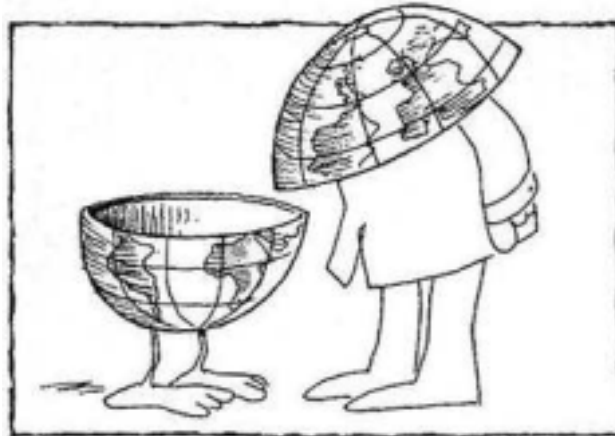




THE HUMAN RIGHTS IMPLICATIONS OF THE MEDA PROGRAMMES



*Euro-Mediterranean
Human Rights Network*

The Human Rights Implications of THE MEDA PROGRAMMES

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FOREWORD

This report deals with the human rights implications of one of the most important instruments at the disposal of the EU in its relations with its Mediterranean Partners, the MEDA programmes.

These programmes were created in November 1995 by the adoption of the Barcelona Declaration and the establishment of the Euro-Mediterranean Partnership (EMP) by the EU Member States and the 12 Mediterranean Partners¹.

The EMP (also known as the Barcelona process) marked a turning point in the relation between Europe and the Mediterranean. It was formally established to create a zone of peace, prosperity and stability in the Mediterranean region and was founded on the assumption that the way to achieve these goals was by means of economic development, political liberalisation and the building of democratic institutions based on respect for human rights and a strong, independent civil society.

The main elements of the Barcelona process are: 1. the establishment of a free trade zone before the year 2010; 2. increased political dialogue and cultural, social and human exchange; 3. enhanced civil society participation in the development process; and 4. the promotion of respect for human rights, democratic principles and the rule of law.

In order to further these aims the EU created the MEDA programmes (MEDA acronym for *mesures d'ajustement*) and allocated 4,422 million Euros to financial co-operation with its Mediterranean Partners up until 1999 (supplemented by European Investment Bank (EIB) assistance in the form of increased loans). For the period ranging from 2000 to 2006, the so-called MEDA II was endowed with 5,350 million Euro while the EIB's lending mandate is 6,400 million.

The aim of the MEDA programmes is to support financial and technical measures to accompany the reform of economic and social structures in the region and to mitigate the negative social and economic consequences which might result from this adjustment for the neediest populations in particular.

This report basically asks how the MEDA programmes relate to the human rights dimension of the Barcelona process and explores ways to assess the implications of the programmes for human rights in the region.

¹ Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia, Turkey, and the Palestinian Authority.

The EMHRN

The Euro-Mediterranean Human Rights Network (EMHRN) was established in January 1997 as a civil society response to the establishment of the Euro-Mediterranean Partnership.

The EMHRN welcomed the Barcelona process's aim to link human rights and democracy promotion with political dialogue and economic development. In particular, it welcomed the inclusion of a human rights clause in the bi-lateral Association Agreements between the EU and its Mediterranean Partners, and in the MEDA regulation that governs EU economic assistance to the region. Both type of documents state that *respect for human rights and democratic principles constitutes an essential* (and thus legally binding) *element* in the EU's relations with its Partners.

Since its establishment, the EMHRN has sought to highlight the human rights dimension of the Barcelona process and the human rights instruments that are enshrined in the Barcelona process.

The report is the fifth in a series of EMHRN publications aimed at debating these aspects¹. By highlighting the human rights implications of the EU's economic assistance to its Mediterranean Partners, it aims to: 1. Raise awareness among human rights activists and policy makers about the human rights issues at stake in relation to EU MEDA assistance; 2. Provide civil society, the EU and EMP decision-makers with instruments to improve policies and strengthen mechanisms in this field; and 3. Argue for regular evaluations of the implications of the MEDA programmes with regard to their impact on human rights.

Progress in EU Thinking

The report basically asks for more coherence and consistency between the three chapters of the Barcelona Declaration, i.e. the political and security chapter, where the major part of the Partner's human rights commitments are stated; the economic and financial chapter, aimed at creating economic development and a free trade zone, and the third chapter on cultural, human and social exchange, aimed amongst other at supporting civil society and human rights.

In this context, the EMHRN has noticed with interest the development in EU human rights thinking in relation to the Mediterranean during the past three years.

¹ Previous publications are: *Promotion and Protection of Human Rights in the Euro-Mediterranean Region*. Policy Paper on the Occasion of the Stuttgart Summit, April 1999, Copenhagen. *The Role of Human Rights in the EU's Mediterranean Policy: Setting Article 2 in Motion*. Report from the seminar in the EU parliament. Copenhagen 2000. *The MEDA Democracy Programme*. Recommendations to the EU Institutions. Copenhagen 2000; *Guide to Human Rights in the Barcelona Process*. Handbook on the EMP, Copenhagen 2000.

In May 2000, the *Community Co-operation Framework for Country Strategy Papers*² provided a new basis for promoting human rights by requiring an analysis of the situation in each country relating to human rights, democratisation and the rule of law.

New tones were noticeable in the Commission Communication on *Re-Invigorating the Barcelona process* in preparation for the Ministerial meeting in Marseille 2000 (6/09/00, COM (2000) 497), which stated that MEDA country allocations should be more dependent on substantial progress in the areas of human rights, democracy and good governance and the rule of law.

