human rights has gained greater prominence in the external action of the EC/EU. The 2001 Communication on the EU's role in promoting human rights and democracy in third countries was a landmark policy document, spelling out an ambitious agenda for the EC, including in terms of mainstreaming human rights (Annex 8). Ever since, there have been many declarations of the EC political leadership in favour of human rights. At EU level there has been a proliferation of human rights dialogues and démarches. Guidelines have been produced on key political and civil rights. Strategic partnerships have been concluded while the EC has reached out to a myriad of civil society organisations. Funding for human rights (directly or indirectly through broader governance reforms) has increased steeply (with fluctuations over the years). Capacity support has been provided to both 'duty bearers' and 'right holders' with a view to promoting the effective implementation of normative frameworks. Staff awareness of the importance of human rights has been enhanced across the board. On the whole, this strong profile of the EC/EU on human rights is highly appreciated by a wide range of human rights activists across the world. They feel supported in their uphill struggle for rights in hostile local environments.

This conclusion is linked to findings related to all EQs.

2) There is a deficit in political commitment towards implementing an effective and coherent human rights policy

The centrality of human rights in EU external action has been clearly affirmed and reinforced in successive treaties. Human rights clauses underpin EU partnerships with third countries and regions. The discourse on human rights permeates country strategy papers and actions plans. There is no shortage of mechanisms for political dialogue on human rights. The EC has gradually built up its institutional infrastructure to deal with human rights, including dedicated units and focal points in the Delegations. In the field, human rights objectives are pursued through a wide range of programmes and projects. All this testifies of the EU's principled engagement to promote human rights in its foreign policy and development cooperation.

Yet the evaluation findings clearly suggest that the overall EU political commitment towards promoting human rights is incomplete, ambiguous and selective. (i) *Incomplete* because the EU policy and institutional architecture addressing human rights lacks a strong 'political roof' in the form of truly joint strategies on human rights for which the EC and Member States assume *joint* responsibility and accountability for results. (ii) *Ambiguous* because a strong discourse on human rights is not consistently translated into action, particularly when major political and economic interests are at stake. All too often a culture of 'complacency' prevails as illustrated, amongst others, in the ENP South before the upheavals in Tunisia, Egypt and Libya. (iii) *Selective* because double standards continue to

be applied depending on the strategic importance of the partner country. It leads to a situation whereby the EC/EU is perceived by stakeholders in third countries as both a core ally in the struggle for human rights and as a player "lacking teeth" (or failing to exercise a "protagonismo politico" commensurate to its status, as argued by a human right activist in Guatemala).

The lack of political leadership at EC level to ensure a coherent action in the field of human rights is also reflected in:

- the limited institutional incentives provided for an effective mainstreaming of human rights;
- the 'ritual', highly formalised nature of many political dialogue processes, operating behind closed doors and often failing to produce specific outcomes that can be monitored;
- the continued provision of aid even if no real progress is made on reforms to which the government committed itself;
- the reluctance to fully explore and exploit the range of (smart) incentives that could be used to promote the human rights agenda in a given context through various instruments (trade, association agreements, budget support, etc.);
- the frequently observed inhibition to engage with non-traditional actors that have potential to be change agents (e.g. opposition parties, social movements, religious groups, non-registered civil society organisations, media);
- the tepidness and superficiality of the reporting with regard to progress achieved on human rights in partner countries;
- the absence of EC systems and processes to systematically document, monitor and evaluate results achieved in the field of human rights and to promote internal learning.

This EC/EU deficit in political commitment to act coherently on human rights *all along the chain* (i.e. from policy discourse to implementation and accountability for results) structurally hampers the ability of the EC/EU to be an effective and result-oriented change agent in the field of human rights. It also explains other systemic weaknesses that will be developed in the conclusions below.

Conclusion linked to EQ 2; EQ 5; EQ6; EQ10

3) EC action on human rights is too often confined to a ghetto

The separation between the world of human rights (characterised by values, legal norms and technical complexity) and the arena of foreign policy/development cooperation (driven by interests, needs and aid processes) is not new. All external agencies that have sought to promote human rights through their external action face this issue and struggle to overcome the divide. Considering the lack of a consistent political commitment to a coherent EU action on human rights, it ought not be surprising that the EC still often tends to deal with human rights as a 'separate issue' or to confine the theme to a 'ghetto' (to use an image invoked by many interviewees).

These ghettos can be mental, political, institutional and instrumental:

- *Mental* when the staff see the value of human rights but finds it difficult to "do something with it" in their development work;
- *Political* when the dialogue takes place on human rights that is largely disconnected from economic ties, aid and effective progress on the ground;
- *Institutional* when too much responsibilities are given to dedicated human rights units that do not enjoy sufficient political backup and resources;
- *Instrumental* when the EC support is too much focused on thematic instruments and not sufficiently on the leverage potential of geographic instruments and other incentives to be used in the broader EU external action;

In the last years, promising breaches have appeared in the walls surrounding the various ghettos. Push factors have been: the growing importance of foreign policy and security considerations in development cooperation, the search for a better balance between 'needs and rights' in poverty

reduction strategies as well as the promising innovations by engaged EU Delegations. The policy developments related to the ENP and budget support represent other breaks in the wall.

