REALISING PROTECTION FOR HUMAN RIGHTS DEFENDERS AND CIVIL SOCIETY ORGANISATIONS IN EUROPE

Pathways Towards an Effective Protection Ecosystem

October 2024

This paper was the initiative of an informal coalition of organisations that building on years of advocacy came together to develop this report and the prior Mapping Paper:

Coalition: Civil Society Europe and European Civic Forum (hosts); Amnesty International – EU Institutions Office; Araminta, Business & Human Rights Resource Centre; Civil Liberties Union for Europe, Civil Rights Defenders; European Partnership for Democracy; International Federation for Human Rights; Front Line Defenders; Platform for International Cooperation on Undocumented Migrants (PICUM) and Protection International.

And as associate members: European Network of National Human Rights Institutions, the European Network Against Racism (ENAR) and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)-Europe.

The report was drafted by Kersty McCourt in collaboration with the coalition.

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1. INTRODUCTION

The last years have seen a marked deterioration in civic freedoms and an increased number of threats against civil society organizations (CSOs) and individual human rights defenders (HRDs). This initiative, to work towards a Protection Mechanism for Human Rights Defenders and Civil Society in Europe, builds on years of advocacy by CSOs across Europe to improve civic space and ensure the protection of HRDs. It responds to the pervasive and increasingly diverse nature of attacks and the consequent need to focus on protection, while simultaneously advocating a holistic approach to securing a broad and enabling civic space.

EU Guidelines to support the work of HRDs outside of the European Union (EU) were adopted in 2004 and in 2015 a protection mechanism, Protect Defenders.eu, was set up to support the urgent protection, and in some cases temporary relocation, of HRDs from outside the EU. Nothing similar exists within the EU.

This Pathways to Protection Paper – supported by the Mapping Paper – is based on the identified gaps and needs in the system for the protection of HRDs in Europe and identifies the critical elements and areas for reflection of different approaches. It draws on the lessons learnt from systems to protect journalists and other actors, and on the experiences and perspectives of HRDs from across the region – in particular through a series of bilateral meetings and a Roundtable Meeting in Brussels in April 2024 (see the Mapping Paper).

The paper is structured around different, often complementary options for a protection ecosystem for Europe, recognising that no one organisation or institution will likely be able, or best placed, to support the variety of needs and necessary tailored responses. It doesn't examine the details of how different types of protection can be best implemented – such as different approaches to digital security or how to provide legal aid. These will need to form the basis of further work building on existing tools. What it does focus on are the broad structures needed to bring together different actors to create a system of protection for HRDs and civil society

in Europe. Recommendations to specific institutions will follow, building on further discussions and responses to the Mapping and Options Papers with the aim of co-creating a tailored and flexible system.

2. DIFFERENT RESPONSES AND OPTIONS

Drawing on the Mapping Paper and the research and discussions over the past months, the possible responses fall into two broad categories which complement each other in terms of the response and redress they provide:

- **Alerts and Investigations** - HRDs should be able to officially report attacks within a system that follows up with an investigation and appropriate action.
- **Rapid Response** - ensuring holistic protection both as a preventive measure and immediately following a threat or attack. Support should include physical, psychosocial, legal, and digital protection.

Both need to be **anchored in national laws, policies and institutional support** and underpinned by **broader monitoring** that documents trends, identifies early warning signs, and links to the above systems to trigger action. The monitoring should also inform broader policy change that supports long-term protection and an enabling civic space. Europe has a near absence of national laws and policies protecting HRDs within European states, which are critical to underpin practical forms of support.[1]

The needs were reflected in the outcome of the European Commission's series of seminars on civic space and a final report, which drew several key recommendations relevant to the protection of HRDs (elaborated further in the Mapping Paper).

The April Roundtable Meeting in Brussels and follow up discussions explored different types of protection systems, recognising that the below areas are not a complete or exhaustive list but were identified to focus the discussion on different possibilities. The first **'alert and investigation'** option provides an institutional response and the subsequent options focus on

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1   Further research is needed to detail laws in individual states.

different ways to ensure a **'rapid response'** system. As noted above, the different options depend on the response and the redress being sought.

Several overarching elements were identified before looking into different possibilities.

• A practical system for protection should be **anchored in national and regional laws and policies,** for example in the form of national HRD laws and EU Guidelines, drawing inspiration from the EU Guidelines on HRDs that apply externally, and from the Action Plan of the 2018 HRD World Summit.

• A protection mechanism should be **sustainable and long-term** and cannot be project driven. Any system will take some time to set up and needs to build and learn from ongoing experience. HRDs need to know there will be a permanent ongoing system, allowing for stability and trust. Over time a permanent focal point for protection will help HRDs rapidly access support as a time of need.