In May 2001, the Commission issued a communication on the *European Union's Role in Promoting Human Rights and Democratisation in Third Countries* (welcomed one month later by the European Council), which argues for more coherence and consistency in the Community policies and for the mainstreaming of human rights into all sectors of its relations with third countries.

Further suggestions are to *'examine the possibility of systematically assessing the human rights and democratisation impact of co-operation projects, so as to both avoid negative effects and enhance positive impacts'*, and *'to consider progress in implementing institutional reforms for human rights, democracy, the rule of law and good governance as an element in defining allocations for individual countries'*.

In February 2002, the Commission issued a *Communication to Prepare the Meeting of the Euro-Mediterranean Foreign Ministers, Valencia, 22-23 April 2002*, where it was recommended that:

'Ministers should agree that questions related to human rights and democracy be raised systematically in all contacts between the EU and the partners with a view to promoting a structured approach to progress; MEDA allocations should be linked more closely to progress in these fields; joint working groups of officials should be set up between the EU and each of the partners on the subject; and partners should encourage the signature, ratification and implementation of the relevant international instruments and should recognise the role of civil society in strengthening democracy and human rights'.

During the same period, the restructuring of the European Commission External Relations Directorate General and the creation of the EuropeAid Agency led to the strengthening of the human rights unit within the DG RELEX, the initiation of dialogue with civil society representatives on human rights issues, and the publication during Spring 2002 of Regional and Country Strategy Papers (describing EU policies for the region and the individual countries), as well as Regional and National Indicative Programmes (describing EU economic assistance programmes on the basis of the strategies), making these available for the first time for public scrutiny on the Commission's website.

² Working Document of the Commission. *Community Co-Operation: Framework for Country Strategy Papers*, SEC(2000)1049.

The present study inscribes itself within these positive developments. However, it shouldn't be forgotten that the 'MEDA region' is plagued by huge problems.

The Barcelona Declaration did not 'keep to what it promised' in 1995 in terms of human rights promotion and protection. Except for a few cases, the human rights situation deteriorated, in particular following the outbreak of the *Al Aqsa Intifada* and the events of September 11th ².

It seems more necessary than ever to *apply and strengthen* existing instruments for the promotion and protection of human rights in the region, to develop mechanisms where these are missing and to provide them with the necessary political support.

When it comes to the MEDA programmes, the EMHRN asks the EU to:

- *Ensure that the Community aid instruments are being applied in a manner coherent and consistent with the Community 'acquis' relevant to human rights including the fact that 'respect for human rights' has been adopted as one of the core principles of the Euro-Mediterranean Partnership.*
- *Establish clear human rights objectives and bench-marks in relation to the Community's Mediterranean Partners and systematically assess the human rights implications of the objectives and priorities set out in regional and country strategies.*
- *Design and implement the MEDA programmes coherently and consistently with the human rights objectives envisaged in the strategy papers, and include systematic evaluations of their human rights impact. At all levels of programming, response strategies and indicative programmes should be conceived in terms of fulfilling the rights of the human beneficiaries targeted.*
- *In this regard, consultation with civil society should be systematically applied, including regular meetings on a national and regional level with civil society representatives with knowledge and experience in the relevant fields of intervention.*

More detailed recommendations are outlined below.

² *White book by 8 human rights organisations assessing five years of EMP with regards to respect for human rights*, 15 November, 2000 and *Proceedings of the 5th General Assembly Meeting of the EMHRN*, June 2002, forthcoming.

About the Report

The present study has been carried out and written while the positive changes in EU thinking took place. It is written by Iain Byrne (Research Fellow at the University of Essex and Programme Coordinator at Interrights) and Charles Shamas (Senior Partner, MATTIN Group) in close co-operation with the EMHRN.

Research was initiated in July 2001 and carried out up until November 2001, when a preliminary report was presented for discussion at the EMHRN training seminar on *The MEDA Programmes: The Human Rights Implications of EU Economic Assistance to its Mediterranean Partners, Brussels, 5-7 November 2001*.

The report was finalised in the course of Spring 2002 and integrates inputs from participants (leading human rights activists, experts and Commission staff) at the seminar. It was unfortunately delayed by difficulties in gaining access to relevant documents in the Commission (prior to 2002) and by the destruction of one of the authors' office in Ramallah by the Israeli army.

Due to the need to limit the scope of the study, the report primarily deals with the programming level of the MEDA programmes and not with the project level. Thus, highly important issues such as the EU's political back-up to beneficiaries of its funds is not discussed, for example the cases of Saad Eddin Ibrahim and the Ibn Khaldoun Center in Egypt, and of the Tunisian Human Rights League. Nor does the report deal with two other important areas: the role and management of the MEDA programmes in times of war and armed conflict (Palestine) or in EU pre-accession negotiations (Turkey).

The study was generously support by NOVIB and the EU Commission.

The EMHRN wish to thank all those who contributed making this publication possible.

EMHRN, August 2002



EXECUTIVE SUMMARY

This study asks the simple question what does EU economic assistance do for the South Mediterranean region in terms of human rights promotion and protection, i.e. what are the human rights implications of the MEDA programmes, and to what extent are human rights taken into account in programming, implementation and evaluation.

More precisely, it discusses how the EU has handled the imperatives of coherence and co-ordination with overall EU policies when it comes to the MEDA programmes; how considerations of political expediency and feasibility have affected the Community's treatment of human rights objectives, and finally, the extent to which human rights-based principles established in the Community's development policy have been acknowledged and applied to the MEDA programmes.

The report notes that the critical objective of the Euro-Mediterranean Partnership and the MEDA from the outset was the achievement of economic growth through the successful implementation of free trade and related structural and policy reforms.