Conclusion linked to EQ1; EQ2; EQ5

4) There are innovative practices yet the EC is confronted with an important delivery gap with regard to its human rights agenda

The lack of a common EU-Member State political agenda and implementation strategy (conclusion 2) and the related tendency to deal with human rights as 'a separate issue' (conclusion 3) inevitably affects the delivery capacity of the EC. Despite these structural limitations, the evaluation took stock of several good and innovative practices in terms of:

- incorporating a sound human rights analysis in the Country Strategy Papers;
- promoting a decentralised, multi-actor and iterative dialogue process on human rights;
- establishing a virtuous link between the political dialogue and the programming exercise;
- combining different instruments in a strategic manner to enhance the impact;
- reaching out to human rights activists and providing them with much more sophisticated forms of support;
- strengthening the human rights dimension in second-generation justice/security reform programmes;
- up-scaling positive project outcomes into much broader support strategies;
- building stronger complementarities with Member States and UN agencies.

However, the problem with these innovations is that they remain too much ad hoc initiatives pushed through by committed EC officials (both in headquarters and Delegations). There is limited evidence of a proper institutionalisation of these good practices. The limited learning culture (including effective M&E systems) on how the EC addresses human rights further compounds the problem.

Other factors contribute to reducing the overall delivery capacity of the EC. Evidence suggests that the EC is not yet fully exploiting the potential of regional organisations, such as the AU, to act as change agent on human rights in their respective geographic zone. The EC action is also hampered by ill-adapted procedures and funding modalities, as confirmed during the recently held 'Structured Dialogue' between the EU and civil society (human rights) organisations. Key problems are the limited flexibility most procedures provide to act quickly and decisively when opportunities/threats arise on the ground and the huge (often insurmountable) transaction costs they impose on local organisations.

Conclusion linked to EQ 4; EQ5; EQ6; EQ7; EQ9; EQ10

5) The knowledge, capacities and incentives provided are not commensurate with EC ambitions on human rights

Dealing with human rights is a demanding task for all EC actors involved at both Delegation and Headquarters level. Specialist (legal) knowledge is required as well a wide range of capacities to analyse human rights situation, detect opportunities to support promising dynamics, engage with local actors (both state and non-state), manage the 'politics' involved in pushing forward a human rights agenda, coordinate with Member States and UN agencies, etc. There is also a need for the right mix of incentives for EC officials to enter this 'messy' arena or to mainstream human rights. The evaluation found that overall levels of knowledge have increased over the last decade, amongst others through the work of dedicated human rights units and highly committed and qualified focal points. Some Delegations are building a solid institutional knowledge on human rights across the board (Morocco). Innovative practices have been developed to mobilise local knowledge (Kazakhstan) or to share the burden through smart partnerships (Guatemala). Capacities have been developed in several areas, particularly in terms of ensuring a strategic management of thematic instruments or incorporating gender rights into programmes and projects.

While these are promising evolutions, the EC remains confronted with a serious knowledge and capacity gap that prevents it from effectively pursuing a human rights agenda and achieve results. Addressing this deficit is not just a matter of quantity and quality of staff. It is also linked to:

- weaknesses in the overall EC institutional set-up for dealing with human rights (e.g. limited priority-setting, inadequate guidance[153], disjointed policy agendas[154] or the existence of institutional 'silos'[155]);
- the still often less than optimal collaboration with Member States (in terms of collective action and burden sharing in EU external action);
- a suboptimal use of local sources of knowledge and expertise;
- the lack of incentives from the political and managerial leadership to ensure an effective and coherent integration of human rights in all aspects of cooperation and in all relevant instruments.

Conclusion linked to EQ 5; EQ 7; EQ 8; EQ10

6) Results have been achieved yet the full EC/EU potential to promote human rights remains largely under-utilised

Reaching conclusions as to the impact achieved with EC actions in favour of human rights is a major challenge:

- the EC – much like other donors - is often confronted with hostile environments or reluctant governments, providing limited space for reforms;
- the EC operates within the broader EU arena, where human rights objectives co-exist with a host of other foreign policy and economic priorities and interests. The reconciliation of values and interests is generally a difficult balancing act;
- the degree of leverage and the type of incentives that the EU can provide to encourage/pressure governments may show major limitations in several contexts;
- pushing forward a normative human rights agenda is not likely to be effective in the absence of informed citizens and a clear societal demand for these rights. As in other areas, local ownership of the human rights agenda is crucial. The 'supply' of EC/EU support must meet local 'demands' to achieve genuine impact;
- changes in the human rights culture are, by definition, a long-term endeavour. Quick fixes are not to be expected. While governments may be induced to adapt the *rules and legal frameworks* related to human rights, it has proven much more difficult to also influence the *processes* that allow to enforce rights and freedoms and to change the *behaviour* of power holders, civil servants and citizens.

