

Danida

**Feasibility Study of a Foundation for
the Promotion and Protection of
Human Rights in the Euro-
Mediterranean Region**

Executive Summary of the Final Report

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1. Introduction

Danida has commissioned *Rule of Law Consulting* to undertake a feasibility study including an identification mission of needs for the establishment of a Euro-Mediterranean Foundation of support to human right defenders. In agreement between Danida and the Euro-Mediterranean Human Rights Network (EMHRN), the director of *Rule of Law Consulting*, Mr. Jacob Gammelgaard of Danish nationality, and Mr Khémaïs Chammari, independent expert consultant of Tunisian nationality, undertook this mission during the month of June 2002 in conformity with the terms of reference and the programme of the mission elaborated in collaboration between Danida and EMHRN.

The mission programme consisted of:

- A working session with EMHRN and Danida in Copenhagen on Tuesday, 14 May 2002.
- Two working days in Paris on Tuesday and Wednesday, 11-12 June 2002.
- Participation in the 5th General Assembly of the EMHRN in Athens on 13-16 June 2002.
- A working visit to Morocco on 17 June 2002.
- A working visit to Algeria on 20-24 June 2002.
- A working visit to Lebanon on 25-26 June 2002.
- A working visit to Jordan from 27-29 June 2002.
- The elaboration of the mission report during the last week of June and the first week of July.
- A working and validation session with EMHRN and Danida on 15 August 2002.

The objectives and terms of reference of the mission

Following the 4th General Assembly of the EMHRN held in Marseilles, France, in November 2001 and on the eve of the meeting of the EuroMed Civil Forum, an EMHRN plan of action was adopted. This plan of action identified the following themes:

- The protection of human rights defenders, notably the freedoms of association and expressions;
- Justice and equal access to justice;
- The rights of women;
- The rights of migrants and asylum seekers and human interchanges;
- Human rights education;
- Self-determination and the rights of refugees;
- Economic, social and cultural rights.

Concerning the protection of human rights defenders, notably the rights of association and expression, five themes were underlined: the co-operation with international NGOs, the Foundation for human rights defenders, the Trial Observation Network, and the freedoms of association and expression.

Concerning the **Foundation**, the plan of action outlined the question in the following terms:

- *Funds are essential for the protection of human rights defenders. Even small funds can make a big difference, for example when it comes to: travel and accommodation costs for persons who are forced to escape their country for a limited period of time; the purchase of a mobile phone when all telephone lines have been cut by the authorities; the purchase of fax machines or computers; economic support for the health care of ill persons recently released from prison; economic support to families whose members were sacked or jailed by the authorities, etc.*
- *Human rights defenders are in need of readily available funds for such purposes. Therefore, the EMHRN will establish a Foundation for Human Rights Defenders in the Euro-Mediterranean region with a board consisting of independent personalities.*
- *It will finalise a proposal for statutes of the Foundation before the 5th General Assembly of the EMHRN, including the proposal that membership fees to the EMHRN are ear-marked for the Foundation. Furthermore, it will urge funding agencies, private companies, political parties, etc. to contribute with the necessary basic capital.*

On this basis, the terms of reference of the present mission were established by the workshop dedicated to the question of the foundation in the framework of the 5th General Assembly facilitated by Mr. Jacob Gammelgaard and Mr. Khémaïs Chammari. The principal objective of the terms of reference is:

To provide a needs assessment for a human rights foundation devoted to flexible and strategic small scale funding of human rights activities in the South Mediterranean region as well as advice and

*recommendations concerning the constituency and mode of functioning
of the agency in question.*

The consultants would like to express their gratitude to all those persons who have provided inestimable assistance to the mission and who, with all too short notice, received us and shared their experience and knowledge.

Finally, it should be underlined that the points of view and conclusions of the report are the sole responsibility of the consultants.

2. Executive Summary

In May 2002 Danida mandated a feasibility study on the establishment of a Foundation for the Protection and Promotion of Human Rights in the Mediterranean Region. The objective of the study was to provide a needs assessment for a human rights foundation devoted to flexible and strategic small-scale funding in the South Mediterranean regions and to provide advice and recommendations concerning the constituency and mode of functioning of the agency in question.

The study was undertaken in the period from May 28 to July 8 with a mission fielded to Greece, Morocco, Algeria, Lebanon and Jordan in the period from 10-29 June 2002. In the course of the mission wide consultations and exchanges of information were undertaken with a number of key NGOs and resource persons in the region.

The human rights NGO community in the region is generally small and extensively based on volunteer work. Their activities are tolerated in some countries, whereas harsh repression occurs in other parts of the region. All countries place legal and physical restrictions on associations and on the freedom of expression. Large numbers of human rights organisations are denied official recognition thus hampering their functioning, while trials are held against individuals exercising their right of public criticism. Nowhere in the region do civil society organisations enjoy the autonomy and the absence of government interference that is associated with a vibrant and dynamic civil society capable of articulating the interests and conveying the participation of the population in political and social processes.