The report also notes the Community's remarkable failure to establish any mechanism to ensure that the Association Agreements between the EU and its Mediterranean Partners which include a 'Human Rights Clause' (Article 2) are being implemented in accordance with this 'essential element', and thus coherently and consistently with overall EU policies. With regard to MEDA, despite clear signals of human rights commitment in the MEDA Regulation, only few specific programme has been created to support human rights projects. Contrary to Community Development and Enlargement policies, essential human rights objectives are placed outside reform-centred policy and policy management focus.

Human Rights: Tools or Entitlements?

Based on the authors' summary of the conclusions they drew from a review of Commission materials and interviews conducted with Commission personnel, the report describes how a main Community preoccupation within the field of trade and investments has been to defend Europe's competitiveness in the context of globalisation through institutional harmonisation and structural economic integration, and in this light to preserve stability by promoting prosperity and human rights.

At the same time, a main preoccupation of the Community's Foreign and Security Policy has been with actual and potential instability in several of the MEDA Partner Countries. This is why the Community has given priority to a massive effort to promote economic, fiscal and socio-economic policy reform and public institutional development through co-operation and dialogue with the sitting governments.

In this context, human rights have mainly been perceived as tools for good governance which help to maintain social cohesion and political stability during the process of achieving development goals related to Partner Country transitions related to free trade. Civil rights gains, such as strengthening the rule of law and transparency, are seen as gains to be pursued in the context of economic and fiscal reforms through structural adjustment measures rather than as entitlements upon which a rights, value and human person centred policy supporting development and reform could be based.

The report describes that recent developments of Community policy mandate the incorporation of human rights concerns into the Community's programming and implementation of MEDA assistance. These developments should give rise to the incorporation of human rights conditionalities in most of the MEDA financing instruments. They should also spur the creation of mechanisms within the Commission to ensure that MEDA programming and project execution is carried out consistently with the above-mentioned imperatives of Community treaties.

However, the report finds no systematic indication of what the Commission has said most recently in its Communication on the European Union's Role in Promoting Human Rights and Democratisation in Third Countries that the Partner Country's 'positive performance in implementing reforms in the area of human rights, democracy and the rule of law' has been 'taken into account when deciding country allocations under MEDA'. No systematic procedure or attempt to incorporate human rights concerns appears to exist.

Rather, the report finds that since 1996 the Commission appears remiss in failing to provide vetting mechanisms to ensure against direct or collateral harm to human rights arising out of the design and implementation of the MEDA projects.

Article 11 of the Amsterdam Treaty on the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms is not applied to the second basket of the Barcelona Declaration. While strong indications of Community policy reform-in-progress do exist, the objective of promoting respect for human rights is not coherently and consistently incorporated in the MEDA Country Strategy Papers and National Indicative Programmes, nor are conditionalities inserted in financing protocols and memoranda.

In both RELEX and EuropeAid Co-operation, human rights appear to be an accompanying objective, with its own spoken-for projects, rather than a mainstreamed cross-cutting principle to be served in all assistance programme sectors.

The Interdependence of Development and Human Rights

In this way, the MEDA programmes do not reflect the sea change amongst international agencies over the last few years, placing the interdependence of human rights and development at the centre of their programming activity.

This approach argues that collective development rights aspects highlight the mutual responsibility and solidarity of the human rights concept, while individual rights aspects in turn provide a clear ethical and objective framework against which development projects can be assessed.

Moreover, human rights imply accountability, enabling the victims of rights violations to secure redress; by emphasising the importance of participation, non-discrimination and the indivisibility of rights, it is also recognised that true development cannot flourish in an environment of repression or powerlessness.

The report notes there has been an increasing recognition that people can have their economic and social rights violated and that the abuser should be held accountable, and it describes a set of guidelines for identifying economic and social rights violations.

It asks if such an approach has been applied to the MEDA and finds that in contrast to other EU programmes, MEDA has tended to focus on the need for political stability, arguably at the expense of human rights.

Structural Adjustment without Human Rights Conditionalities

Within the structural adjustment programmes, the report finds that in the contractual instruments under which direct budgetary support measures are implemented under MEDA, no provisions exist at present which give the Community the right to suspend any or all direct budgetary support disbursements to states which engage in serious violations of human rights.

No managerial provision is made with regard to the general and sectoral structural adjustment measures mandated under SAF programmes to systematically assess if the positive human rights impact of development assistance carried out under MEDA is ensured at the programming level (i.e. EuropeAid Co-operation). No provision is made to vet and ensure its consistency with the principles on which the Community's Development Policy is based.

Neither does the Community have a publicly transparent and effective mechanism required to monitor and evaluate Partner Country performance with respect to their general duties to maintain respect for human rights under the Association Agreements. As such the Community is not in the position to command the means to properly exercise the rights of enforcement it has reserved for itself in those agreements.

Which Role for Social Alleviation Programmes?

According to the findings of the report, social alleviation programmes play a derivative role – an important 'accompaniment' - in supporting and sustaining economic transition rather than operating on their own rationale. These aim at improving the standard of living of less favoured groups of society and to strengthen

social cohesion. The prevailing approach appears to be that the EU is clearly engaged in human rights work in this area of social alleviation, but does not need to be explicit about it.

Thus, there is arguably a need to consistently and comprehensively mainstream human rights through the programming process.

Mainstreaming takes as its starting point the recognition that beneficiaries are not merely the passive recipients of aid but have certain entitlements that both the Partner Country, as a party to various binding international commitments, and the EU, as a donor providing assistance to that country, are under a duty to fulfil. This conceptual framework provides the basis for formulating overall strategies for fulfilling the rights to the greatest possible extent and provides the right to redress when things go wrong.

