

Law Society response to the International Development Committee's FCDO and Civil Societies inquiry

April 2024

Introduction

1. The Law Society of England and Wales ("The Law Society") is responding to this International Development Committee Call for Evidence in its representative capacity as the independent professional body for 200,000 solicitors of England and Wales. Our role is to be the voice of solicitors, to drive excellence in the profession and to safeguard the rule of law.
2. This submission sets out the findings of the Law Society's Lawyers at Risk and Capacity Building programmes, which support legal professionals worldwide who are hindered in carrying out their profession and promote the important role that lawyers play in ensuring respect for the rule of law.¹

Questions

What are the strengths and weaknesses of the FCDO's approach to strengthening civil society in aid-recipient countries as part its wider development strategy?

3. Through the Law Society's in-country engagements, we have seen examples of specific embassies engaging with civil society proactively as key stakeholders and partners to deliver the FCDO's development strategies. For example, during a visit by the Law Society to Uzbekistan in April 2024, it was evident that the British Embassy in Tashkent has good lines of communication and collaboration with civil society and is seeking ways to foster networks and build partnerships and capacity to deliver its development and human rights objectives.
4. However, although there are examples of good practices, the FCDO's approach to strengthening civil society remains highly variable and inconsistent, both across embassies and within the department. Consequently, the UK may miss opportunities to maximise its impact and engage effectively with civil society.
5. Recent research, conducted by several organisations, including the Law Society, found that the UK could do more to engage with human rights defenders (HRDs) and strengthen civil society. The research involved interviews with 82 HRDs, working across a range of human rights issues in seven countries (Afghanistan, Colombia, Egypt, Libya, Russia, Philippines, and Zimbabwe). The interviews focused on their work, engagement with the UK, and recommendations for how the UK Government could best support them.
6. Among the findings of this research, published as *On the Human Rights Frontline – How the UK government can defend the defenders*, it was noted that of the 82 HRDs interviewed:
 - Only 40% had been in contact with the UK in their role as HRDs within the last two years; 70% were in contact with embassies of other countries.
 - 76% did not know how to contact someone at their local UK embassy.

¹ The Law Society of England and Wales, International rule of law, <https://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk>.

- 94% had experienced threats, harassment, or abuse as a result of their work; only 6% had sought or received support from the UK for these threats.
 - 75% were not aware of their local UK embassy speaking out publicly in support of specific HRDs who were at risk.
 - 31% had been contacted by their local UK embassy to contribute their knowledge and experiences on human rights.
 - 75% had never received funding from the UK.²
7. These findings indicate that the FCDO could engage more systematically and strategically with HRDs and further develop its approach to strengthening civil society, as part of its wider development strategy.
 8. Drawing on these research findings, a draft strategy was proposed for the UK Government to enhance the protection of HRDs and strengthen civil society. This strategy proposes that the UK Government works towards the achievement of three specific goals:
 - a. **HRDs are better recognised and protected by their governments, including as a result of strategic and outspoken UK Government diplomacy.** When asked what one thing the UK should do more of, HRDs said the UK should “speak out more”. In six of the seven countries this was the most commonly stated recommendation. HRDs often report that high-level engagement with UK Government representatives provides them with protection. Moreover, accountability for abuses and criminalisation of HRDs is an essential component of a safe and enabling environment.
 - b. **HRDs and organisations are better able to access appropriate, flexible funding for their work.** The second most mentioned recommendation was the provision of flexible funding sources, including long-term and core funding for human rights organisations. Sustainable, core funding allows HRDs and civil society organisations to have a greater impact in a safer way.
 - c. **More HRDs who are at risk have access to rapid response, individual and collective protection mechanisms.** The third most mentioned recommendation was establishing or supporting rapid response, individual and collective protection mechanisms for HRDs at risk. The role of third-party states in supporting domestic efforts to protect human rights defenders is critical. This should include technical assistance to states, along with funding for rapid response emergency mechanisms to relocate human rights defenders and their families within and outside of the country, and funding for collective protection mechanisms.
 9. To implement these goals, it is recommended that the UK Government establish criteria to identify priority countries, issues, and groups of HRDs to support, ensuring that resources are focused, and measurable impact is realistic and achievable.
 10. Such a strategy would identify opportunities for maximising the UK’s credibility and leadership internationally and improve the impact and value for money of other initiatives and priorities. In this way, the strategy would be the most impactful and cost-effective way for the UK to make a difference to the lives and work of HRDs and strengthen civil society. The strategy would not only provide guidance on how to support HRDs, but it would also be supported by capital-led initiatives, including increased and more flexible funding, multilateral interventions, cross-departmental plans, and consistent engagement.