Bearing these caveats in mind, it can be concluded that the EC track record in terms of results achieved is mixed. On the one hand, the evaluation team found many examples where the EC action in favour of human rights -undertaken directly or within broader EU framework- has generated positive effects, including:

- at macro level, the sheer presence of the EU as a global player promoting a human rights agenda (though with various levels of consistency and conviction) has helped to protect and eventually also enlarge the space to address human rights issues (= the EC/EU acting as agency of restraint);

[153] There is, for instance, a growing awareness on the potential added value of mainstreaming human rights. Yet EC officials and technical experts are a bit at loss on *how* this can be done in practice; their drive to adopt a stronger rights focus are hampered by the lack of relevant and manageable operational guidance.
[154] This refers to the tendency to deal separately with the different components of the governance agenda supported by the EC. This often leads to a situation whereby the human rights agenda is addressed without strong connections with adjoining policy areas such as democracy, civil society development, the rule of law, etc.
[155] Systematic reference was made in this context to the negative impact of the 'silo' that exists between thematic units dealing with human rights and geographic desks.

- in several settings (including highly restrictive environments) the EC has been able to intelligently mobilise the different instruments at its disposal with a view to pushing for legal changes or effective application of ratified conventions;
- political demarches have helped to prevent a deterioration of human rights situation (e.g. when EC/EU action contributed to halting legislative reforms that would re-introduce the death penalty)
- the EC support to human rights defenders and civil society organisations has repeatedly been described as a 'lifeline' for the actors involved;
- several EC-supported programmes have contributed to promoting joint action between state and non-state actors on human rights
- EC support to justice sector reforms and the fight against impunity have contributed to improving the overall environment for the protection of human rights;
- though poorly documented, there is evidence of impact achieved with capacity building initiatives (which consume a large share of EC aid for human rights).

On the other hand, the evaluation findings clearly indicate that the overall EC potential to support human rights remains all too often untapped. Many opportunities are missed to build on promising local dynamics, to structurally support drivers of change or to promote human rights through other cooperation programmes and instruments that are not optimally used so far.

Conclusion linked to EQ 4; EQ5; EQ7; EQ8; EQ9

6. RECOMMENDATIONS

6.1 Overall Policy Recommendation

Upgrade the political status of human rights in the EC/EU external action so as to ensure coherent action and increased impact

The evaluation concluded that the EC/EU has built over the past two decades a basic policy and institutional framework to address human rights in its external action. This architecture was constructed to ensure that human rights (and a core value of the EU) are incorporated in the partnerships with third countries. To achieve this aim, several funding and non-funding instruments have been deployed. While the EC/EU has thus contributed to promoting the cause of human rights across the board and supported a myriad of valuable programmes, the overall relevance and impact of these efforts has remained less than optimal. This is primarily linked to a set of ***structural impediments of a political nature within the EU.*** While the core value of human rights has featured prominently in the EU *discourse and declaratory policies,* there has not been a commensurate focus on ensuring coherent and result-oriented action. The EU architecture for human architecture is based on too weak political foundations and displays too many structural weaknesses and unfinished construction sites. There are too many 'missing links' in the chain from expressing high-level policy ambitions with regard to human rights and to delivering results on the ground.

Bold decisions are needed to ensure that human rights can leave the 'ghetto' in which they have all too often been relegated. The EC/EU needs to clarify 'upstream' how much weight it wants to give to human rights and how it can better reconcile values and interests in this critical area of its external action. It needs to build stronger bridges between human rights and other domains of EU external action. These are pre-requisites for a more credible, effective and result-oriented EC/EU action.

There are indications that this recommendation may now fall on relatively fertile ground within the EU. The Arab Spring has had the effect of a 'wake-up call' for the EC/EU. It may lead to the demise of the old "stability versus human rights" paradigm that was long upheld by the EU. The growing societal demands for more justice and rights, arising from the 'bottom-up' in many other parts of the world, confirm that the struggle for human rights is a shared agenda and not a pure Western imposition. All this has prompted a fundamental rethinking of EC/EU policies towards human rights. In a recent speech, Commissioner Piebalgs pleaded to 'give human rights the place in development policy that they deserve" and to "embed human rights and democracy even more deeply" in EC practices, amongst others by ensuring that they are given "greater weight in determining the ways and means of

providing assistance"[156]. The recently proposed 'Agenda for Change' (COM [2011] 637 final) is clear on the ambition to heighten the impact of EC cooperation on democracy and human rights. The new orientations for the use of budget support (COM [2011] 638 final) are another illustration of this approach. From now on, human rights will be a central consideration when the EC analyses a partner's country profile and suitability for budget support.