Civil Society Support: A Marginal Activity

The report notes that the promotion of human rights and democracy under the MEDA Regulation through civil society has remained a marginal and, in some respects, an improvised and fragmented activity. Enhanced participation and dialogue as a core principle for programming and implementing EU assistance (contrary to other regional arrangements such as Cotonou) has not yet translated into systematic practice within the MEDA.

Although the European Initiative for Democratisation and Human Rights does provide valuable and strategic inputs, the MEDA assistance programmes tend more than ever to appear to be about economic reform and limited development activity rather than about promoting human rights and civil society.

In conclusion, the report argues that although the EU in past years has put substantial thinking into bringing more coherence and consistency to its human rights policies, and although noticeable progress has been made and is in the making, a great deal still needs to be done in order for the Community to be able to assess the implication of its policies within the MEDA framework on human rights in the Mediterranean.

On this basis the EMHRN presents the following main recommendation to:

- *Ensure that the Community aid instruments are being applied in a manner coherent and consistent with the Community 'acquis' relevant to human rights including the fact that 'respect for human rights' has been adopted as one of the core principles of the Euro-Mediterranean Partnership.*
- *Establish clear human rights objectives and bench-marks in relation to the Community's Mediterranean Partners and systematically assess the human rights implications of the objectives and priorities set out in regional and country strategies.*

- *Design and implement the MEDA programmes coherently and consistently with the human rights objectives envisaged in the strategy papers, and include systematic evaluations of their human rights impact. At all levels of programming, response strategies and indicative programmes should be conceived in terms of fulfilling the rights of the human beneficiaries targeted.*
- *In this regard, consultation with civil society should be systematically applied, including regular meetings on a national and regional level with civil society representatives with knowledge and experience in the relevant fields of intervention.*



RECOMMENDATIONS

1. On Strategies, Programmes and Evaluation

1.1 The Community should ensure coherence and consistency with the principles on which the Community's Development Policy is based by establishing a publicly transparent and effective mechanism to monitor and evaluate Partner Country performance with respect to their general duties to maintain respect for human rights.

1.2 The EU should establish clear human rights objectives and bench-marks and systematically assess human rights implications of the objectives and priorities set out in the regional and country strategy papers.

1.3 The regional and national indicative programmes should be coherent and consistent with the human rights objectives envisaged in the strategy papers and include systematic evaluation of their human rights impact.

1.4 The EU should as a matter of priority develop sound and manageable methodologies for human rights evaluations at the project level, and EuropeAid should as a matter of urgency commission pilot projects in this regard.

1.5 Response strategies and indicative programmes should be conceived in terms of fulfilling the rights enjoyed by the beneficiaries targeted. Structured consultation with civil society should be systematically applied at all levels of programming, implying regular meetings on a national and regional level with civil society representatives with knowledge and experience in the relevant fields of intervention and representatives of beneficiaries targeted.

1.6 Whilst the recent revision of most Country Strategy Papers do make more explicit reference to human rights issues within each MEDA country, there remains a clear imbalance between civil and political rights and economic and social rights. Both in the description of a country's political, economic and social situation and the EU's response strategy there needs to be a recognition of the range of economic and social rights held by the population and the level of enjoyment.

1.7 If National Indicative Plans (NIPs) are to reflect seriously the EU's current human rights approach, then proposed programmes and projects need to be presented within the framework of the relevant rights – be they civil and political or economic and social. This will enhance not only operationalisation of rights, but also monitoring and evaluation.

1.8 Country Strategy Papers (CSP) should list in an appendix all of the relevant international and regional human rights treaties (together with relevant reservations and declarations) ratified by each Partner Country together with reference to the relevant human rights provisions which govern the EU's external relations. Each of

the analysis sections in the CSP should present a detailed picture of the human rights situation in the country in relation to civil and political and economic, social and cultural rights. These should be cross-referenced to the relevant human rights standards.

1.9 EuropeAid's Evaluation Unit should extend its methodology to embrace human rights impact assessment, and all MEDA staff should undergo periodic human rights training. The EU should consider establishing a dedicated Human Rights Unit within EuropeAid to ensure a more concerted and consistent approach to adopting a human rights approach throughout its aid programmes.

2. On Structural Adjustment

2.1 The Community should consider a more ambitious programme of direct budgetary support finance with a distinct human rights institutional reform component.

2.2 The Community should reconsider its decision to intensify the linkages of Community structural adjustment programmes with those of the Bretton Woods institutions, unless those institutions are also prepared to incorporate measures aimed at correcting serious deficiencies in the legal and de facto protection of human rights in their structural adjustment programmes with MEDA beneficiary countries.

2.3 The Community should incorporate a clause in all direct budgetary support contractual instruments conditioning the commitment and disbursement of financial aid on the Partner Country's respect for non-derogable human rights in its policies and systematic practice.

3. On Social Alleviation

3.1 The Community should establish a dedicated body within EuropeAid in order to facilitate mainstreaming of human rights throughout project design and implementation. Initially this should involve making clearer and more explicit reference to the human rights issues at stake, particularly economic and social rights in documentation on social alleviation programmes (see also recommendation 1.9).

3.2 In particular the Country Strategy Papers should contain a detailed analysis of the economic and social situation in each country and the extent to which the various economic and social rights are enjoyed by the population. These should then form the basis for the appropriate social alleviation strategies to be pursued.

3.3 Each National Indicative Programme should be conceived and described in terms of the rights issues they are seeking to address and how these will be operationalised and assessed (see also recommendation 1.5).

