POLICYBRIEF

FOSTERING HUMAN RIGHTS AMONG EUROPEAN (EXTERNAL AND INTERNAL) POLICIES

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This Policy Brief presents the findings of the second stage of research by the FRAME project in the context of an on-going evaluation of the EU's human rights policies.

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INTRODUCTION

FRAME's objective is to provide a comprehensive research base on EU human rights policies in order to address challenges identified in the **Action Plan on Human Rights and Democracy (2015-2019)**, anticipate future challenges and offer creative solutions to enhance policy effectiveness and coherence.

FRAME's task is to provide guidance to EU policy-makers to help resolve problems hindering the protection and promotion of human rights. **FRAME research can therefore feed in to the mid-term implementation review of the Action Plan in 2017**.

The **first FRAME Policy Brief**, published in **October 2014**, summarised the initial nine FRAME reports. FRAME has now entered a more evaluative phase. **This Policy Brief provides a snapshot of the latest research and offers recommendations by reference to the principles and strategic areas of action in the Action Plan**. In the review period, nine further reports have been published, five expert workshops have been convened and highly topical working papers, policy briefs and blog posts. All material is available on the FRAME website.

FRAME has a YouTube channel featuring keynote speeches from the workshops, lectures and interviews. FRAME has launched a **MOOC** (Massive Open Online Course) on the EU and Human Rights to facilitate learning and knowledge dissemination on FRAME research outputs. Registrations are open here.

At the core of FRAME's research are **four research questions**:
- What **factors** enable or hinder positive EU impacts on human rights protection worldwide?
- Who are the **actors** with whom the EU has to interact in promoting human rights and what are the best strategies to do so?

- How has the EU integrated human rights concerns into selected **policies**, and what has been the overall impact of these policies on human rights?
- What innovative **tools** can be put in place to arrive at better-defined and more effective policies?

<div style="background-color:brown;color:white">**EVIDENCE, ANALYSIS AND RECOMMENDATIONS**</div>

This Policy Brief identifies five cross-cutting issues. These are:
1. Strengthening human rights engagement and empowering local actors;
2. Targeting the most urgent human rights challenges;
3. Ensuring a comprehensive human rights approach to conflicts and crises;
4. Fostering better coherence and consistency;
5. Deepening the effectiveness and results culture in human rights and democracy.

These issues align with strategic areas of action in the Action Plan. We discuss each issue separately.

1. Strengthening human rights engagement and empowering local actors

One of the core principles set out in the Action Plan is to promote universal values by empowering interlocutors in third countries, both governmental and civil society, and fostering strong local ownership. FRAME reports have identified key actors in this regard and proposed strategies for interaction, empowerment and ownership, particularly with civil society. The following sub-headings relate to several of the proposed actions in the first strategic area of the Action Plan.

a) Strengthening cooperation with regional human rights and democracy mechanisms

Objective 6 of the Action Plan identifies actions designed to strengthen human rights in EU cooperation with regional organisations, in particular by pursuing synergies and common initiatives. It seeks to promote peer-to-peer capacity building between regional human rights and democracy support mechanisms.

Two reports examine the **EU's engagement with regional multilateral organisations** in, respectively, **Africa** **(D5.4)** and **the Americas (D5.6)**. The report on **Africa** finds that, under the Joint Africa-EU Strategy, the relationship between the EU and African institutions has become more equal. Case studies, on the right to food and human rights defenders, highlight inadequacies and inconsistencies in protecting human rights in EU-African Union (AU) relations. The EU has been **inconsistent on the most pressing issue of migration**, where it prefers bilateral discussions rather than co-ordination with the AU. The AU has strengthened its governance and been more constructive in its approach to human rights dialogue. Whilst the AU has demonstrated a shared commitment to human rights, this commitment remains **more rhetorical than practical**. Significant differences remain in international criminal law and LGBTI rights.

The **Inter-American** report focuses on EU engagement with the Organisation of American States (OAS). It finds progress in **judicial reform and strengthening the institutional capacity** of the Inter-American human rights institutions. In Peru, several human rights projects have been financed and implemented. Further co-ordination is required in order to achieve more effective outcomes and avoid duplication of efforts.

b) Invigorating civil society

Empowerment of civil society, relating to Objectives 7-11 in the Action Plan, is a running thread. A report on enhancing the contribution of the EU and Member States to more effective engagement with non-state actors **(D7.2)** highlights EU engagement with a relatively narrow spectrum of civil society organisations (CSOs), many of them large, professional, Brussels-based NGOs.

Communication channels with CSOs need to be improved through public consultations and on the ground, in order to receive accurate and up-to date information on the human rights situation in third countries. The

EU needs to work harder at identifying points of contact to harvest most of the valuable input and knowledge that civil society can provide.

International Financial Institutions (IFIs) have a vital role to play in working with CSOs to implement projects through the EIDHR and other financial instruments and can reduce the financial risks of lending and make more efficient use of limited financial resources. Such mechanisms can also be used to support the work of **human rights defenders** (HRDs) working in insecure situations.

