

## **Position Paper: concerning EU visas as a protection tool for human rights defenders**

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### *Who are human rights defenders?*

Human rights defenders (HRDs) are people who take peaceful action to promote and protect the human rights of others. The right of all people to do so, individually or collectively, was recognised by all UN Member States with the adoption of the UN Declaration on Human Rights Defenders by the UN General Assembly in December 1998. People become human rights defenders all around the world where human rights are at risk, including inside and outside the EU.

### *Why might human rights defenders from outside the EU benefit from access to the bloc?*

Since I took up my mandate in 2020, EU Member States have repeatedly asked me for recommendations on practical measures they could put in place to better support and protect human rights defenders. From my conversations with defenders around the world, one of the most frequently repeated requests relating to their security is that visas are made more accessible to them. There is currently a disconnect between States stressing their support for the work of human rights defenders on the one hand, yet failing to implement one of the protective measures most commonly cited by HRDs themselves on the other.

There are four main situations in which HRDs could greatly benefit from facilitated access to visas for entering the EU.

#### *(I) Situations of immediate risk*

In situations of immediate, pressing risk, such as where defenders have received death threats, have suffered an assassination attempt or where an arbitrary arrest warrant has been issued against them, temporary relocation may be the only effective option to protect them from irreparable harm. If that relocation is to be to the EU, most defenders will need a visa.

Relocation to the EU is rarely the first or most preferable option. Where relocation internally or to a neighbouring country is possible, it is the solution most frequently chosen by defenders, as often it will not present the same linguistic, logistic, cultural or financial challenges that relocation to the EU might.

In some cases, however, the internal situation may render relocation nationally ineffective or impossible. Neighbouring states may not be secure for defenders either, given the well documented risks of collaboration between security forces and transnational repression.

Where this is the case, facilitated access to a visa allowing for temporary relocation to the EU may provide a solution if requests can be processed quickly and support provided for the defender once they reach the EU. In most situations, defenders will be able to return to their home country once the risk has diminished.

#### *(II) Situations of anticipated risk and 'just-in-case' visas*

In other situations, human rights defenders may be able to anticipate increased risks associated with

their work ahead of time. This may be the case, for example, in advance of election periods, ahead of the launch of projects, or prior to the publication of reports human rights defenders have contributed to. It may also be relevant in the context of shrinking civic space in an individual State, if defenders have seen their colleagues or allies targeted.

In such circumstances, by temporarily relocating in advance of the anticipated period of heightened risk and returning when things cool down, HRDs may be able to mitigate the risk of arrest or attack.

In these cases, the possibility of temporarily relocating to the EU, facilitated through long-life multi-entry visas in particular, may form part of a HRD's broader protection strategy and empower them to continue their work back home in the long-term.

### *(III) Avoiding burnout*

Human rights defenders can face great levels of tension and stress, and are often exposed to traumatic events and experiences.<sup>1</sup> This comes not only from the retaliation and pressure they are routinely subjected to, but the nature of their work itself. Defenders frequently find themselves stigmatised in society and see their solidarity and support networks targeted in an attempt to isolate them, including their family ties.

These factors make the risk of burnout and mental health issues for defenders significant. Rest and a temporary change of environment can be among the means to address and mitigate these risks. Furthermore, such periods of respite enable defenders to return home to continue their human rights work feeling refreshed and recharged, with a new network of external contacts and allies. However, persistent insecurity, retaliation and stigmatisation can make it difficult for defenders to find such recourse in their communities and countries. Travel to the EU can provide an option where visas are accessible, given the number of organisations and institutions which host programmes designed specifically for human rights defenders in such circumstances.<sup>2</sup>

### *(IV) Mobility for advocacy, capacity building and connecting*

Visas are essential to ensuring human rights defenders can effectively participate in human rights conferences, events and decision-making fora in the EU.

Workshops and programmes on human rights, solidarity and strategic litigation, which can be either very risky or impossible for HRDs to attend or organise in some countries, are carried out in the bloc. Most HRDs need visas in order to attend.

Furthermore, as a result of shrinking civic space in a growing number of States, communities of human rights defenders have been forced to relocate and work in exile within EU Member States and third-countries.

Some human rights defender from States affected by shrinking space have, however, remained in their home country, adopting lower profiles and carrying out essential work documenting the human rights situation on the ground.

Where such defenders have colleagues who have relocated to the EU, access to visas can help them maintain vital links with their colleagues abroad, travel to engage in advocacy and collaborate with actors in the EU, and avoid becoming isolated and eventually abandoning their work.

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1 Wellbeing, Risk and Human Rights Practice, Human Rights Defenders Hub Policy Brief, University of York January 2017, available at: <https://securityofdefendersproject.org/policy-briefs-en>

2 For an overview of such programmes, see <https://ecosystem.openbriefing.org>, searching by 'Europe'.

Such defenders may also benefit from access to visas in response to the risk-based circumstances previously outlined.

*What is the current situation concerning access to EU visas?*

The current situation is defined by a discord between the EU's external human rights policy and its visa policy as it impacts upon HRDs.