3.4 The Commission should facilitate the production of manuals and training on how project design should utilise a human rights framework based on verifiable indicators

which will enable not only effective implementation but also monitoring and evaluation of the impact (be it positive or negative).

3.5 The beneficiary participation should be recognised as a cross-cutting issue which should be addressed at all stages of project design and implementation. In line with principles of transparency and accountability such participation should also encompass mechanisms for redress where a project negatively impacts and/or fails to fulfil its aims.

4. On Civil Society

4.1 The Community should ensure consistent and coherent criteria for funding and managing civil society projects between The European Initiative for Democracy and Human Rights (EIDHR) and MEDA.

4.2 There should be an explicit recognition in Country Strategy Papers that promotion of human rights and democracy through civil society is a key cross-cutting issue which should permeate all MEDA programmes as appropriate

4.3 National Indicative Programmes should be developed in consultation with the EIDHR to ensure greater priority be given to support civil society both at a policy as well as operational level in all countries

4.4 Particular attention should be given to devising innovative strategies for promoting civil society in those countries where it has hitherto found it difficult to flourish

4.5 Sufficient priority should be given to those NGOs working in more controversial areas, such as civil and political rights. This is especially required where the country is not a priority for EIDHR funding but has to rely solely on MEDA allocation.

4.6 Greater transparency of documentation should be ensured to enhance participation by and dialogue with civil society throughout the project process - through design to implementation, monitoring and evaluation.



INTRODUCTION

With the launching of the Euro-Mediterranean Partnership (EMP) at the Euro-Mediterranean Conference of Ministers held in Barcelona on 27-28 November, 1995, the European Union embarked on a multi-faceted effort to promote the emergence of an 'area of dialogue, exchange and co-operation guaranteeing peace, stability and prosperity' amongst the states and societies of the region.

The first pillar and 'anchor' of this Partnership was to be the intensification and elaboration of the system of free trade that had been instituted between the EU and its southern and eastern Mediterranean partners over prior decades in a manner that would also promote the gradual establishment of free trade between the Partner Countries themselves.

The full complement of goals, reciprocal and common policy commitments and the key programmatic dimensions of this partnership were set out in the Barcelona Declaration, subscribed to by the fifteen Member States of the EU and their twelve Mediterranean 'Partners'³.

The stage was thus set for the introduction of a new generation of accompanying aid instruments that would both motivate and facilitate the Partners' fulfilment of their commitments under the Partnership. These instruments would be reinforced by new mechanisms of bilateral and multilateral political and economic dialogue.

Conditionalities on budgetary support would propel and help maintain the momentum of the policy and institutional reform measures agreed to with Partner Countries.

Budgetary support and project aid targeting poverty reduction would cushion the fiscal and social impact of the transition to free trade and open markets.

Human rights and democratic principles conditionalities on preferential trade and aid would help defend the development of dialogue, exchange and co-operation against conflict-inducing internal and external conduct by Partner Country governments.

General objectives of the report

The 'MEDA' is one of a new generation of regionally-specific EU external aid co-operation instruments that have been designed to both motivate and support Partner Countries' efforts to pursue different sets of policy reform and economic and fiscal structural adjustment objectives in the context of carrying out transitions to open free market economies.

³ Cf. The Barcelona Declaration, November 1995.

The Community's implementation, via the Commission, of the MEDA Regulation⁴ must, since the Maastricht Treaty, be 'coherent' and 'consistent' in *content* and *effect* with the full range of established EU policies. The implementation of all policies across Commission Services and Directorates must also satisfy these tests.

The *content* and *implementation* of EU and Member States' policies must also be 'complementary' and 'co-ordinated'. The recent re-organisation of the Community's external assistance operations (into the EuropeAid Agency) and the new decision-making processes involving the Member States together with the Commission under the amended MEDA regulation (2001-2006) reflects an ongoing quest to satisfy these binding political and bureaucratic principles more adequately.

This report accordingly considers *the EU's key human rights-related policy commitments applicable to its conduct of external relations, and by extension, to its organisation and implementation of the MEDA regulation. The report then considers the manner and extent to which the Commission has moved and may move to satisfy the imperatives of 'coherence', 'consistency' and 'coordination' in this regard.* Other more substantive considerations which appear to be shaping the evolution of the Community's application of human rights conditionality from 'expedient' to 'normative' to 'material' are noted.

On the other hand, the bilateral and multilateral processes of partnership and co-operation through which the Community's MEDA regulation must be implemented, are based on the principles of *consensuality* and *conditionality*.

How considerations of 'political expediency' may have affected the Community's prioritisation and treatment of its human rights commitments and objectives in the context of its overall strategy and affected the choice of material conditionalities attached to its assistance will be considered.

Finally, since the assistance programmes designed and implemented under the MEDA regulation have incorporated measures otherwise designated as 'development measures', *the extent to which human rights-based development principles established in the Community's development policy have been acknowledged and applied in that component of the MEDA programmes will be considered.*

⁴ See below for details of the legal basis of the MEDA programmes.



AN OVERVIEW OF THE EURO-MEDITERRANEAN PARTNERSHIP AND THE MEDA

The Barcelona Declaration

As noted earlier, the Euro-Mediterranean Partnership (EMP) was officially launched in November 1995 with the declared aim of promoting the establishment of an area of peace, security and shared prosperity on the southern flank of the EU zone. The 15 EU members would enter into partnership with 12 Mediterranean 'Partners': Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Palestine, Syria, Tunisia and Turkey.