Accessibility of EU points of contact in delegations in third countries varies widely. Also, while there is now greater awareness of EU **funding mechanisms**, accessing funding is often prohibitively difficult for HRDs. The administrative burden it may dissuade or effectively preclude many HRDs from applying.

A report on the **analysis and critical assessment of EU engagement in UN bodies** **(D5.1)** finds that the EU has provided a **global lead** with the adoption of the EU HRD Guidelines. Member States have played a crucial role in the development of the UN Framework on HRDs, in particular the adoption of the UN Declaration and the creation of a UN Special Rapporteur. The EU has used diplomacy in different UN fora to address the protection of HRDs. The EU's role in supporting reforms of the UN system is vital for this protection.

Issue 1 - *FRAME recommendations*
1. Creation of a database tracking on-going EU-OAS co-operation. This would allow EU contributions to the region to have even more positive results and greater impact.
2. Diversification of the range of CSOs the EU engages with.
3. More support for regional CSOs dedicated to improving the situation of indigenous women and girls in their campaigns for human rights and sustainable development.
4. Greater transparency in the EU's dealings with CSOs. The EU has been criticised for not disclosing documents such as human rights country strategies.
5. Strengthening the implementation of the EU HRD Mechanism, awareness-raising and training.
6. Funding procedures for HRDs should be made more straightforward.
7. Follow-up of operational guidance at UN-level to develop a more systematic approach to diplomacy alongside work on instruments so as to produce a more refined strategy.

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2. Targeting the most urgent human rights challenges

FRAME reports have focused on identifying and addressing the most urgent human rights challenges both internally and externally. We have identified **combating discrimination and the protection of vulnerable groups, human rights protection in the context of migration and ensuring freedom of expression** as being among the most pressing of these challenges. Other urgent challenges include the **comprehensive promotion of economic, social and cultural rights and advances on business and human rights**.

Many of these challenges are identified and will be addressed under the second strategic area of action in the Action Plan. FRAME research touches specifically on Objectives 11-17.

a) Combating discrimination and the protection of vulnerable groups

Discrimination against disadvantaged groups, such as children and elderly people, ethnic and religious minorities, women, LGBTI, indigenous peoples, migrants and disabled persons, is associated with a wide range of factors that impact on the protection of human rights in EU internal and external policies. These factors – historical, political, legal, economic, social, cultural, religious, ethnic and technological – hinder the realisation of human rights for many people around the globe.

A report on **in-depth studies of selected factors which enable or hinder the protection of human rights in the context of globalisation** **(D2.2)**, addresses the challenges presented by these factors.

First, the report analyses the work of the **European External Action Service (EEAS)**. It finds that recent measures have had a **positive effect** in combatting discrimination and promoting equality. However, unlike in the internal sphere, these are mainly soft law measures such as guidelines and action plans. In practice, anti-discrimination policies have been **implemented unevenly** and in a fragmented way, focusing on specific areas, while neglecting or leaving out others (for example LGBTI issues).

Second, the impact of EU non-discrimination policies on the promotion and protection of the rights of ethnic minorities at Member State level is explored. It identifies drivers and barriers to the implementation of these policies. One significant barrier is the failure of national and local political actors to articulate the core values of non-discrimination and equal treatment. Anti-migrant and anti-minority rhetoric influences policies that hinder ethnic minorities in accessing their rights. This can only be overcome by **strong leadership** at EU-level and **peer pressure** from Member States.

One main driver is EU **anti-discrimination legislation** because it recognises that hindrances to fundamental rights must be overcome. There is a case for a **new generation of legislation**, starting with the proposals in [COM(2008) 426 final](#), and an agenda that would stimulate a **more proactive approach**. This agenda could address ambiguities in the definition of race and ethnicity and the inclusion of nationality as a specific ground of discrimination. It could require a reasonable accommodation of cultural diversity in employment and service provision, and impose duties on both public and private sectors in carrying out their functions.

Third, the right to **freedom of religion or belief** is considered. There is significant variation in the organisation of religion in Member States and the relationship between state and religion. This variation impacts negatively on religious minorities. For instance, Fundamental Rights Agency (FRA) reports show that Jewish minorities across Europe perceive a highly increased level of anti-Semitism. In the external dimension, the EU has a more comprehensive approach. However, the Guidelines for Freedom of Religion are not binding and EU staff are not always sufficiently equipped to be fully effective in promoting these rights.

Report **(D12.2)** on the [**assessment of consistency in the prioritisation of human rights throughout EU policies**](#) assesses policies towards **vulnerable groups**. It finds that 'vulnerability' has **multiple meanings and usages** within the EU's external policies. In some cases there is a 'vulnerable groups' approach, which simply lists groups that are considered vulnerable. In other cases there is a 'factors approach' where factors that render certain people vulnerable are explained. This leads to confusion over the scope and application of concepts such as discrimination, marginalisation, victimisation, exclusion or protection which, in turn, leads to **inconsistencies in protection** of minorities, women, children and disabled people.

By contrast, in the **internal sphere**, there is a consistent 'vulnerable groups' approach in the Platform against Poverty and Social Exclusion and the Agenda for New Skills and there is a clear understanding and specific indicators of who is '**at risk of poverty and social exclusion**'.