In the abovementioned speech Commissioner Piebalgs also made the point that revision of the instruments in the framework of the new Financial Perspectives provides for a "unique opportunity to embed human rights and democracy even more deeply in our practices […}. Our aim must be to look beyond the instruments themselves so as to frame human rights and democracy in the tools we use in our daily practices".

The EU High Representative Catherine Ashton has repeatedly stressed the need to integrate human rights as a "silver thread" throughout all EU external action. To this end, a major policy review of the EU policy towards human rights was announced.

The finalization of this independent evaluation largely coincides with the planned policy review. This provides a major window of opportunity The recommendations below may provide a source of inspiration for this fundamental re-orientation and upgrading of human rights in EU external action

6.2 Strategic and Operational Recommendations

1) *Clarify* the political agenda of the EU with regard to human rights and translate this in common implementation strategies (EU - Member States)

Justification of this strategic recommendation (linked to conclusions 2-6)

This is the necessary starting point for a more credible EC/EU human rights policy in the new Post-Lisbon institutional set-up. The EC/EU need to ensure that, the architecture for addressing human rights has a solid 'political roof'. This means providing clarity on the EU human rights ambition towards third countries and regions. It implies being more explicit about the EU interests that co-exist with the promotion of human rights as a core value. It means developing common implementation strategies for which both the Commission and the Member States take responsibilities[157]. It calls upon all EU institutions to fully exploit the potential of the Post-Lisbon configuration to define such political agenda with regard to human rights towards third countries and regions.

Operational recommendations

(i) Define ***joint EU political human rights agendas*** towards third countries and ensure their consistent integration in partnership/association agreements, country strategies and action plans.

(ii) Upgrade and specify the status of human rights ***in negotiations on association agreements*** (particularly regarding the granting of an advanced status) or on other important international agreements (e.g. related to fisheries) within the framework of specific, time-bound commitments.

(iii) Ensure a clear ***link*** between a revitalized political dialogue (see recommendation 3 below) and multi-annual programming processes.

(iv) Define ***clear methodologies and conditions*** to activate human rights clauses, including the use of targeted sanctions against those who perpetrate violations of human rights.

(v) Ensure political leadership in terms of putting together the "***right package of incentives"*** and ensuring an optimal use of the geographic instruments while promoting complementarity with the thematic budget lines and other EU instruments (e.g. trade).

(vi) Specify realistic benchmarks, milestones and outcomes for the progress to be achieved – in line with the commitments agreed upon by third countries internationally or in the partnership with the EU.

[156] Speech of Commissioner Andris Piebalgs at the European Parliament inter-parliamentary committee meeting with national parliaments. Brussels, 11 October 2011.
[157] This is crucial also to avoid that the active promotion of human rights in the new post-Lisbon configuration of human rights is left too much to the EU level without fully embarking Member States in the delivery of coherent actions.

(vii) Provide political support to the upgrading of economic and social rights in the overall EC/EU action.

(viii) Put in place an effective system for the ***monitoring and evaluation*** of the results achieved.

(ix) Enhance the overall accountability towards the European Parliament and other stakeholders on the policies and practices with regard to human rights.

(x) Create the role of the ***Special Representative of HR t***o guarantee systematic political attention, strategic direction, coherence and visibility.

2) Develop a comprehensive strategy to localize human rights

Justification for this strategic recommendation (linked to conclusions 2, 3, 5 and 6)

A clear and shared political agenda on the EU side towards third countries and regions (recommendation 1) is the necessary starting point of a coherent approach to promoting human rights in EU external action. In the absence of this 'upstream' work – aimed at making core political choices, setting priorities and reconciling values and interests - 'downstream' actions of the EC are likely to suffer from the same weaknesses as evidenced in this evaluation report.

The next step is to take the local reality as the point of departure for elaborating a realistic and inclusive human rights local agenda. This 'localization' process (recommendation 2) is key to: i) allow local actors to define a realistic and prioritized ***reform agenda***; ii) ensure that the struggle for legislation on human rights is complemented by efforts to ***make rights 'substantive'*** and 'real' for poor and marginalised people; and to iii) better ***connect*** international normative frameworks with societal dynamics at country level, since there is no contradiction between maintaining human rights as a global reference and allowing for variations in the content in order to make human rights protection as locally relevant as possible. The recently introduced innovation to request all Delegations to elaborate a local implementation strategy is a step in the right direction. The task at hand is to further improve the quality, the strategic management and the effective monitoring of these local implementation strategies.