The EMP would be comprised of three mutually reinforcing 'dimensions' (or 'baskets' as they have become known). Under the first basket, the 'Political and Security Dimension' the overall aim is the progressive establishment of peace and stability in the region through political dialogue leading ultimately to the adoption of a Charter for Peace and Stability. This dialogue should be based in particular on the respect of human rights and encompass security concerns.

The second basket, the 'Economic and Financial Dimension,' envisages building shared (and stabilising) prosperity through the economic growth achieved by a combination of measures carried out in the context of the progressive establishment of a Euro-Mediterranean free trade area.

The third basket, the 'Social and Cultural Dimension,' aims to provide closer relations and better understanding between peoples, including the improvement of mutual perceptions. Here the role of civil society is given prominence and co-operation is envisaged in areas such as drugs, migration, youth exchanges, health and rule of law.

It was made clear from the outset that achieving economic growth through the successful implementation of free trade and related structural and policy reforms was the critical objective on which all others rested.

Nonetheless, human rights do receive quite significant mention, explicitly in the Preamble⁵, in the first and third baskets and implicitly to a limited extent in the second. The most extensive references come in the first and third baskets. The Preamble sees human rights promotion and protection as an important vehicle for guaranteeing political stability and security stating *inter alia*:

⁵ The Preamble states the partners declare themselves 'resolved to establish to that end a multilateral and lasting framework of relations based on a spirit of partnership, with due regard for the characteristics, values and distinguishing features peculiar to each of the participants' and 'convinced that the general objective of turning the Mediterranean basin into an area of dialogue, exchange and co-operation guaranteeing peace, stability and prosperity requires a strengthening of democracy and respect for human rights, sustainable and balanced economic and social development, measures to combat poverty and promotion of greater understanding between culture, which are all aspects of partnership'.

{The participants} express their conviction that the peace, stability and security of the Mediterranean region are a common asset which they pledge to promote and strengthen by all means at their disposal. To this end they agree to conduct a strengthened political dialogue at regular intervals, based on observance of essential principles of international law, and reaffirm a number of common objectives in matters of internal and external stability.

In this spirit they undertake the following declaration of principles to:

- *act in accordance with the United Nations Charter and the Universal Declaration of Human Rights, as well as other obligations under international law, in particular those arising out of regional and international instruments to which they are party;*
- *develop the rule of law and democracy in their political systems, while recognizing in this framework the right of each of them to choose and freely develop its own political, socio-cultural, economic and judicial system;*
- *respect human rights and fundamental freedoms and guarantee the effective legitimate exercise of such rights and freedoms, including freedom of expression, freedom of association for peaceful purposes and freedom of thought, conscience and religion, both individually and together with other members of the same group, without any discrimination on grounds of race, nationality, language, religion or sex;*
- *give favourable consideration through dialogue between the parties, to exchanges of information on matters relating to human rights, fundamental freedoms, racism and xenophobia;*
- *respect and ensure respect for diversity and pluralism in their societies, promote tolerance between different groups in society and combat manifestations of intolerance, racism and xenophobia. The participants stress the importance of proper education in the matter of human rights and fundamental freedoms’.*

Although reference to the Universal Declaration implies recognition of the importance of all rights, the non-exhaustive list has a distinctly civil and political rights feel. Note the emphasis placed on human rights education.

The third basket, on the social, cultural and human dimension, contains more explicit reference to certain economic and social rights, whilst at the same time promoting civil society:

{The participants}

- *underline the importance of the health sector for sustainable development and express their intention of promoting the effective participation of the community in operations to improve health and well-being;*

- *recognize the importance of social development which, in their view, must go hand in hand with any economic development. They attach particular importance to respect for fundamental social rights, including the right to development;*
- *recognize the essential contribution civil society can make in the process of development of the Euro-Mediterranean Partnership and as an essential factor for greater understanding and closeness between peoples;*
- *they accordingly agree to strengthen and/or introduce the necessary instruments of decentralized co-operation to encourage exchanges between those active in development within the framework of national laws, leaders of political and civil society, the cultural and religious world, universities, the research community, the media, organisations, the trade unions and public and private enterprises;[...]*
- *they will encourage actions of support for democratic institutions and for the strengthening of the rule of law and civil society[...]*
- *they undertake to guarantee protection of all the rights recognized under existing legislation of migrants legally resident in their respective territories⁶[...]*

As a chapter primarily concerned with trade and trade-related matters, the second basket only refers to rights in an indirect and cursory manner. It talks about the need for 'sustainable and balanced economic development' to create 'shared prosperity' with the long term objectives of 'improvement of the living conditions of [the Partner Countries'] populations and 'reduction in the development gap in the Euro-Mediterranean region'.

The MEDA programme was embedded in the second basket *'[to] support the efforts that Mediterranean non-member countries and territories [...] will undertake to reform their economic and social structures and mitigate any social or environmental consequences, which may result from economic development'⁷.*

The EMP operate on a *quid pro quo* basis. Bilateral agreements dating back in most cases to the 1970's established free trade in industrial goods and limited free trade in certain agricultural goods between the Community and each of the Partners⁸. The Occupied Palestinian Territories were brought into the system belatedly in 1986 through a special Council regulation extending Community preferences unilaterally to eligible products of those territories.

⁶ A separate MEDA Democracy budget line, now under the European Initiative for Democracy and Human Rights (EIDHR), added at the strong urging of the European Parliament, reinforced the themes of the third basket by providing an instrument for funding civil society initiatives independently of the partner governments.

⁷ Article 1.1: Council Regulation No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean Partnership.

⁸ Subject to Community protectionist restrictions to accommodate the Community's Common Agricultural Policy.