The EU has recognised the risks and pressures HRDs face, most notably through its Guidelines on Human Rights Defenders, which are addressed to EU missions abroad and seek to strengthen the EU's human rights policy overall.<sup>3</sup> An internal Guidance Note adopted by the EU's Council Working Party on Human Rights (COHOM) in 2014 and updated in 2020 suggests specific action these mission should consider to support and protect HRDs. This includes support for visa procedures.<sup>4</sup>

Yet there are no specific provisions for HRDs in the EU's visa acquis. Defenders are not mentioned in either the EU Visa Code or the accompanying Visa Handbook.

This means that defenders seeking to enter the EU will ordinarily need to follow the normal procedures of the Visa Code, whether in situations of immediate risk, accumulating pressure or otherwise.<sup>5</sup>

This makes access to visas very difficult for most defenders. The procedures under the Visa Code can be extremely onerous. When confronted in the intense, repressive and insecure contexts in which HRDs often find themselves, they can present insurmountable barriers to successful visa applications.

Where HRDs are able to make applications and do receive a visa, often these will not be appropriate to meet their needs, arriving too late to support them or being granted for only a very short period.

Some Member States have created schemes and practices to facilitate access to the EU for defenders by working closely with civil society, cities, regions and embassies.<sup>6</sup> These programmes are encouraging, and provide vital passages of safety and support to some defenders. However, the practices put in place vary greatly in their scope, accessibility and the extent to which they meet the real needs of defenders.

These factors leave the grand majority of defenders unable to realistically consider temporary relocation and travel to the EU as part of their protection and advocacy strategies.<sup>7</sup>

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3 Ensuring Protection – European Union Guidelines on Human Rights Defenders, accessible at [https://www.eeas.europa.eu/sites/default/files/eu\\_guidelines\\_hrd\\_en.pdf](https://www.eeas.europa.eu/sites/default/files/eu_guidelines_hrd_en.pdf)

4 Protecting Human Rights Defenders at Risk: EU Entry, Stay and Support, European Union Fundamental Rights Agency, 2023, pp. 8 and 12

5 The EU has agreed a visa-free regime for 61 non-EU countries, which benefits some defenders. However, no African or Central-Asian countries benefit from such a regime, and extremely few in Asia. Nationals of 105 countries require visas to come to the EU. See: <https://www.consilium.europa.eu/en/infographics/eu-visa-agreements-with-non-eu-countries/>.

6 For an overview of these schemes and practices, see: [https://fra.europa.eu/sites/default/files/fra\\_uploads/2023.2911\\_new\\_hrd\\_entry\\_and\\_stay\\_report\\_draft\\_for\\_editing-annex-i-ii\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/2023.2911_new_hrd_entry_and_stay_report_draft_for_editing-annex-i-ii_en.pdf)

7 This situation has been repeatedly highlighted by the European Parliament, civil society and others. See: European Parliament resolution of 17 June 2010 on EU policies in favour of human rights defenders, paras 39 – 41; European Parliament resolution of 16 March 2023 on the EU Guidelines on Human Rights Defenders, paras 41-46; and Joint Statement: International Civil Society Organisations call for an effective and enabling EU Visa framework for At-

*What are the obstacles faced by HRDs when applying for EU visas?*

- Long, costly and often insecure travel required to get to consulates and lodge applications, in particular for defenders in remote areas or conflict zones
- Incompatibility of the standard time-frame for making a visa application with the needs of defenders, in particular those at immediate risk
- Outsourcing of visa services by EU Member States to external service providers, resulting in privacy risks for defenders in insecure countries, increased costs and administrative inflexibility around support documents
- Time-frame for issuing decisions and the discretionary nature of expedition of applications
- Difficulty gathering required support documents, in particular proof of income or employment, to prove intention to return
- Unaffordable visa fees for economically marginalised defenders, who are often those at highest risk and under most pressure
- Refusals based on past criminalisation in retaliation for their human rights work
- Restrictions on applications outside one's State of residence
- Challenges obtaining and renewing travel documents<sup>8</sup>

Where human rights defenders do make applications for EU visas, they may be refused for fear among decision makers that they would not return to their country of residence, given the risks they face.

Yet while human rights defenders may well qualify for asylum under the EU's international protection framework, and in some cases may need to turn to it, most HRDs seeking to travel to the EU, either for a period of temporary relocation or in for their work and advocacy, do so with the intention of returning to their homes and communities to continue their human rights work, not to seek asylum.

This is borne out by statistics from the few programmes and policies that have been put in place by individual EU Member States to facilitate access to visas for HRDs.

In the Netherlands, between 2012 and 2021, of 160 human rights defenders welcomed to the country under the Shelter City programme, only 15 requested asylum.<sup>9</sup>

Under Spain's temporary protection programme, 150 defenders were welcomed to the country between 2012 and 2021, of whom 22 applied for asylum. This figure drops by more than half when cases where defenders returned to their country when a change in situation allowed for it are

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Risk Human Rights Defenders, accessible at: <https://protectdefenders.eu/wp-content/uploads/2022/06/Visa4HRD-ProtectDefenders.eu-Joint-Statement.pdf>

8 Protecting Human Rights Defenders at Risk: EU Entry, Stay and Support, European Union Fundamental Rights Agency, 2023, pp. 29-30

9 Ibid., p. 38

considered.<sup>10</sup>

Between 2010 and 2021, Ireland welcomed 827 HRDs for various purposes, including under its Facilitated Visa Procedure for Human Rights Defenders. Of those, 6 people, or 0.7%, sought asylum.