² On the Human Rights Frontline, <https://www.amnesty.org.uk/onthehumanrightsfrontline>.

What is the role of UK diplomats and staff in supporting civil society and civil society organisations?

11. In order to support civil society and civil society organisations (CSOs) and achieve the three goals outline above, *On the Human Rights Frontline – How the UK government can defend the defenders* proposes five objectives that the UK Government can work towards, with each objective setting out the role that the UK can play in supporting HRDs. The role that individual UK diplomats and staff can play supporting civil society and CSOs is set out below through the lens of these five objectives.
12. Objective 1 – Promote the right to defend human rights:
 - UK diplomats and staff should, as a matter of good practice, maintain regular contact with HRDs as appropriate, allowing for the exchange of information and the development of mutual relationships of trust.
 - UK diplomats and staff should raise the importance of the work of HRDs and their protection needs and express concern about specific violations in bilateral meetings with states, and in multilateral spaces. The UK should also issue statements, individually and jointly with other states, to highlight human rights violations.
 - UK diplomats should facilitate contact between HRDs and CSOs and the other missions, the UK mission in Geneva and the FCDO country teams in London.
 - UK diplomats should provide, where appropriate, visible recognition of HRDs through publicity, visits by staff, or invitations to events.
 - UK diplomats and staff engaged in universal periodic review processes or liaising with the UN Human Rights Council treaty bodies and special procedures should engage with HRDs and CSOs as part of these mechanisms.
 - All UK missions – at the very least in priority countries – should have human rights strategies, developed in consultation with local HRDs and civil society organisations and including local HRD engagement plans.
13. Objective 2 – Strengthen the capacity of HRDs:
 - UK diplomats and staff should organise and fund training opportunities for HRDs on issue they identify as critical to their work.
 - UK diplomats and staff should facilitate contacts among HRDs and the exchange of experiences between countries and/or regions.
 - UK diplomats and staff should facilitate safe travel for HRDs invited to networking or capacity-building opportunities in the UK.
14. Objective 3 – Improve accountability and access to justice for HRDs:
 - UK diplomats and staff should facilitate training for judges, prosecutors and lawyers. This could be implemented in collaboration with the Law Society of England and Wales and other representative bodies of the legal profession in the UK.
 - UK diplomats should monitor trials involving HRDs, whether they are parties to the trial or acting as legal representatives. This is especially important in high-profile cases that may result in reprisals.
 - UK diplomats and staff should share contacts and act as liaison between organisations providing accompaniment for HRDs and embassies.
15. Objective 4 – Improve access to funding directed to HRDs:

- UK diplomats and staff should ensure funding opportunities are adequately publicised on embassy websites disseminated among HRDs and organisations, and where possible provide applicants with support and/or mentorship.

16. Objective 5 – Strengthen protection arrangements for HRDs:

- UK diplomats and staff should support and advocate for the development of protection mechanisms for HRDs where appropriate.
- UK diplomats and staff should provide assistance with temporary visas and emergency evacuations for HRDs at risk where appropriate.
- UK diplomats and staff should expand, develop, and disseminate information about ‘rest and respite’ schemes for HRDs in the UK.

17. The above suggestions offer avenues for the UK to improve its in-country support for HRDs, civil society and CSOs and develop mutually respectful and beneficial relationships. There are already many examples of excellent practice by diplomatic missions, often involving collaborative work with like-minded states, which could be replicated across the network as best practice through a comprehensive UK Government strategy.