One consequence is that there is a clear **predominance in policies for some vulnerable groups**, notably women and children, but other groups, minorities and forced migrants, or disabled people, are mentioned less frequently. Inconsistency leads to a '**phenomenon of dilution**' in a number of areas. For example, some issues, such as the protection of the rights of migrants and indigenous peoples, do not receive the same degree of attention in the Development Cooperation Instrument.

The [report on **engagement with non-state actors**](#) **(D7.2)** identifies a pressing need to improve the effectiveness and monitoring of Corporate Social Responsibility (CSR) mechanisms to address the problem of **child labour** in supply chains. There is particular concern for children working in the informal economy where their presence and involvement in the 'workplace' is difficult to trace and monitor.

b) Human rights protection in the context of migration

The unprecedented surge in migration, and the thousands of tragic deaths, is undoubtedly the **most pressing human rights crisis the EU has faced** even if the source of the problem is beyond Europe's borders. FRAME

recommendations provide a reference point for the implementation of measures **across the strategic areas of action**. Specifically, Objective 23, concerning the fostering of better coherence and consistency, contains several cross-cutting actions designed to more effectively analyse and address the human rights impacts of migration policy including trafficking in human beings, smuggling of migrants and asylum policies.

Report **(D11.2)**, **critically assessing human rights integration in Area of Freedom, Security and Justice (AFSJ) policies**, identifies an immediate **need for effective search and rescue operations** to save lives, and for **viable legal avenues to access the EU**, in particular, full implementation of relocation and resettlement programmes, leading towards a more humanitarian and co-ordinated approach to migration management. Also, it is essential to address the root causes of irregular migration through development policies.

Report **(D4.2)**, on the **global human rights protection and governance system,** highlights **significant deficiencies in the 'Dublin system'** of regulations for determining the Member State responsible for the examination of an application for international protection of asylum seekers. In particular, the 'first-entry' criterion has put huge pressure on 'frontline' states. Once again this raises the **issue of burden-sharing** and the need for a reform of the system.

c) Comprehensive promotion of economic, social and cultural rights

One of the main criticisms of the EU Human Rights Guidelines is that their aims and objectives are heavily slanted towards civil and political rights and place significantly lesser emphasis on economic, social and cultural rights (ESCR). This gap is acknowledged in the Action Plan, which, at Objective 16, proposes actions to foster a comprehensive agenda to promote ESCR by providing a clear human rights dimension in areas such as social policy, land rights, standard of living, health and education.

Report **D5.1**, an **analysis and critical assessment of EU engagement in UN bodies**, finds ESCR are largely absent or inconsistently included in human rights documents prioritised by the EU at the UN. Rights to physical and mental health, to education and to an adequate standard of living have not generally been included. However, some Member States have been very active on ESCR by, for example, regularly introducing resolutions on adequate housing, education, safe drinking water and sanitation.

The EU can draw from the array of **priorities pursued by Member States** as a starting point. Closer working with CSOs should include groups representing the interests of **indigenous peoples** who are often at the forefront of the most egregious violations of ESCR in sectors such as textiles and mining.

Report **D4.2**, above, points to deficiencies in the **protection of ESCR within the Union**. For example, the European Committee of Social Rights has been highly critical of the impact of austerity measures taken by Greece, in particular on the right to social security. However, notwithstanding the role of EU institutions in requiring these actions, these measures have been deemed not to amount to implementation of EU law by the Court of Justice and, as such, outside the scope of application of the Charter of Fundamental Rights.

d) Making progress on business and human rights

The EU is raising awareness of the **UN Guiding Principles on Business and Human Rights** (UNGPs) and implementing them by means of a '**smart mix**' of voluntary and mandatory Corporate Social Responsibility (CSR) measures. Pressure is mounting for more stringent unilateral and multilateral measures to **hold transnational companies to account** for human rights violations for which they may be responsible, often through their supply chains.

Report **(D7.2)**, on **enhancing the contribution of the EU and Member States to more effective engagement with non-state actors** the importance of increasing the EU's **institutional capacity** to engage more effectively with business and civil society on human rights in the context of CSR and the UNGPs is highlighted. The report finds that the EU's agenda on CSR lacks coherence and is insufficiently transparent.

Issue 2 – *FRAME recommendations*

1. The EU should choose fewer priorities and communicate in a transparent manner why these priorities are chosen. The EU must focus sharply on actions having an **effective impact on the ground** against instances of the **most heinous** human rights abuses and crisis situations.

2. Increase the Involvement of civil society actors in the development and implementation of EEAS policies.

3. Better dissemination of non-discrimination and equality expertise within the EEAS.

4. Full implementation of equality and non-discrimination mainstreaming. This could include developing guidance and support tools, investment and funding and good practice exemplars.

5. National Equality Bodies must have a more central and independent role in bringing cases forward.

6. Stronger focus on coherence between internal and external endeavours to promote the protection of freedom of religion or belief and the rights of religious minorities.