Operational recommendations

Several concrete suggestions can be formulated with a view to further localizing the EU human rights agenda and the related support strategies. They are summarized in figure 4.

(i) Assess *the local human rights situation, the reform preparedness of the government and the domestic capabilities in cooperation with relevant stakeholders*. To this end, the EC/EU should make a systematic assessment that includes the human rights profile of the civil, political, economic and social sectors, a legal analysis of the extent to which human rights are protected in formal law and the status of the judicial mechanism of redress.

(ii) Identify *the most pressing human rights needs and windows of opportunities in a particular country/region.* The EC should develop an analytical tool to identify relevant 'entry points' (in terms of constraints and opportunities at local level) and take them as starting point for develop a concrete and realistic response strategy.

(iii) *Integrate the local HR strategy in the programming cycle at country level*. The EU/EC should integrate the HR strategies into the bilateral programming process with the inclusion of specific indicators, benchmarks and monitoring system. The integration of human rights into development cooperation should be based on reciprocal commitments of the EU with the recipient country. Such agreements should include the mutual accountability among the partners for the implementation of the human rights commitments and accountability of both on the human rights impact to the affected rights holders[158].

(iv) *Combine political/HR dialogues and financial instruments (thematic & geographic) strategically*. The thematic and geographical tools should be effectively combined to complement each other in a flexible way depending on the country situation. Local

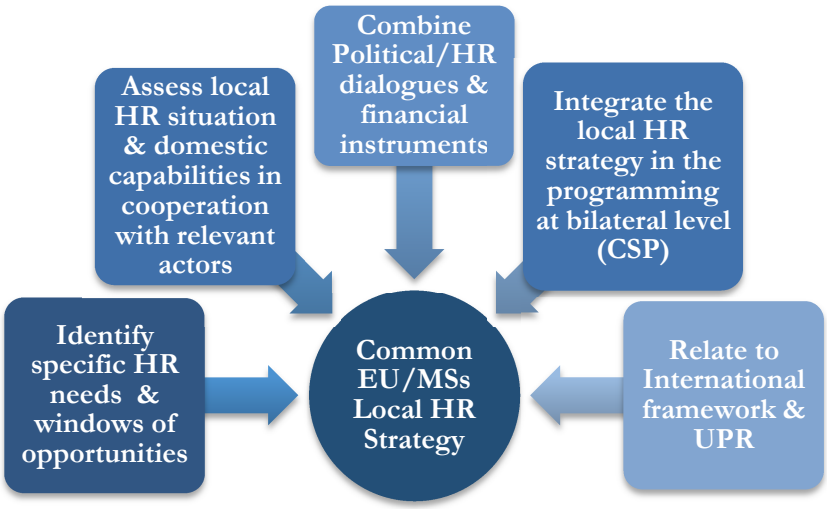
[158] A rights-based approach to development insists on the accountability of duty bearers: aggrieved rights holders are entitled to institute proceedings for appropriate redress when states or other duty-bearers do not comply with human rights instruments. Donors should not only support programs that assist in the implementation of human rights in the recipient country, but also ensure that no human rights violations occur in the context of aid sponsored activities.

programming strategies grounded on contextual needs are the basis to make good use of the added value of each instrument. The EC/EU should also promote a better synergy between spending and non-spending tools in order to enhance the consistency between its political and financial role. The Lisbon Treaty is a unique opportunity to embed human rights and democracy even more deeply in EU cooperation practice.

(v) *Relate to the international framework and the UPR*. The EU/EC should use the UPR recommendations more strategically to create an opening for a human rights debate with government authorities in situations where this has been very hard. This concerns countries where there is a serious lack of fundamental freedoms, where human rights defenders are under most pressure and where civil society operates with difficulty. In all the other countries the essential UN recommendations to use are the ones produced by the human rights "*Treaty bodies"* and the "*UN special rapporteurs"*. The EC should also consider the possibility to support the implementation of the UPR or treaty bodies' recommendations with financial intervention.

(vi) *Adopt an inclusive actor approach*. The localization of human rights depends on the cooperation among actors at different levels. The EC should involve all relevant actors in the country in a broad consultation and information process, notably: a) CSOs and human rights defenders from all party of the country, including rural communities; b) UN agencies working in the human right field and in particularly the office of the High Commissioner for HR; c) Member States, other donors and their partner organisations; d) legal experts and independent lawyers (for further details see recommendation 6).

Figure 4 - How to develop a local HR strategy that can be realistically implemented?