There is a perceived lack of human rights and democratic culture, as well as a scarcity of civil society participation in social and political life, including the enabling of populations to take active part in and benefit from the development process.

Overall, there is an absence of local funding available to NGOs devoted to human rights, democratisation, women and youth organisations, and to development organisations. As a result, human rights organisations are largely dependent on external financing. Such sources of funds, however, pose a set of difficulties for organisations. In a number of countries receipt of foreign funds

is illegal and punishable by long prison sentences, in other countries various restrictions are placed on organisations, preventing them from receiving external funding, and in yet others foreign funding is discouraged through public pressure and innuendo. Only in Lebanon and Morocco was the receipt of external funding regarded as comparatively unrestricted.

Existing external funding to organisations in the region was widely perceived to bypass small and nascent NGOs, who have neither the network nor the capacity to access international funding. Project-funding was generally viewed as favouring large organisations, whereas small NGOs do not have the capacity to formulate projects, and may experience difficulties in sustaining projects due to lack of funding of core operational costs of the organisation. The often laborious and slow process of obtaining project-funding was seen as an obstacle to smaller, strategic initiatives. International networks were seen by many as a vital element in obtaining funding and support for small organisations.

The initiative to set up a human rights foundation for small-scale and strategic funding in the southern Mediterranean region is seen as a window of opportunity that builds on and refines a process of analytic and strategic debate, which has been underway in the human rights community for some time. The backlash from the terror attacks of 11 September 2001 in terms of further restrictions of civil liberties and the plight of arrested human development in the Arab world eloquently brought forward in the recent UNDP Arab Human Development Report 2002, further underlines the timeliness of a Human Rights Foundation as discussed in this report.

The report presents an analysis of the possibilities of establishing a unique profile of a future foundation based on 1) the specific needs voiced by organisations and activists on the ground, 2) the perceived lacuna in the present funding opportunities, and 3) a survey of the mandates of the main human rights donor institution presently active in the region.

The analysis assumes that the proposed foundation will be able to place itself with a distinct profile and with a potential for well-targeted interventions. It is concluded that the proposed Foundation will be able to address a number of well-defined and largely unmet needs from the human rights community in the Mediterranean region, thus giving it the potential of becoming a key funder and resource centre in the region..

The justification for establishing the foundation is found to reside in the following main elements of a unique profile:

- *Access to an existing network of human rights organisations* - It is foreseen that the Foundation will have direct access to the EMHRN membership, which will provide a unique and highly qualified source of knowledge and contacts to the entire human rights environment of the Euro-Mediterranean region. The affiliation with EMHRN will furthermore enable the equal

representation of members from the north and south in the governing bodies of the Foundation, thus enhancing its public standing and credibility.

- *Targeting assistance to human rights defenders* - The proposed Foundation will focus its interventions on the material protection of and financial assistance to human rights defenders in the Mahgreb and Mashrek region. This constitutes a unique platform not covered by other known agencies, and offers the Foundation a special opportunity of complementing the mandate of the UN Special Representative on Human Rights Defenders.
- *A unique Funding strategy* - It is proposed that the Foundation adopt a funding strategy based on the willingness to take carefully calculated risks in extending modest funding to small and nascent organisations as well as to innovative and catalyst activities in the field of human rights. By providing small grants in support of operational costs, capacity building and training, the Foundation will fill a void in existing funding opportunities for civil society organisations in the region. It is furthermore suggested that the Foundation be able to make quick – and when called upon – urgent decisions on requests for assistance to individuals at risk.
- *Filling a funding gap* - The funding strategy of the Foundation will make a specific and very direct contribution towards filling a part of the perceived funding gap in the region, which has been clearly identified at local and international level.

The report discusses the legal framework and options for establishing the governance structures of the foundation and a series of recommendations are offered to establish a base for informed decision-making and to take forward the process of establishing the foundation.

It is recommended that the EMHRN takes the initiative to establish the Foundation through drawing up draft statutes based on the recommendations of the present report, and by calling a constituent assembly of persons drawn from the human rights and democratic environment in the region. It is recommended that once established, the Foundation will be a distinct legal entity enjoying complete autonomy in its finance and governance.

The report discusses two options for the legal structure of the foundation under Danish law, either as an association or as a fund. Different legal regimes apply offering a choice between two governance structures, each with implications for the functioning of the foundation. Recommendations are made for the objectives and criteria for the foundation, along with recommendations for ensuring the independence, impartiality, transparency and representivity of the foundation. Finally, an initial operating budget and discussion of the potential financial demand on the foundation is presented as a basis for obtaining an initial capitalisation of the foundation.