7. In the area of non-discrimination, concrete actions are needed, targeted at the most vulnerable groups taking into account the **root causes** of their vulnerability.

8. Stronger action to hold businesses to account for violations of children's rights through the **UNGP** and in the context of **trade and development negotiations with third countries**.

9. Full and prompt implementation of the European Agenda for Migration including a permanent system of **burden sharing**.

10. Clear and effective mechanisms for the identification of, migrants with specific needs, such as persons with disabilities, unaccompanied minors, victims of sexual violence, and survivors of torture.

11. Safe avenues for legal migration, including family reunification, labour and humanitarian visas.

12. Priority in border controls and surveillance should be given to search-and-rescue efforts.

13. The Smart Borders Package should be prepared on the basis of a solid analysis of the proposal's effects on the **enjoyment of human rights**.

14. Reform of the 'Dublin system' to address the situation of persons who have been denied asylum or a residence permit but cannot be returned, to ensure they receive basic protection.

15. The Return Directive should more fully incorporate human rights safeguards.

16. EU and Member State systems governing the rights of migrants, in particular children, **must ensure access to essential economic, social and cultural rights**, such as housing and education.

17. Elevation of ESCR in the EU's agenda at the UN. The EU must demonstrate full commitment to ESCR to have **credibility as a global human rights champion**.

18. Realisation of Article 53 of the Charter, which would enable Council of Europe instruments to be applicable so as to provide higher levels of protection of ESCR and better harmonisation of the two systems.

19. Focusing on creating remedial structures for human rights violations by business and prioritising the full implementation of **binding measures** such as the Non-Financial Reporting Directive.

3.   Ensuring a comprehensive human rights approach to conflicts and crises

One of the main objectives of FRAME is to survey and analyse contemporary human rights violations, especially against vulnerable groups, within the context of **conflicts and crises** within and among states, between and within communities and their link with historical and cultural factors.

FRAME reports examine the role of **non-state actors as perpetrators of new forms of violence and war**. This concerns the application of relevant international law in conflict and in post-conflict situations to promote human rights and democracy and protect vulnerable groups, such as children, internally displaced persons and refugees. Also, we have assessed the integration of human rights and International Humanitarian Law (IHL) and democracy/rule of law principles and tools into the **Common Security and Defence Policy (CSDP)**.

FRAME research is, therefore, closely aligned with the **third strategic area of the Action Plan**, which is aimed at ensuring a comprehensive human rights approach to conflicts and crises – Objectives 18-22.

a)   Addressing human rights violations in conflicts

Report **(D10.1)**, surveying human rights violations in conflict settings, assesses the various **patterns of human rights violations** related to conflict and violent crisis situations. A further report on **applicable**

regulatory frameworks regarding human rights violations in conflicts (D10.2), seeks to identify the scope of the legal status of protection, with reference to vulnerable groups, in view of the interaction of the applicable legal frameworks to human rights violations in situations of conflict.

The aim is to assess the potential contribution of these strands of international law towards the emergence of a comprehensive regulatory framework for the protection of **vulnerable groups in situations of conflict**. This ties in with the creation of a possible **IHL compliance mechanism** as envisaged in Objective 20 of the Action Plan. It will also provide an important source for work being undertaken on **promoting and supporting accountability and transnational justice** in fulfilment of Objective 21.

This report stresses the need to promote and utilise the new EU **Conflict Early Warning System**. Also, it highlights the importance of greater coherence in human rights reporting and early warning/conflict analysis as identified in Objective 18b of the Action Plan. Recommendations will be made on measures to **prevent children from being involved** in armed conflict, to respond to situations where **children's rights** are violated in conflict and, post-conflict, and to facilitate their reintegration in co-operation with local communities.

b) Enhancing the capacity to address conflicts and crises at multilateral and regional level

Turning first to the multilateral level, report **(D5.1)**, on the **analysis and critical assessment of EU engagement in UN bodies**, highlights the need for 'effective multilateralism' on all human rights issues. This is of particular importance in conflict and crisis situations where the EU and the UN must act quickly and decisively to provide co-ordinated humanitarian assistance and political leadership.

At the regional and bilateral level, the EU's rhetoric must be backed up by acts to protect human rights in conflict and crisis situations. Report **(D6.1)**, on **Mapping, Analysing and Implementing Foreign Policy Instruments in Human Rights Protection** explores **inconsistencies in the use of foreign policy tools**. It finds that often foreign policy priorities of the EU and Member States override human rights values. Forthcoming studies will examine specific problems in the Ukraine and Western Balkans.

c) Protecting human rights in the context of CSDP missions and operations

Challenges associated with blending EU and Member State military and wider **security objectives** with the protection of human rights have been identified and are being analysed in FRAME reports. Report **D2.2**, on **factors which enable or hinder the protection of human rights in the context of globalisation**, considers legal factors that influence the protection of international human rights in CSDP missions and operations. It identifies legal factors that **undermine policy commitments** to promote, protect and enforce International Human Rights Law (IHRL) and IHL – see Objective 20b in the Action Plan. These factors include:

- **uncertainty** about which legal obligations EU-led military forces shall respect and protect hinders the effective protection of human rights.
- **inconsistency** arising from the problem that EU human rights policy documents have mainly focused on the **promotion of human rights in third States** – by third States themselves – rather than on the EU's and EU-led military forces' own compliance with human rights standards when involved in CSDP missions and operations in third states.