*What should be done?*

The positive practices put in place by some EU Member States show what can be done on the basis of the existing EU visa acquis, notably by making use of the discretion & flexibility afforded to Member States under the EU Visa Code.

These examples can be learnt from and built on.

Yet if the EU is to make good on its policy commitment to provide real, meaningful support to human rights defenders, a more comprehensive approach is needed. As such, I am making the following recommendations for action in the short and medium term.

*In the short-term*

To the EU Commission:

- Update the EU Visa Code Handbook to provide support to Member States on the exercise of discretion to facilitate access to visas for human rights defenders, in particular:
  - by providing guidance to consulates on the possibility of considering applications from HRDs present in the jurisdiction of the consulate, but not normally residing there, where justification can be presented (*EU Visa Handbook, Point 1.8, based on article 6 of the Visa Code*);
  - to emphasise that human rights defenders should be able to benefit from the flexibility provided for in setting of timeframes for lodging applications and obtaining appointments, in light of situations of immediate risk or the requirements of longer-term protection plans (*EU Visa Handbook, Points 2.1 and 2.2, based on article 9 of the Visa Code*);
  - by providing guidance on the need for flexibility concerning travel documents and their validity for human rights defenders (*EU Visa Handbook, Point 3.1, based on article 12 of the Visa Code*);
  - to clarify that applications from human rights defenders which do not fulfil the ordinary criteria for being considered admissible may nonetheless be examined on humanitarian grounds, for reasons of national interest or pursuant to international obligations (*EU Visa Handbook, Point 3.7, based on articles 10 and 19 of the Visa Code*);
  - to underline that consulates should consider determining human rights defenders as “bona fide” applicants able to benefit from exceptions on the presentation of documents regarding their journey (*EU Visa Handbook, Point 5.2.3, based on article 14 of the Visa Code*)

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<sup>10</sup> Ibid., p. 40

- by including human rights defenders among the listed categories of travellers who should be issued long-validity multi-entry visas (*EU Visa Handbook, Point 8.4.3.2, based on article 24 of the Visa Code*);
- to underline that human rights defenders at immediate risk who are unable to fulfil the ordinary entry conditions of a Member State may be granted a visa of limited territorial validity on the basis of humanitarian considerations, for reasons of national interest or in relation to international obligations (*point 8.5.1, based on article 25 of the Visa Code*).

#### To EU Member States:

- Drawing on best practices already put in place by some Member States on the basis of the current EU visa acquis, develop specific schemes facilitating access to visas for human rights defenders;
- Develop and make use of existing procedures and communication channels to facilitate collaboration among Member States to address cases of human rights defenders in urgent need of temporary relocation;
- Provide guidelines for visa officers on the exercise of flexibility in the consideration and processing of visa applications from persons who can show they are human rights defenders and their family members, including in relation to:
  - requirements for original and translated copies of documents;
  - appointment deadlines, in particular where defenders are based in rural areas or required to travel to a third-country in order to access the relevant consulate;
  - the definition of family members, in particular for LGBT defenders;
- Through consulates, regularly engage with human rights defenders on mobility and access to visas, in particular in countries suffering from shrinking or closed civic space;
- Mainstream trainings for consular staff on the EU Guidelines on Human Rights Defenders and ensure they have sufficient budget to fulfil them.

#### *In the long term*

#### To the European Commission:

- Initiate the process of amending the EU Visa Code to facilitate access to visas for HRDs, in particular through:
  - recalling, in the Recitals, the EU's commitment to human rights defenders in its external human rights policy, as well as the EU Guidelines on HRDs;
  - further recalling the risks faced by human rights defenders in the course of their activities, the potential impacts on their family members, and the place of temporary relocation to the EU among broader protection plans;
  - including, in Article 2, a definition of a human rights defender in line with the UN Declaration on Human Rights Defenders, the EU Guidelines on Human Rights

Defenders, and developing EU Law<sup>11</sup>;

- introducing a new article, ‘On human rights defenders’, requiring the exercise of discretion by Member States in favour of applications from persons able to demonstrate their engagement for human rights, in particular concerning:
  - consular competence to consider applications by human rights defenders outside their ordinary country of residence;
  - the possibility of allowing human rights defenders to lodge applications without appointment or to be given an appointment as soon as practically possible in cases of urgency;
  - the possibility of waving criteria concerning valid travel documents in the face of situations of immediate risk for defenders;
- amending article 16(4) to include human rights defenders among the category of persons for whom visa fees shall be waived, and article 16(6), to explicitly include human rights interests as basis for waiving or reducing visa fees;
- amending article 24(2)(a) to include human rights defenders among the categories of persons who shall be able to benefit from multi-entry visas.

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<sup>11</sup> Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)