• It needs to be inclusive to **cover all countries in Europe** – with the anticipation that the needs will vary over time and geography and should not be limited to several target countries. It should also be accessible to all HRDs working individually or collectively as set out in section 3 of the Mapping Paper.

• Any system needs to ensure a **formal link to those with the ability to hold perpetrators to account,** including state or other public actors as well as non-state actors. It should not stop with the documentation of a threat or attack. The challenges of reporting, especially for different marginalised groups, should be factored into any system.

• There should be a **formal role for independent civil society, networks and national human rights institutions** and a continued process of co-creation and structured dialogue through design, development and implementation. Effective implementation needs to be regularly discussed with relevant national authorities to ensure up-to-date, appropriate and agile responses. This could be through focus groups, training sessions, and feedback by HRDs and civil society. This should be supported by strong **coordination and communication** between all key actors.

Within each system the provision of concrete protection is critical and as noted above, the different approaches and methodologies require further exploration. This might include guides for civil servants and diplomats – similar to the EU Guidelines on HRDs and different tools developed by civil society such as the Front Line Defenders EU Toolkit for Women Human Rights Defenders. It would also include, for example, exploration of the best approaches to legal aid and development of toolkits and manuals on different forms of protection such as Security in a Box (see further in the Mapping Paper and resources chart).

2.1 AN INSTITUTIONAL PLATFORM TO REPORT THREATS AND ATTACKS

An institutional alert system anticipates the possibility to report threats and attacks to an institutional body that has the capacity and obligation to follow up with suspected perpetrators. The discussion drew inspiration from the Platform for the Safety of Journalists at the Council of Europe (CofE). The forms of redress would include an independent investigation, legal redress and steps to ensure similar violations are prevented in the future. Several critical elements were identified as well as questions and concerns:

Critical Elements

During the discussions several elements were identified as critical to any alert system including,

• The ability for HRDs and civil society organisations to be able to quickly and easily **report threats,** attacks and violations in a secure way without fear of reprisals, including via the establishment of a third-party reporting mechanism for those human rights defenders that fear reprisal from state authorities. This requires widespread **knowledge** of the existence of the system and **trust,** both that they won't experience further harm and that ultimately some form of redress is attainable.

• **Attacks are logged and reported** through a transparent and accountable alert system with options for anonymity where there are overriding security concerns.

- **States are obligated to respond** within a set period, investigate and, where necessary, bring legal action against suspected perpetrators – whether state or non-state actors.
- The institution mandated to implement such a platform needs to be able to **act independently** and be **adequately resourced and have the mandate to request action** from states.
- The system should be independent of but **connected to a rapid response mechanism** as explored below – as well as to broader human rights protection systems.
- A formal role for **human rights organisations** in the development, implementation and oversight should be built into the design to provide connectivity with a diverse range of HRDs, information, expertise and trust. Lessons can be drawn from the group of media freedom organisations linked to the Platform for the Safety of Journalists.

Questions and concerns from HRDs

- Such a mechanism needs to ensure that the **threshold** to report a violation is not set too high. HRDs reported that a mechanism needs to be able to recognise trends and early warning signs and an alert should not be limited to *'major attacks or emergencies'*. It should be possible, for example, to report a series of small but repeated incidents, that amount to continuing harassment. In this way less obvious or insidious attacks are still recognised and addressed.

- When HRDs raise alerts, they are already vulnerable. Such an alert system needs to be **related to other mechanisms** with the potential, for example, to unlock urgent funding or other urgent actions such as relocation or security support. The connectedness of the chain and the order of support and action is important.

- While broadly in favour of such a system focused on Europe (rather than a global mandate where the resources are very thinly spread), HRDs are conscious of the **lack of compliance** by certain states, including EU member states, and the seeming inability of regional mechanisms to oblige states to meet their responsibilities. There needs to be awareness and cross learning, as well as a strong push to hold all states equally to account.

- HRDs raised concerns that government organised NGOs (GONGOs) and organisations who work to undermine the international and regional human rights system could seek to benefit from and undermine such a system. **Safeguards** would need to be put in place to ensure the reliability and credibility of the system drawing on the experience of the Platform for the Safety of Journalists.

- Many HRDs were concerned about **how to engage the police** who are key actors but often distrusted. The possibility to create specialized roles within the police with a greater understanding, training and specific mandate to advise on cases involving HRDs was raised as well as the development of protocols and focal points with the skills and contacts to engage effectively with the police cognisant of the challenges, for example of undocumented HRDs. Cooperation with border police, for example in the case of Interpol red notices is also crucial.