18. The above suggestions should also be supplemented by updating the guidance on ‘UK support for human rights defenders’.³ This policy paper was published in 2019 by the Foreign and Commonwealth Office and the Department for International Development, and sets out why HRDs, and the work that they do, is important to the UK and how the UK Government may be able to support them. This policy paper is due to be updated and developed further, but there is no fixed timeline for when this will happen or indication of how this process will be carried out. Accordingly, it is recommended that a clear timeline is developed to update this policy paper and that an inclusive procedure is put in place to enable civil society organisations to provide input and assist in updating.

19. Finally, the above suggestions for UK diplomats and staff should be supported by capital-led initiatives focussed on improving support for HRDs and CSOs, such as increased and more flexible funding, multilateral interventions, cross-departmental plans, and consistent engagement, as, otherwise, any efforts by UK diplomats and staff will be diluted, ad hoc and less effective.

Do commitments made in the recent international development White Paper provide a sufficient foundation for the FCDO’s work on promoting civil society across aid-recipient countries?

20. The recent International Development White Paper emphasises that the UK Government will reinvigorate its approach to partnering with civil society (para. 9.5), shift its approach to partnerships, prioritising mutual respect and being locally led (para. 2.10) and listen to those closest to the challenges faced by communities (para. 1.26). The White Paper acknowledges that: “Defending civic space and fundamental freedoms means working with civil society, and local organisations... The protection of civic space and fundamental freedoms is needed as a response to growing authoritarianism and influences of non-state armed groups and violent extremist organisations” (para. 6.24).

21. The White Paper commits the UK to:

³ UK Support for Human Rights Defenders, <https://www.gov.uk/government/publications/uk-support-for-human-rights-defenders>.

- Publishing and implementing an FCDO strategy on Open Societies and Human Rights Strategy (para. 6.30);
 - Publishing a strategy setting out how the UK will support local leadership on development, climate, nature, and humanitarian action (para. 2.18);
 - “A new match funding offer that builds on previous and existing programmes, such as UK Aid Direct and UK Aid Match; tailored, long-term financing and capacity-strengthening support to a diverse range of CSOs in the UK and in partner countries; and support for CSOs and human rights defenders in crisis” (para. 9.5).
22. The White Paper is significant not only as evidence of the UK’s support for civil society but also because it identifies concrete commitments. However, the White Paper does not offer a considered and comprehensive strategy to support HRDs and promote civil society, as recommended in *On the Human Rights Frontline – How the UK government can defend the defenders*. Indeed, the commitments listed above respond to separate issues within the White Paper, such that the White Paper lacks an overarching approach to promoting civil society. The lack of a strategy to direct resources and actions, including those specified in the White Paper itself (notably para. 9.5), renders it ineffective.
23. The Law Society is also concerned by the absence of details relating to the commitments above, such that it remains unclear how these positive commitments will be institutionalised. In particular, there is no indication of the contents or timeline of publication of the Open Societies and Human Rights Strategy.
24. The Law Society took part in a roundtable meeting with the FCDO on the Open Societies, Democracy and Human Rights Strategy (since renamed the Open Societies and Human Rights Strategy) in March 2023. Subsequently, on 20 February 2024, Lord Ahmad of Wimbledon stated that: “The FCDO acknowledges the commitment made in the International Development White Paper to publish an Open Societies and Human Rights Strategy. The Strategy is in draft, and it will be published in due course. In line with commitments made in the International Development White Paper, the Strategy will signal our intent to provide additional support to human rights defenders.”⁴
25. There is still no indication as to the contents of the Open Societies and Human Rights Strategy nor the expected date of publication. CSOs have not had the opportunity to input on the text. Similarly, the White Paper states that the UK “will reinvigorate our approach to partnering with civil society” and refers to “tailored, long-term financing and capacity-strengthening support to a diverse range of CSOs in the UK and in partner countries; and support for CSOs and human rights defenders in crisis” (para. 9.5), but there is no indication as to how this will be implemented in practice.
26. The Law Society recommends consulting both HRDs and local CSOs themselves, as well as the UK civil society organisations that work with them, on both projects and policy development and rollout and implementation.