3) Revitalize the political dialogue on human rights by clarifying its objectives while ensuring an inclusive, iterative and result-oriented approach

Justification of this strategic recommendation (linked to conclusions 2-3)

Political dialogue – in its various forms - constitutes a fundamental component of the EC/EU toolbox to promote human rights. Yet the evaluation confirmed the structural deficiencies of the current dialogue processes on human rights, including their overtly formal ('ritual') nature, the focus on government (at the expense of other actors), the disconnection with mainstream cooperation processes and the ad hoc organization. Looking forward, the importance of the political dialogue is set to increase as the EU seeks to upgrade the status of human rights in its overall cooperation and to better embed its support in localized strategies. However, in order to be effective, important changes are needed in the way political dialogues are prepared and conducted. The way forward is to adopt a much more decentralised, inclusive, iterative and result-oriented formats that match the local context and optimally use the potential of the EU's new institutional framework 'post Lisbon'.

Operational recommendations:

The revitalization of the political dialogue, as a key tool to leverage change, calls for the following innovations:

(i) Defining a clear mandate for the political dialogue, focused on a realistic set of priorities and backed up by high-level political support from EU Member States.

(ii) Ensuring inclusivity by organising an effective, decentralized multi-actor political dialogue involving civil society and actors from the 'political society'.

(iii) Organizing systematic linkages between the political dialogue, the programming processes and the various instruments (including budget support).

(iv) Defining public indicators of progress for human rights, reflected in results and concrete commitments that can be monitored and evaluated.

(v) Promoting transparent information and communication flows on the outcome of the political dialogue among actors involved in the country and in Europe.

4) Overcome the divide between human rights and development through smart forms of mainstreaming *and direct support to human rights.*

Justification of this strategic recommendation (linked to conclusion 2)

Evaluation findings confirm that human rights are still too often addressed in a 'ghetto'. This severely reduces the effectiveness and impact of EC action in the field of human rights. There is growing recognition of the critical links between human rights, poverty, exclusion, vulnerability and conflict. This indicates the time has come to overcome the divide between human rights and development and to operate a real "cultural shift" in EC development policy. The task at hand is to remove silo's that prevent an integrated approach on human rights. Adopting an integrated approach is not only a question of improving the mainstreaming of human rights. It also calls for an optimal use of direct (dedicated) actions in favour of human rights (which mobilize a large share of the funding). An integrated approach implies (i) to reconcile the needs-based and the rights-based approaches; (ii) to better focus on human rights in EU programming and needs assessments; (iii) to exploit, where appropriate, the possibility of retaining human rights as a focal sector in future programming; (iv) to further strengthen the EC niche and comparative advantage to work directly on human rights through dedicated instruments (such as EIDHR) and (v) to actively promote smart forms of mainstreaming human rights[159] in all relevant policies, cooperation instruments and practices.. The climate seems ripe for such a qualitative move as societal demands for freedom, social justice and accountability increase and globalisation brings with it an enhanced focus on social and economic rights within a more inclusive and equitable global economic system.

Operational recommendations

In order to fully exploit new opportunities for smart mainstreaming, the following actions could be envisaged:

(i) Clarifying the concept and practical use of rights-based approaches in EU development cooperation (particularly in the rapidly expanding area of social and economic rights) in order to promote mutually reinforcing bridges between development and human rights.

(ii) Providing clear political guidance on EU human rights priorities in a particular country while ensuring linkages with the programming processes and the various geographic and thematic instruments.

(iii) Removing artificial barriers between different work streams within the broader 'governance agenda' such as support to democracy, civil society development and the rule of law.

(iv) Promoting the effective integration of the 'rights dimension' in EC-supported programmes related to key sectors (e.g. health, education, food security), economic governance (e.g. natural resource management) and domestic accountability (e.g. by strengthening the capacity of citizens to claim rights and demand accountability).

[159] Smart forms of mainstreaming focus on substance and seek to embed human rights in concrete practices on the ground. They avoid bureaucratic approaches to mainstreaming (e.g. by imposing rigid formats or checklists).

(v) Strengthening the link between budget support and the fundamental values of human rights, democracy and the rule of law by applying the principle of 'selectivity' in granting general budget support and by specifying how this particular aid modality could be strategically and effectively used to promote human rights.

(vi) Reviewing the overall effectiveness of EU approaches to using trade as a tool for promoting human rights – preferably by carrying out a learning evaluation - focusing in particular on issues of coherence, transparency, predictability as well as on the type of incentives that may work in specific contexts.

(vii) Further supporting responsible behaviour by EU investors and operators all along the global supply chain.

(viii) Putting in place quality control systems on mainstreaming strategies and results achieved.

(ix) Supporting experimentation and joint learning on how best to mainstream human rights.

(x) Creating incentives at political, managerial and implementation level to take mainstreaming of human rights seriously (see further recommendation 7).

(xi) Using the revision of the EU instruments to systematically embed human rights in future practices.