After 1995, 'second generation' Association Agreements added a broader spectrum of undertakings and scope of co-operation to the free trade core provisions carried forward with some adjustments from the earlier generation of trade-related agreements. These included provisions for macro-economic policy dialogue and political policy dialogue.

In return for carrying out agreed free trade-related economic, fiscal and socio-economic structural and policy reforms aimed at increasing investment flows into the Mediterranean Partner Countries and generating trade-driven economic growth, Partner Countries would receive significant amounts of aid – double the amount prior to 1995.

It was in these agreements that the Community obtained the commitments of its Mediterranean Partners to co-operate in the construction of a regional free trade area with the EU over 12-15 years – the *quid pro quo* being the 'measures of accompaniment' that would be mandated in the MEDA Regulation to take effect in 1996.

Individual Association Agreements to this effect were signed with Tunisia (July 1995), followed by an 'Interim Association Agreement' with *'the PLO for the benefit of the Palestinian National Authority of the West Bank and the Gaza Strip'* and then with Israel and Morocco (1996). The remaining countries, except Syria, have all concluded new bi-lateral Agreements, the latest being Algeria and Lebanon (although the agreements remain subject to approval by EU member state parliaments).

Each of the Agreements contains a standard Article 2 'Human Rights Clause', stating that respect for human rights and democratic principles is 'an essential element' of the Agreement⁹. However, despite the insistence of the European Parliament and many human rights NGOs that there be a mandatory and transparent periodic review of the state of respect for human rights in all Partner Countries, and that the Community be prepared to suspend agreements should a Partner Country persist in violations of a serious and systematic character, no steps have yet been taken in this direction.

Rather, the argument is often raised within the Commission and amongst the Member States that the suspension of preferential trade with the Community is not yet a useful option, since it would be of too little consequence to the governing

⁹ *'Relations between the Parties, as well as all the provisions of the Agreement itself shall be based on respect for human rights and democratic principles which guide their domestic and international policies and constitute an essential element of the Agreement.'* (Article 2 of the Agreements with Tunisia and Israel).

'Respect for the democratic principles and fundamental human rights established by the Universal Declaration of Human Rights shall inspire the Parties' domestic and external policies and shall constitute an essential element of this agreement.' (Article 2 in the other agreements)

establishments of the Mediterranean Partner Countries having the worst human rights records.

According to this argument, it was first necessary to instigate and support a process of economic and institutional reform in the MED countries through free trade, aid and political, social and cultural dialogue, and to create stronger interests in the preservation and expansion of these engagements.

Making threats of suspension prematurely would only spoil this 'larger game'. As noted later in this report, this argument offers a disturbing (but plausible) explanation of the Community's failure to establish any coherent and consistent basis for monitoring and assessing the state of respect for human rights in the Partner Countries. However, it does not explain the Community's remarkable failure to establish any mechanism to ensure that the Association Agreements themselves are being implemented in accordance with their 'essential element'.

These observations naturally raise questions about the extent to which the Community aid instruments created to instigate and support a process of reform in the MED countries are being applied in a manner *coherent* and *consistent* with the fact that 'respect for human rights' has been adopted as one of the EMP's core principles, and is therefore presumably an essential element and object of the sought reform.

The MEDA Programme

The main vehicle for the delivery of aid in support of the EMP concluded in Barcelona was to be a new programme named MEDA (acronym for *Mesures d'Accompagnement*). In return for carrying out agreed economic, fiscal and socio-economic policy reforms Partner Countries receive significant amounts of aid under the MEDA (double the amount prior to 1995).

Between 1995 and 1999, measures financed under MEDA accounted for 76% of total EU aid for the region (3,345 million Euro out of 4,422 million Euro) and for the period 2000-06 MEDA assistance is due to the total of a further 5,350 million Euro.

The vast majority of the funding under MEDA is bilateral (90%), with the remainder directed to regional programmes such as the Femise economic research network, the SMAP environmental programme and the Euromed Heritage programme.

This study focuses on the bilateral programmes encompassing three broad groups:

- Structural adjustment.
- Economic transition and private sector development.
- Development (mainly health, education and rural development).

Although the principle aim of MEDA is to support (and motivate) agreed Partner Country policy reform measures implementing a transition to free trade and open

markets, one of the key supporting aims of MEDA is to support measures designed to maintain socio-economic balance and alleviate the social costs and burdens triggered by economic transition. These include measures aimed at improving the provision of basic education and health care, job creation, enhancement of public services, reducing wealth gaps between urban and rural areas and improving water supply.

Nine of the twelve Partner Countries qualify for MEDA assistance, the exceptions being Israel (considered too economically developed to receive assistance) and Cyprus and Malta. The latter, together with Turkey, receive assistance under pre-accession agreements. Although the programme is predicated on bilateral aid flows to states, a range of beneficiaries from civil society can apply for support with the approval of their governments.

The legal basis for the MEDA programme was the 1996 regulation EC/1488/96 which governed the process from its inception in 1995 until 1999. The regulation was amended in November 2000 after evaluations found that decision-making procedures could be streamlined and strategic programming strengthened.

The new MEDA II regulation governs the flows of aid from 2000-2006. Following its adoption, the responsibility for programming and implementing assistance passed from the Commission's External Relations Division (RELEX) to EuropeAid in 2001.

The overall strategic framework is set out in individual Country Strategy Papers (CSP), from which three-year National Indicative Programmes (NIP) are developed in consultation with the relevant Partner Countries. These map out the framework of the mutually agreed programming priorities and objectives to be implemented through the structural adjustment financing and project tendering process. A MED Committee, composed of representatives from all the EU Member States and MED partners, advises the Commission on strategy and planning and monitors key milestones of implementation. Again, as part of the recent restructuring, the MED Committee is now mainly involved in overall policy development rather than scrutiny of individual project proposals.