- Specific questions were raised regarding **non-state actors,** including businesses involved in projects causing environmental damage and the role of tech companies (including those providing social media platforms, digital surveillance, artificial intelligence etc.). An institutional platform should have the ability to engage with non-state actors, but additional elements may also be considered. For example the Recommended Actions for Online Platforms on Protecting Human Rights Defenders Online adopted by the EU and U.S. in May 2024 recommend that tech companies establish effective, accessible, secure, and responsive incident reporting channels.

2.2 A RAPID RESPONSE PROTECTION MECHANISM

The discussion drew inspiration from ProtectDefenders.eu which was set up in 2015 to support the protection of HRDs from outside the EU. It is designed as a rapid response mechanism for urgent practical support such as physical or digital security measures, rapid grants and a temporary relocation programme. It is an EU programme led by a consortium of 12 human rights organisations. The discussion

focused on two possibilities: a centralised system like ProtectDefencers.eu and a more decentralised option.

2.2.1 A centralised system

Critical Elements

During the discussions, several elements were identified as critical to any rapid response system:

- Support needs to be **quick and flexible.** In very urgent cases it should be possible to receive support or funding within 1-3 days.

- The types of support need to be **diverse and tailored,** with flexibility for the individual HRD, CSO or community group to guide towards the most useful and appropriate support. This might include funds for physical protection, legal fees or other professional fees for example for medical or psychosocial support. It needs to be possible to secure different types of support from one centralised hub ensuring delivery is as frictionless as possible for the impacted HRDs and responds to new challenges.

- There needs to be a **simple application process** that can be accessed in different ways – for example with options for either online or telephone applications or to apply through a third party. Psychosocial support needs to be considered especially when HRDs are at risk of re-traumatisation through the application process.

- Currently funding for litigation is excluded from EU funding within the EU, thus there needs to be a system to ensure **funding for legal aid**.

- A **transparent and accountable funding process** with confidentiality for individual cases and **independence** from institutional actors is essential. Member states and state institutions cannot have a role deciding on individual cases and applications.

- The mechanism needs to be legally **recognised and sustained** through long-term funding which allows for grants to individuals and not only organisations.

- A formal role for **human rights organisations** should be built into the design to provide connectivity with

a diverse range of HRDs, information, expertise and trust. Lessons can be drawn from the group of human rights organisations that make up the consortium for ProtectDefenders.eu.

Questions and concerns from HRDs

- While there are advantages to a centralised model in terms of expertise, economies of scale and connectivity to a wide range of actors, HRDs raised concerns regarding **local knowledge**, language, context and the distance between HRDs and decision makers.

- Existing models to fund HRDs outside the EU are based on lower **levels of financial support** that stretch to a reasonable level of support in many countries. In Europe, while some support may require relatively small sums of money (for example to reinforce physical security), legal fees in particular, can rise to substantial sums. However, it was also recognised that rapid support in the early stages of legal proceedings is the most important and should be the initial priority. The length of many legal proceedings can subsequently allow a HRD to seek longer term financial support or pro bono assistance.

- Some areas reveal the need for **longer term, strategic approaches**. For example, immediate action may be necessary to reinstate a closed or frozen bank account, but wider action is needed to challenge the practice of freezing HRD's accounts. Similarly, a HRD may fight an individual case, but again an underlying law or practice targeting HRDs may need to be challenged. Rapid response support needs to be **connected to actions that address systemic challenges,** either through connection with specialized organisations or those with expertise for example in long-term advocacy or strategic litigation.

- While **temporary relocation** is typically viewed as primarily supporting HRDs from outside Europe, possibilities need to exist for HRDs within the EU. For example, a HRD may need to relocate during an intense smear campaign or following a period of multiple challenges, including time away and access to holistic care to recover from stress and burnout. With free movement within the European Union, visas and other permits are

not an issue for short stays but logistical support and a supportive community are critical. Specific solutions should be found for non-EU HRDs who are undocumented or with precarious residence status, including support in accessing available permits (for example on the basis of their status as victims of crime).

- A wide range of HRDs and community groups need to be **eligible,** without limitations related to employment, connectivity or the need to establish an organisation. Each individual circumstance needs to be assessed individually based on the protection of those defending human rights, as recognised under international law.

2.2.2 A decentralised system

This model is based on the same need for rapid response grants but considers how this could be established at the national level.