The report concludes that uncertainties and inconsistencies about the applicable legal obligations of EU-led military forces and the policies towards third States may **hinder the effectiveness** of EU human rights policies.

FRAME recommendations provide a reference point for developing **sector-specific operational guidance** for staff in CSDP missions and practical orientation on the mainstreaming of human rights and the implementation of a new **common code of conduct** for CSDP civilian missions aimed at human rights awareness-raising for staff prior to and during deployment – see Objectives 22a and 22b of the Action Plan.

These findings will also feed in to a case study, **D10.3**, on how relevant policy commitments and tools for the integration of human rights, democracy and rule of law principles should be integrated and operationalised in CSDP policy and missions in order to **evaluate their impact on vulnerable groups**.

Issue 3 – *FRAME recommendations*
1. The overall visibility and impact of EU action should be seen in a practical context and measured by results. This requires **high level support** from EU institutions and Member States for the work of the UN Special Representative for Children and Armed Conflict, the UN Special Adviser on the Prevention of Genocide and the UN Special Adviser on the Responsibility to Protect.
2. The EU should ratify to the extent legally possible, additional IHRL and IHL conventions relevant in CSDP military operations, including the Geneva conventions and operational protocols.
3. The EU should specify which IHL and IHRL standards EU-led military forces shall comply with during military (and civil) CSDP operations in third States and how these – potentially conflicting – standards should interact in different scenarios.
4. The EU should clarify how the relevant IHRL and IHL standards are complied with in practice.
5. The EU should also clarify who should monitor and supervise that EU-led forces comply with the relevant IHRL and IHL standards.
6. The EU should initiate a full review of how IHRL and IHL have been integrated into and protected during EU-led military operations in third States with a view to identifying lessons learned and good practice which can be integrated into future EU-led military operations.

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4. Fostering better coherence and consistency

FRAME research is designed to address the many problems of incoherence and inconsistency in EU human rights policies, both internal and external. Examples include:
- Double standards;
- Gaps and duplications in governance;
- Limitations of the EU as a global actor;
- Selective application of human rights;
- Different conceptions of human rights, the rule of law and democracy;
- Competence issues and tensions between the EU and Member States;
- Inconsistency in implementation of laws.

Targeted areas for addressing problems of incoherence and inconsistency are identified in **fourth strategic area of the Action Plan**, specifically Objectives 23-27

a) Understanding the concepts that underlie notions of human rights, democracy and the rule of law

Understanding concepts of human rights, democracy and the rule of law and how they relate to each other helps to foster more coherent development of the law, improved and more consistent human rights standards, and enhanced domestic implementation of human rights norms. It also helps with prioritisation of the most urgent human rights challenges as outlined in part 2 above.

Report **(D3.2) critically analyses the [EU's conceptualisation and operationalisation of the concepts of human rights, democracy and the rule of law](#)**. It notes that these concepts have been conceptualised in EU internal policies in a **broad and holistic** manner, and even broader in EU external policies. The research finds that the EU tends to **blur the distinctions** between these values, for example, its advancement of 'deep democracy' in the MENA region. This holistic approach offers **advantages and disadvantages**. On the one hand, more clarity could perhaps lead to greater policy coherence. But, on the other hand, these concepts have been applied in different contexts and therefore flexibility is essential.

Two cross-cutting themes are highlighted that impact on coherence and consistency:
- Tensions between universalism and cultural relativism;

- The aspiration of having inclusive conceptualisations.

The success of the EU's mission to foster human rights, democracy and the rule of law internally and externally will, to a large extent, depend on the ways in which it navigates these issues.

b) Double standards and internal/external inconsistencies

Several reports highlight inconsistencies in human rights policies both internal/external and external/external (EU and Member States). **(D3.2)**, a [case study on Hungary](#) finds evidence of **divergence from the values** enshrined in Article 2 of the Treaty on European Union. Criticism by international and European organisations has not led to changes affecting the fundamental characteristics of the newly set up Hungarian constitutional system.

Report **(D4.2)**, on the **[global human rights protection and governance system](#)**, identifies inconsistencies between **different human rights systems in Europe**. It highlights the complex legal relationship between the ECHR, the Charter of Fundamental Rights and Member State constitutions. This complexity is exacerbated by **inadequate supervisory mechanisms** for Council of Europe (CoE) instruments and the work overload of the European Court of Human Rights. Also, a particular problem arises from the **subordinate role of economic, social and cultural rights** (ESCR) and the lack of an internal EU fundamental rights monitoring mechanism.

Also, concerning **vertical coherence**, tensions between **Member States and the EU** are problematic. The EU's political system allows Member States to safeguard their **national political interests** to a certain extent, which may run counter to human rights values laid down in the Treaties.