5) Better use the added value of the EU/EC to support systemic reforms that help realizing rights

Justification of this strategic recommendation (linked to conclusions 4 and 6)

The deepening of inequalities in many parts of the world has led to a growing focus on the systemic factors that perpetuate poverty, including power relations, lack of checks and balances, poor domestic accountability systems as well as international drivers of bad governance. In response, donor agencies (particularly the EC) have increased their support to major institutional reforms linked to governance (e.g. in the justice and security sectors, regulatory reforms, etc.) that have the potential to structurally improve the position of right holders and to structurally improve the human rights situation.

Operational recommendations to ensure a better integration of human rights in these wider governance reform programmes include:

(i) Improving the political economy analysis of the structural reforms (i.e the power relations, interests and incentives that drive these processes).

(ii) Strengthening the human rights dimension in structural reforms and related EU support strategies by including conditionalities and specific benchmarks on human rights, particularly linked to the independence of the judiciary.

(iii) Associating the various stakeholders in the process (including the right holders).

(iv) Ensuring that (budget) sector support programmes include a component and funds to strengthen the capacity of non-state actors to access justice or enjoy protection.

(v) Regularly monitoring the impact of the structural reform programmes on the human rights situation.

6) Deepen the strategic engagement with citizens, civil society political actors and regional organisations

Justification of this strategic recommendation (linked to conclusions 1, 3, 4 and 6)

Human rights are derived from the normative framework developed by the international community and agreed upon by states. Yet the struggle to make rights real is first and foremost a domestic process and the result of changes in relations between governments and their people. The Arab Spring is yet another illustration of this. Citizens revolted to enjoy their freedoms, to be able to elect their leaders through genuine democratic elections and to safeguard their economic and social rights in a context of growing inequalities and rapid globalisation. If the EC/EU is to provide effective support to these endogenous processes, it needs to listen more to societal dynamics, to define localised human rights strategies (recommendation 2) and to ensure inclusive approaches (recommendation 3).

All this requires a strengthening of the "actor dimension" in future EU human rights policies. The evaluation findings show that the EC has already quite some experience with engaging with state actors and non-state actors at various levels on human rights related issues. Good practices have been developed, though in a rather ad hoc manner. The challenge now is (i) to enhance understanding of societal dynamics so as to better detect windows of opportunities; (ii) to deepen this strategic engagement (beyond projects); (ii) to diversify the type of actors to be involved; and (iv) to provide smarter and more sustainable forms of support in close cooperation with Member States.

Operational recommendations:

(i) Enhancing the EU's knowledge on politics and dynamics in the realm of citizenship, within civil society and in the relations between state and society.

(ii) Developing strategies to support active citizenship, including through awareness raising activities (civic education) and capacity building of 'right holders'.

(iii) Adopting a more strategic approach to engaging with civil society by:

- ✓ further improving the protection provided to autonomous CSOs;
- ✓ using all possible leverage to prevent governments to issue restrictive laws that hamper the operation of independent CSOs;
- ✓ deepening the direct dialogue with CSOs on human rights;
- ✓ includin CSOs in political dialogue processes;
- ✓ associating CSOs in a more systematic and strategic way in major development cooperation programmes and budget support operations, particularly those that have important linkages with human rights (e.g. justice and security sector reforms)[160];
- ✓ ensuring greater attention for social and economic rights;
- ✓ diversifying the type of CSOs involved, with a particular focus on organisations at decentralised levels (grassroots organisations); this should facilitate the outreach to smaller and voluntary organisations with suitable implementation modalities such as re-granting
- ✓ clarifying the strategy used to support CSOs as 'change agents' over a longer period of time through more 'programmatic' forms of (financial) support allowing for genuine institutional development to take place;
- ✓ combining strategic support to both state and non-state actors;
- ✓ refining outreach and communication approaches towards civil society;
- ✓ creating more space for CSO participation in major policy processes supported by the EC, such as the reforms pertaining to the public sector, decentralisation and the justice sector.
- ✓ improving joint action between EU and Member States in support to CSOs.

(iv) Extending relationship with 'political society' for the promotion of human rights (including parliaments, political parties, political personalities).

(v) Deepening the strategic partnership with regional organisations that can act as legitimate norm-setter and monitoring agency within the global rights system by:

- ✓ fostering the establishment of effective regional mechanisms aimed at the protection of human rights, including at the judicial level;
- ✓ contributing to meeting the capacity building needs of, and to raising awareness on, existing and emerging regional and national human rights mechanisms, specifically empowering the regional courts and specific human rights commissions, notably in Africa through support for the consolidation of the 'African Governance Architecture' (AGA);

[160] Practical guidance on how to ensure a full-fledged participation of non-state actors in budget support operations can be found in the 2011 EC Reference document on "Engaging non-state actors in new aid modalities for better development outcomes and governance".