What role can the FCDO’s work on improving civil society play in broader UK international policy?

27. HRDs and CSOs work on issues integral to the UK Government’s broader international policy, including strengthening the rule of law, building peace and preventing conflict, ending

⁴ Question for Foreign, Commonwealth and Development Office, tabled on 5 February 2024, <https://questions-statements.parliament.uk/written-questions/detail/2024-02-05/HL2180>.

inequality, fostering gender equality, protecting freedom of religion and belief, ensuring media freedom, protecting the environment, and promoting sustainable development. HRDs and CSOs are experts in their communities, as well as the issues they work on, and it is through them that the UK can have a meaningful and sustainable impact across its foreign policy and development priorities.

28. The UK Government recognises that “Human Rights Defenders are on the frontline, defending the fundamental rights that are an essential part of the UK’s foreign policy”.⁵ Thus, the FCDO’s work on improving civil society directly supports broader UK international policy objectives. In addition, the FCDO and other government departments benefit greatly from the insights offered by HRDs on a wide range of thematic issues, helping to inform the UK’s engagement with State officials and other stakeholders.
29. The FCDO’s work on supporting HRDs and improving civil society is also critical for protecting the international rules-based system. If reprisals against HRDs – particularly following engagement with UN mechanisms and the international human rights community – are left unchallenged, respect for the rule of law and the strength of the international rules-based system are weakened.

What wider benefits can be harnessed from strengthened civil society?

30. The UK Government recognises the fundamental role of HRDs and civil society in defending human rights, upholding the rule of law, and improving access to justice.⁶ In particular, HRDs and civil society document and report human rights violations, bringing public attention to abuses and holding governments to account for their actions.
31. The lawyers of HRDs are often HRDs themselves and carrying out their professional duties can come at great cost to their and their families’ lives. Lawyers are often identified with their clients and their clients’ causes, contrary to Principle 18 of the UN Basic Principles on the Role of Lawyers, and face harassment, disciplinary proceedings, arbitrary prosecutions, unfair trials, arbitrary deprivation of liberty, incommunicado detention, enforced disappearance, torture and unlawful killings.⁷
32. Attacks on lawyers have a chilling effect, discouraging others from taking up cases for fear of retaliation from the authorities or others. This severely restricts access to justice in human rights-related cases. In some countries only relatively small groups of lawyers who strongly believe in the independence of the legal profession, the rule of law, and access to justice are willing to put themselves at risk. Without a lawyer to represent them when they are arrested or prosecuted, HRDs lack a voice and are unlikely to receive a fair trial, undermining the rule of law and access to justice. Prosecutors and judges are also at risk in many countries, with some forced into exile. If legal professionals and HRDs are not adequately supported and protected, the rule of law and access to justice are undermined.
33. The United Nations has likewise recognised that the rule of law and development are strongly interrelated and mutually reinforcing. In particular, respect for the rule of law is an

⁵ UK Support for Human Rights Defenders, <https://www.gov.uk/government/publications/uk-support-for-human-rights-defenders>.

⁶ UK Support for Human Rights Defenders, <https://www.gov.uk/government/publications/uk-support-for-human-rights-defenders>.

⁷ UN Basic Principles on the Role of Lawyers, adopted on 7 September 1990, by the Eighth Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

important prerequisite for translating the SDGs into practice. As such, strengthened civil society and, in particular, support of lawyers, prosecutors and judges has the wider benefit of not only strengthening the rule of law but also supporting ongoing development work, which includes and goes beyond SDG 16.

34. The International Development White Paper notes that: “The role of independent media must be promoted and protected... so that people can... hold their governments accountable without fear of censorship, internet shutdowns, or disinformation” (para. 6.23). The International Development White Paper further commits to “support resilient, free, open and trustworthy independent media as a bulwark against disinformation, launching a new programme on this in 2024” (para. 6.28). While this is laudable, it is important for the UK Government to acknowledge lawyers working both in the UK and internationally as important partners in its ongoing efforts to strengthen the rule of law and to commit to supporting the independence of the legal profession globally.