In seeking to address these inconsistencies, and reconcile tensions, the EU and the CoE can find **synergies with regional human rights protection systems** in Africa, the Americas and Asia. There are significant gaps in human rights protection in these systems and weaker institutional frameworks. However, in the case of the African Union (AU), there is a considerable body of human rights instruments that are distinguished from other regional systems by explicitly taking into consideration all generations of rights.

Report **(D5.1)** on **[EU engagement in UN bodies](#)** analyses the consistency of the EU's pursuit of specific goals and objectives at the UN. It finds **inconsistencies** with regard to (i) thematic human rights issues; (ii) country-specific priorities; and (iii) EU aims and objectives relating to the various UN bodies and fora. One problem is the **EU's limited role as an observer** without full participation rights. The EU Delegation and Member States at the UN operate under the principle of sincere cooperation but there are difficulties arising from the division of competences. This often results in poor coordination, which obstructs the effective implementation of EU policies at the multilateral level.

The report identifies **four policy challenges** to be addressed:
- **Political divergences** (differences between the interests and priorities of Member States);
- **Institutional competition** (differences between priorities of various EU actors);
- **Procedural impediments** (time-consuming and insufficiently flexible processes);
- **Capacity shortcomings** (for example, insufficient support for EU Delegations and the Council of the EU's working group on human rights, COHOM).

c) Strengthening the trade-development-human rights nexus

One of the main challenges identified by FRAME is how the EU can improve the synergy between its trade and development policies toward the fostering of a so-called **trade-development-human rights nexus**. Objectives 24, 26 and 27 of the Action Plan feature measures aimed at addressing some of the incoherencies and inconsistencies at the intersection of these policies, while Objective 28 aims to enhance the contribution of impact assessments to the respect of human rights.

Report **(D9.2)** on **assessing the impact of EU trade and development policies on human rights** discusses the EU's system for integrated ex-ante impact assessments (IAs), the proposed toolbox for a Rights Based Approach (RBA) to development and Sustainability Impact Assessments. It identifies a number of weaknesses regarding the design and processes of IAs, including:

- The limited role of the **European Parliament** in the IA process and no involvement by the Council;
- The lack of transparency of the Commission in **selecting and targeting** its impact assessment work;
- Insufficient **scrutiny by stakeholders** on IA drafts and poor timing of consultations.

The report welcomes **proposed guidelines on stakeholder consultations** for IAs in the agenda for 'Better Regulation'. Stakeholders will be able to share their views on the entire lifecycle of a given policy and public consultations will be able to scrutinise delegated acts for the first time. The full implementation of these proposals is essential notably for the fulfilment of the EU's Policy Coherence for Development Agenda.

Turning to the **RBA to development**, the report identifies **three critical considerations** on which the feasibility of effectively applying a RBA to EU development evaluations arguably hinges:

- **First, the EU needs to work more politically in development**. The RBA aims to advance the design and implementation of development interventions to **reach and empower target groups**. The Action Plan may be interpreted as implying a more political approach as a necessary corollary of ensuring policy coherence, Objective 27c.
- **Second, stronger institutional support from the EU's hierarchy is required** to systematically and consistently apply a RBA in evaluations, as recognised in Objective 27a of the Action Plan.
- **Third, the institutional and organisational culture needs to change** to ensure that they are fully compliant with the objectives and principles of a RBA to evaluation.

In respect of **trade and investment policy**, Objective 24b stresses the need to develop a robust and methodologically sound approach to the analysis of human rights impacts of free trade agreements (FTAs), including in ex-post facto evaluations. The report identifies strong improvements in ex ante '**Sustainability Impact Assessments**' (SIAs) of EU FTAs. Nevertheless there are several shortcomings, notably:

- Human rights impacts are included in a wide array of other issues. This tends to **dilute human rights issues** whereas they should be considered as the number one priority;
- An **emphasis on economic and social rights** rather than civil and political rights;
- Insufficient **consultations** with vulnerable stakeholders;
- Limited **influence** of impact assessments on policy.

Finally, **ex-post evaluation of FTAs is under-developed**. It is not yet well understood how the integration of human rights or social clauses in FTAs affects the protection of specific human rights. FRAME has created a **new dataset**, which focuses on freedom of association and collective bargaining, two of the key rights in FTAs. An explanatory study did not find any direct observable impact on the protection of these rights.

Report **(D5.1)** on **EU engagement in UN bodies** examines the '**right to development**' (RtD), regarded by many in the Global South as a conceptual and political synthesis of the relationship between human rights and development, but viewed by many in the Global North as a dilution of universalism. One problem, tending towards incoherence, is the **ambiguous response of the EU to the debate over the RtD**. On the one hand, the EU Delegation has reiterated its 'support' for RtD at the UN Working Group but, on the other hand, the Commission, in its working document on a toolbox for a RBA to development, made clear that the RBA is not about the RtD and, its adoption, is not an endorsement of the UN Declaration on RtD. In the Action Plan, the EU commits to pursuing the RBA, Objective 26, without any reference to the RtD. These **mixed signals** are unhelpful and cause problems in many other thematic and country-specific issues.

d) Counter-terrorism

One of the areas where the EU is most frequently accused of '**double standards**' is counter-terrorism (CT) policy. The EU CT Strategy is addressed under Objective 25 of the Action Plan. It seeks to reconcile, on the

one hand, the prevention of radicalisation and extremist violence among young people in third countries with, on the other hand, strong promotion and support for human rights and respect for IHL, including freedom of expression, freedom of religion and abolition of the death penalty, in the context of CT measures.