Critical Elements

The critical elements are largely the same as those for the centralised mechanism with a couple of additional factors:

- There should be a central **system for learning, development and exchange** to avoid multiple disconnected programmes. For example, the design of rapid response grant making procedures, systems and protocols, trainings etc. could all draw on expertise from across the EU. With this base, the system can then be tailored to individual states.
- National mechanisms need to be **independent** without fear that they would be pressurised or captured by the government. Lessons could be drawn from the selection of Fund Operators for the EEA/Norway Grants.
- In the case of a rapid political change and risk of capture, there should be a **back-up system** where a neighbouring mechanism can temporarily provide support.

Questions and concerns from HRDs

- Systems for regranting in many countries do not function effectively, so improved systems and a review of what works and lessons learnt would be useful.

- Concerns were raised regarding competition between organisations and greater access for '*organisations in the know'*.
- Grants and funding procedures need to be truly **accessible and easy to access**. Currently there are very few donors with the ability to provide rapid response grants.

2.3 ENGAGING NATIONAL HUMAN RIGHTS INSTITUTIONS

Given the unique role of NHRIs as independent statutory bodies with a mandate to promote and protect human rights, their potential role was considered, taking into consideration, however, that not all states have NHRIs and some are not sufficiently independent.
According to data from the FRA, currently around a quarter of all attacks are reported to national equality bodies, human rights institutions or ombudspersons – the third highest of any institution, so there is clearly knowledge and recognition of the role NHRIs can play.

Critical Elements

- A clear connection between NHRIs and any future national or regional protection mechanism and a core part of the protection ecosystem.
- Recognition of the unique bridging role that NHRIs play between government and civil society and the specific functions individual mandates including:

  - Solidarity, public support and exchange.
  - Research, documentation and reporting – see for example a project by the Belgian NHRI: 'Room for human rights defenders in Belgium', or the French NHRI's opinion on Human Rights Defenders
  - Complaints handling, individual support, strategic litigation and monitoring the execution of judgements.
  - Advice and recommendations to national authorities, input to laws and policies and engagement with parts of government unfamiliar with the role of HRDs.
  - Specific mandates such as the National Preventive Mechanism under the UN Optional Protocol to the Convention against Torture

(OPCAT), independent monitoring mechanisms under the UN Convention on the Rights of Persons with Disabilities and additional EU mandated roles under the Whistleblower Directive and Anti-SLAPP Directive.

Importantly NHRIs also have the potential to provide a space to bring organisations together and provide guidance to HRDs to identify the most relevant support.

Questions and concerns from HRDs

- As HRDs themselves, NHRIs are impacted by the overall trend of increasing restrictions to civic space and the threats to HRDs. In some cases, NHRIs have been threatened themselves or had their mandates undermined, including when speaking out in support for other HRDs. This can cause challenges and additional obstacles to their work to protect HRDs.
- Not all NHRIs are fully compliant with international standards related to their independence and effective operation. This has contributed to diminished trust in some countries due to a lack of action by some NHRIs to stand up for HRDs and address human rights issues affecting them.
- Questions were raised in relation to parts of government such as the police and how NHRIs might play a bridging role to help build knowledge and trust for example through trainings and other activities.

See further in this recent ENNHRI report.

3. MONITORING/EARLY WARNING/REPORTING

Any system of alert and protection needs to be built and complemented by effective monitoring and documentation. The April Roundtable Discussion drew on two key initiatives, both of which are civil society led and contain an advocacy element. It did not focus on institutional monitoring by the FRA or through the EU Rule of Law reports.

- *the Observatory for the Protection of HRDs, which is a **global partnership** led by the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT). The organisations post urgent appeals and statements and based on capacity and*

resources, follow up with different actions, including advocacy towards the most relevant and/or accessible institutional actors. The Observatory also allocates emergency grants, undertakes country visits and trial observations, facilitates experience-sharing, and publishes reports on the situation of HRDs.
- *A new project funded by the EU led by a consortium of 9 organisations to set up a monitoring methodology on civic space and develop an **early warning system** through the Civic Space Watch platform.*

These initiatives are focused broadly on civic space and form a basis for all actions to ensure an enabling space for civil society. Continued and consistent monitoring is thus required to support any protection mechanism, but also a broader range of work.

Critical Elements

- **Coordination** is essential, bringing together the work of different organisations to ensure reliable and independent monitoring. Differing starting points and methodologies need to be understood alongside an exchange of information and recognition of different data sets.
- **Ensuring a connection** between data and action is essential through links to institutional actors and the ability to trigger action when warning signs emerge, or situations deteriorate.
- **Long-term funding support** is required to ensure monitoring is continuous and not reliant on project funding, resulting in gaps in documentation and reporting.
- **Flexibility** to adapt to changing circumstances and assure tailored responses which might include trial monitoring, investigations, legal action or rapid response protection.
- **Early warning** to identify new challenges and trends, for example those facing environmental defenders or stemming from new technologies.