- ✓ building on EU human rights dialogue with the African Union and investing in a dialogue with the other regional systems with a view to sharing knowledge, expertise and addressing common challenges;
- ✓ working 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;
- ✓ playing a key role in facilitating exchange and dialogue across regional bodies to support cross reference regarding lessons learned, as well as concrete informing on emerging regionally based jurisprudence on rights to ensure better compliance of judgments and obligations;
- ✓ being open to discuss developments outside Europe and how they could influence: a) the European system for the protection of human rights; b) the positions that the EC takes in its external policy vis-à-vis countries from the relevant region; c) how these progress can be taken into account in the functioning of the global human rights system;
- ✓ supporting the work of the UN Office of the High Commissioner for Human Rights to further strengthen cooperation among regional human rights mechanisms. The UN's seminars provide a valuable opportunity to exchange experience among regional organizations, regional human rights mechanisms and civil society organizations.

7) Create an enabling institutional environment for effective delivery of a coherent EC/EU action on human rights

Justification of this strategic recommendation (linked to conclusions 4-5)

In order to make EU human rights policies more credible and effective, the EC/EU should strengthen the overall institutional architecture and its overall capacity to deliver an expanding human rights agenda. At EC level, this implies addressing well-known institutional bottlenecks such as: (i) poor incentives to consistently integrate human rights in all relevant aspects of the partnership with third countries; (ii) gaps in knowledge and capacity; (iii) limited cooperation between human rights specialists and other staff; (iv) the existence of many 'silos' (e.g. within Delegation; between Delegation and headquarters; within headquarters). In this context what deserves more careful consideration is the provision of the 'right mix' of political, managerial and individual incentives – all along the chain - to ensure an effective integration (mainstreaming) of human rights in all relevant policies and instruments. At EU level, the challenge will be to make the new Post-Lisbon configuration work for human rights. Systematic monitoring will be essential to determine whether the new structures and processes help to deliver a more political and coherent human rights agenda and what adaptations are needed to improve overall effectiveness and impact.

Operational recommendations

In this context, the following institutional improvements could be considered:

(i) Spelling out a clear strategy to strengthen the overall EU's institutional architecture for dealing with human rights, focusing on the effective delivery of four critical functions: (i) assessing human rights; (ii) elaborating coherent joint strategies (EC-Member States); (iii) identifying adequate (localised) support programmes; (iv) ensuring effective monitoring, evaluation and reporting.

(ii) Allocating clear responsibilities and adequate levels of expertise to key political bodies (particularly in the Cabinet of the EU High Representative for Foreign Affairs and Security Policy) and dedicated human rights units (in both EEAS and DEVCO).

(iii) Providing the 'right mix' of political, managerial and individual incentives – all along the chain- to ensure an effective integration (mainstreaming) of human rights in all relevant policies and instruments (for further details see table 3).

Table 3 - Incentives to embed human rights in the daily practice of the EC/EU

Type of Incentives	Concrete measures
Political incentives	✓ Give clear political instructions with regard to mainstreaming human rights, underpinned by a well-defined implementation strategy with targets, milestones and feedback mechanisms ✓ Provide clear political guidance on human rights priorities towards a particular country or region that could effectively guide the programming process and ensure the link between political dialogue and instruments ✓ Clarify the lines of political accountability for delivering on human rights
Bureaucratic/managerial incentives	✓ Provide clear *mandates* with regard to mainstreaming of human rights for non-specialist directorates, units, geographical desks, and heads of Delegation ✓ Put in place effective *inter-service coordination mechanisms* ✓ Ensure effective quality control of *local country strategies on human rights* ✓ Create space for a more meaningful integration of human rights in *programming processes* ✓ Put in place mechanisms that allow for a mutually beneficial interaction and cross-fertilisation of dedicated human rights specialists and the geographical desks ✓ Organise the Delegations in such a way that cross-sectoral and thematic teamwork can be enhanced ✓ Provide users-friendly *operational guidance* on how to mainstream human rights (in a non-bureaucratic way) ✓ Improve the integration of the *focal point* for human rights in the overall work of the EUD ✓ Put in place *smart M&E systems* that put a premium on experimentation, learning and adaptation ✓ Include human rights in the *job descriptions and performance criteria* for directors/heads of units/HoD
Individual staff incentives	✓ Upgrading the status of human rights in the overall competences required from staff ✓ Providing a menu of learning opportunities (training, exchanges, networking, exposure) ✓ Liberating quality time (for non-specialists) to engage on mainstreaming human rights

(iv) Defining a comprehensive capacity development strategy (beyond training) in order to effectively respond to an expanding human rights agenda and to the higher ambitions of the EU in this area.

(v) Providing users-friendly operational guidance on how to deal with the various dimensions of human rights in EU external action.

(vi) Investing more in smart partnerships with EU Member States and specialised UN organisations to share the knowledge burden, pool resources and enhance overall impact.

(vii) Specifying in the local human rights strategies how a better use can be made of local sources of knowledge and expertise on human rights.