CT policy, not least **rendition**, is a significant area of **vertical incoherence** in the context of heightened concerns of Member States about **security, radicalisation, criminal law and border control**. The implications will be analysed in a report **critically assessing human rights integration in AFSJ policies (D11.2)**.

Report **(D5.1)**, on **EU engagement in UN bodies**, analyses the EU's approach to protecting human rights in its CT Strategy and the **European Security Strategy** in response to the danger of Islamic State (IS). In particular, the relatively new threat of individuals willingly joining IS and returning to their country of origin to potentially carry out terrorist acts, or recruit others, or spread extremist ideology, poses a huge challenge for the EU internally and externally. The report highlights **the need for the EU to be fully engaged at the UN and to ensure that the implementation of its CT Strategy facilitates that engagement**.

Issue 4 - *FRAME recommendations*
1. Strengthening the relationship between Council policy making and Member State/EEAS implementation of adopted policies to ensure coherence in consequent actions.
2. Ongoing and consistent monitoring of this coherence.
3. Deeper coordination between the Member States and the EU, COHOM and the EEAS, on the one side, and, on the other side, the Council Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP), the Fundamental Rights Agency (FRA) and the European Parliament Sub-committee on Human Rights (DROI) and Committee on Civil Liberties, Justice and Home Affairs (LIBE).
4. More streamlining and rationalising of the coordination processes and more flexibility between the EU and Member States in their approach to the division of competences.
5. Stepping up efforts to avoid the impression of double-standards in EU human rights policies by, for example, taking a principled stance in favour of respecting human rights whilst fighting terrorism.
6. Further revision of the Handbook on Trade Sustainability Assessments.
7. Action to ensure that **Impact Assessments consistently take account of human rights** considerations.
8. Changes to the methodology to ensure that the 'human dimension of measures is considered in a country-specific or sectorial context. More methodological guidance might help EU staff and contracted consultants to take account of human rights in a more practical, targeted manner when conducting IAs.
9. A more targeted pilot-approach, focusing on just a few critical policy or human rights issues. This can help foster best practice to help develop further the attitude, skills and capacity required to make human rights a core element of the IA and evaluation systems.
10. Private enforcement mechanisms might be considered as an alternative or complementary route to strengthen the enforcement of labour rights provisions through trade.
11. More EU engagement with the Right to Development debate at the UN.

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5. Deepening the effectiveness and results culture in human rights and democracy

Over the next twelve months, research and proposals from across the FRAME project will be brought together in order to provide a **forward-looking perspective** on the development of an integrated human rights policy, both internal and external.

Work has begun on appraising the human rights indicators and **developing new indicators** for monitoring and evaluating the **effectiveness of human rights protection in EU policies and actions**. FRAME is developing a **policy toolbox** integrating existing, adapted and new policy tools so as to enhance human protection within the EU and in third countries. Proposals will be formulated on how best to improve human rights policymaking through the development of legal, political and operational guidance to implement **human rights mainstreaming** and ensure greater coherence between the internal and external dimensions.

FRAME research in this phase will contribute to the **fifth, and final, area in the Action Plan** on deepening the effectiveness and results culture in human rights and democracy, Objectives 28-32.

a) Increasing the effectiveness of human rights dialogues

Objective 28 of the Action Plan seeks to increase the effectiveness of human rights dialogues by developing, sharing and building on **best practices**, including follow-up processes.

FRAME report **(D3.2)** discusses various forms of bilateral and multilateral human rights dialogues. Multiple objectives of the **different types of dialogue** are identified. For example, dialogues with like-minded countries will be quite different from dialogues with more difficult partners such as China. The EEAS helps to **mainstream** human rights across diplomatic relations with third countries, which aids coherence. **Vertical incoherence** is avoided, to a certain extent, by arms-length treatment of Member State representatives who can participate but are not allowed to speak for the EU. Although the Guidelines foresee the **involvement of civil society** in the preparation of dialogues - during the process and in the follow-up - in practice, civil society is mostly limited to a consultative role and the EU often falls short of the commitment to transparency.

b) Election Observation Missions (EOMs)

In the same report**, D3.2**, the **operational effectiveness of EOMs** is analysed. This corresponds to Objective 31 of the Action Plan, which is concerned with maximising the impact of EOMs through **consolidating and codifying best practice**, including work the Organisation for Security and Co-operation in Europe (OSCE) and other regional partners. It aims to strengthen long-term planning and integrated deployment of EU and Member State support to the electoral cycle, by exploring innovative forms of '**democracy assistance**'.