Questions and concerns from HRDs

- The system is **reliant on HRDs** both to report and provide information and to follow up. This can put a lot of pressure on civil society, particularly when individuals may be in a vulnerable position.
- The need to ensure a **safe space** within civil society where everyone feels heard and safe – it needs to be a '*safe and brave*' space.

- It is important to **anchor monitoring within national and regional systems** – and link, for example, to national human rights institutions and others.
- While civil society is well placed to carry out monitoring given their knowledge and connection to a range of organisations and individual HRDs, there could be a risk that institutional actors deflect responsibility to civil society and do not take sufficient own-initiative action. National laws or policies (see above) should be clear about the legal and political responsibility of state institutions to protect and provide a conducive environment to HRDs, in accordance with international standards.
- Such a system **risks being largely reactive,** falling short on more proactive or preventive action.
- There needs to be knowledge and guidance on when and how to escalate actions drawing on the monitoring data. Experience can be drawn from the Digital Services Act, which outlines when something needs to be escalated in the digital sphere. Experience-sharing with the implementers of the CofE Platform for the Safety of Journalists would also be useful to help define escalation criteria.

The coming years will be critical to ensure that HRDs and civil society in Europe, who face ever increasing challenges, can continue the vital work of defending rights and ensuring governments are held to account.

Such a system would need to be **anchored in laws and policies** and **underpinned by broader monitoring** that documents trends and identifies early warning signs To move towards the realisation of effective protection for HRDs in Europe, there is a need for concerted action over the coming months to continue to bring **together key actors to further develop the different components of an effective protection ecosystem, and bring together private and institutional donors to identify possible funding options.**

The Mapping Paper could also be supported by a more detailed mapping focusing on national legislation, policies and practices that support the protection of HRDs and civil society, and a number of targeted studies that look at the provision of particular services such as legal aid, psychosocial support and state responses based on the monitoring.

With the new Commissioner-designate for Democracy, Justice and the Rule of Law requested to strengthen the protection of human rights defenders, activists and civil society in their work these papers aim to provide a key starting point towards with realisation of that goal.

4. CONCLUSION

Both papers confirm the need for a dedicated – but multi-dimensional protection ecosystem for HRDs and civil society in Europe. Key institutional actors and civil society need to work further together to further develop a protection ecosystem that would:

- **REGISTER** attacks allowing states to document attacks and track developments;
- **RESPOND RAPIDLY** through i) investigations, redress and follow up on reprisals, and ii) rapid emergency support which might include physical, psychosocial, legal, and digital protection; and
- **ADAPT** by changing laws and policies to better support long-term protection needs.

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And as associate members: European Network of National Human Rights Institutions, the European Network Against Racism (ENAR) and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)-Europe.

The coalition supported and guided the work which was further informed by a series of interviews and discussions during the April Roundtable Meeting in Brussels incorporating perspectives and insights from across the region and from different groups including:

ACCEPT (Romania), Bilitis Foundation (Bulgaria), Bulgarian Helsinki Committee, Campaign to Uphold Rights in Europe (CURE), Center for Legal Resources (Romania), Ecologistas en Acción (Spain), European Legal Support Centre, European Sex Workers' Rights Alliance, Federal Institute for the protection and promotion of Human Rights (Belgium), Forum of European Muslim Youth and Student Organisations, Helsinki Foundation for Human Rights Poland, Institute NOVACT of Nonviolence, Nyt Europe (Denmark), Promote Ukraine, Sienos Grupė (Lithuania), Supporting Abortions for Everyone (SAFE), Unrepresented Nations and Peoples Organisations (UNPO), VOCIFY, and the World Uyghur Congress – covering diverse perspectives from anti-racism organisations, business and human rights organisations, environmental rights organisations, LGBTQI+ organisations, faith-based organisations, multi-disciplinary human rights organisations, national human rights institutions, organisations supporting HRDs in exile, peace-building organisations, refugee, migrant-led and undocumented migrant organisations and sexual and reproductive rights organisations.

The April meeting was held at EFTA House and organised in collaboration with CNVOS Slovenia, Stefan Batory Foundation Poland, FDSC Romania in the scope of the Active Citizens Fund's Community

for Action initiative and several HRDs were supported to come to Brussels for a roundtable meeting by the Green/European Free Alliance in the European Parliament. The Belgian Presidency of the EU also hosted a breakfast briefing.

It was also informed by several interviews and meetings with institutional actors, other civil society organisations and individual human rights defenders.

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