The report emphasises the importance of EOMs not merely to assess the quality of elections, but also the **development of the democratic system and respect for the individuals' right to political participation**. Some problems are identified, such as the use of different criteria when more than one organisation is involved. The EU's commitment to the **Declaration of Principles for International Election Observation** and the accompanying Code of Conduct is important for raising the quality of EOMs and harmonising them. Other problems include a lack of transparency in the **selection of countries** chosen for EOMs and a lack of systematic **follow-up**. Also, despite the injection of resources from the European Instrument for Democracy and Human Rights, **funding** is inadequate to cover all the deployments needed.

c) Improving the impact of the Human Rights Country Strategies (HRCS) and thematic Policy Guidelines

In Objectives 29 and 30 of the Action Plan, the EU aims to increase **visibility and impact of the HRCS** and the thematic Guidelines, two of the most important policies in its human rights toolbox. As highlighted in the report on **EU engagement in UN bodies (D5.1)**, more than **150 HRCS** have been adopted. These are expected to be drafted with civil society and human rights actors although the report finds that the role of human rights defenders has not been fully addressed.

The **Universal Periodic Review** (UPR) as one of the most important processes for the realisation of the EU human rights priorities. Although the EU does not participate in the UPR process, it has adopted an approach known as '**light co-ordination**' whereby, firstly, the EEAS sends a checklist to all Member States containing some of the issues to be raised by reference to the HRCS and the Policy Guidelines and, secondly, information is spread among the Member States about recommendations that each State intends to put forward.

The EU is therefore a **facilitator rather than a leader** in the UPR process but, the report finds, it has been effective, with varying degrees of success, in using the process to **pursue EU priorities** through UPR recommendations. For example, in the case of the **death penalty**, the number of UPR recommendations confirms EU Member States' deep involvement in realising the aims in the Guidelines for a moratorium on executions and the abolition of the death penalty. The UPR process can also be used to garner more reliable **data** on the situation in each country to feed into the HRCS. In its conclusion, the report finds that the policy

of 'light co-ordination' has been a **success**. Although EU Member States do not act as a bloc, EU facilitation has helped them **realise EU human rights priorities**.

d) Ensuring the effective use and development of Human Rights Indicators

Human rights **measurements** increasingly attract the attention of international and regional organisations, states, NGOs and academic experts. It has become a widely applied practice to resort to qualitative and/or quantitative indicators to measure human rights **successes or failures**. Indicators help to 'simplify' the often highly complex reality and allow for assertions about different (social) phenomena. Since human rights are a core value to be followed in the EU's internal and external actions, the abovementioned interest in human rights information is also shared by numerous EU bodies.

FRAME research has, among its objectives, the mapping and critical assessment of human rights indicators and seeks to develop them in relation to EU human rights actions and policies. In the Action Plan, at Objective 32e, these indicators, based on the **OHCHR model**, are to be developed with a view to, firstly, facilitating measurement of the realisation of human rights, including online publication of indicators and, secondly, systemising compilation and use of human rights and surveying good practices and lessons learned.

Report **(D13.1)**, a [baseline study on human rights indicators in the context of the EU](#) critically assesses and analyses existing human rights indicator systems, identifies their objectives, target audience and methodology. The report finds that indicators can be a **key instrument** for providing evidence during the policy making process. At the planning stage they can support the EU's turn from a top-down towards a more country-specific approach that **better matches EU objectives with the realities on the ground**. At the implementation stage, a **standardised measurement tool** could help avoid the impression that some states are subject to **double standards** or are under more scrutiny than others. Strengthening assessment systems would allow for more profound analytical statements on third countries' progress or regression over time and make the calls of the EU bodies **more assertive**. At the evaluation stage, indicators can play an important role in assessing the policies' **impact** on the effective protection and the factual enjoyment of human rights.

The report finds that there is currently **no systematic approach** followed by the EU bodies to measure human rights. There are good reasons to argue that the approach developed by the **OHCHR** provides the most appropriate framework for further developing human rights indicators. FRAME is therefore working on the **development of a Human Rights Information System as an 'instant information tool', to facilitate access to relevant human rights information**. The Human Rights Information System will consist of three parts:
  i)   Human rights indicators (existing or developed following the OHCHRs methodology);
  ii)   A database on human rights compliance; and
  iii)   Human rights related indicators and datasets.

Issue 5 – *FRAME recommendations*
1. A revised mandate for the Fundamental Rights Agency as human rights dialogues are a reciprocal process and the Agency is best placed to report on the human rights situation in the Member States;
2. More consistency in bilateral HR dialogues. Where Member States insist on pursuing their own dialogues there must be full consultation with the EEAS to avoid mixed messages.
3. Better co-ordination between the EOMs of different international and regional organisations.
4. Harmonise rules and procedures in EOMs in line with the inter-institutional declaration.
5. Redouble efforts to ensure that Policy Guidelines are not overlooked and **economic, social and cultural rights** are given a higher priority.
6. Human rights indicators should acknowledge the **interrelated** character of all human rights.
7. Indicators should also be consistent and **broadly accepted** among States.
8. Indicators must be rooted in a clearly identified (international) human rights standard.

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