Reflecting the concerns of the European Parliament, Articles 3 and 11 of the MEDA regulation emphasised that respect for human rights and democracy was to be both a condition and a major aim of the programme:

'The MEDA programme is founded on the respect for democratic principles and the rule of law, as well as the respect for human rights and fundamental freedoms, of which they are an essential element and whose violation would justify taking appropriate measures'.

Article 11 of the same Regulation spoke of the 'considerable effort' to be made to promote programmes contributing to development and respect for human rights.

Appendix II also spoke of the need for *'support for achieving a better socio-economic balance [including] in particular: the participation of civil society and populations in*

the planning and implementation of development measures [...] the fight against poverty, [...] strengthening democracy and respect for human rights'.

Despite this clear signal of commitment, *no specific programme was created to support human rights projects* and, as this study makes clear, no specific provision was made to incorporate human rights into the objectives and design of the Partner Country programmes which have been implemented. As mentioned earlier, a MEDA Democracy programme was established in 1996 specifically to fund human rights activity, outside the bilateral governmental MEDA framework, but this was at the behest of the European Parliament¹⁰.

In short, following the establishment of MEDA, a system of aid incentives and reform conditionalities was in place that was supposed to improve the partners' economic competitiveness, stimulate free trade-driven economic growth and moderate the costs and shocks that might be entailed along the way.

If the MEDA were to achieve these objectives, the value to the partners of their preferential access to the Community's market would presumably increase, possibly rendering the human rights conditionality in the Association Agreements of greater consequence. However, this situation does not seem to have arisen yet. On the other hand, in the case of MED countries that have established very substantial preferential trade flows with the Community, the Commission has proven reluctant to propose threatening any suspension of trade preferences on human rights grounds.

¹⁰ In that year alone 62 human rights related projects were supported to the tune of 9 million Euro with a further 8 million the following year. By April 1998, 151 operations had been funded in the twelve Mediterranean Partner Countries at a total cost of 27.75 million Euro.



SOME OF THE POLITICAL OBJECTIVES AND PREOCCUPATIONS BEHIND THE PARTNERSHIP, SOME OF THE HUMAN RIGHTS ISSUES THAT LURK WITHIN ¹¹

It is difficult not to recognize the fact that the MEDA regulation, and the Euro-Mediterranean policy which it supports, are seeking to promote a multi-faceted process of political, economic and social transition within the Mediterranean (MED) region, and that the EU has strong and even vital interests in its successful accomplishment.

It is also difficult not to recognise that the EU has an authentic interest in seeing human rights more fully implemented and respected in the countries of the MED region. Yet, as the management of the EMP has been organised, these two interests appear to arise and to have been addressed quite separately.

Transition and reform is addressed in the context of the European Community's older free trade and investment-related preoccupations, policies and policy instruments. *Respect for human rights* is addressed in the context of the European Union's newer Common Foreign and Security Policy and policy instruments, as well as through external (global and regional) assistance instruments dedicated to strengthening civil society and promoting trans-national civil dialogue.

Consequently, MEDA, an aid instrument dedicated to promoting free trade-driven political, economic and social transition and reform in the MED region under the 'second basket' of the Barcelona process, is managed by the Commission's DG RELEX. On the other hand, the promotion of respect for human rights under the 'first basket', together with the application of human rights conditionalities, has been assigned to the sphere of political dialogue conducted by the Council.

By contrast, for accession candidate countries, which include Turkey, Cyprus and Malta in the MED region, a rather more stringent set of human rights objectives, standards and conditionalities are embedded in the Community's Enlargement Policy for which DG ENLARGEMENT has executive responsibility.

The Community also has a Development Policy, managed by DG DEVELOPMENT, comprised of aid and trade-related components reinforced by political dialogue. The promotion of respect for human rights – embracing poverty alleviation - is defined as a principal object of that Development Policy and all its components. While relations with Partner Countries may draw from more than one of these "policies", each of the aforementioned core external policies is geared to a different group of third countries and a correspondingly different set of policy priorities.

¹¹ The following is the authors' summary of conclusions they drew from a review of Commission materials and interviews conducted with Commission personnel in External Relations, Development and EuropeAid Co-operation.

It is therefore apparent that, while presumably anchored in a single normative foundation, the objective of 'promoting respect for human rights in third countries', has a different place in different core external Community policies, and is therefore operationalised differently by each Commission DG.

As this report makes clear, as of late 2001, the allocation of management and policy responsibilities under the EMP appears to have placed not only human rights objectives, but also essential human rights responsibilities, largely outside the reform-centred policy and policy-management focus of RELEX and therefore marginalized them in the strategic planning the MEDA programme.

What the Community Appears to Want through the EMP, and How It Hopes to Get It: The Community's Trade and Investment-Related Objectives

The Community, as the European common market, has a number of trade and investment-related objectives to fulfil in the MED region. These arise from its primary external relations mission: promoting and preserving prosperity in Europe in the context of globalisation, including against challenges by other developed industrial trading powers with global reach and, in the case of the US, more diversified and powerful instruments of external persuasion and coercion.

Defending competitiveness in the context of globalisation requires the establishment of large multinational zones of advantaged trade and investment market access. One essential element of the Community's strategy in this regard relies on the enlargement of the European common market itself as a zone of not merely free, but advantaged internal trade and investment. A second essential element relies on the extension of the common market's internal system of advantaged trade and investment to a larger number of Partner Countries and regional markets, most of which are not regarded as prospective enlargement candidates as in the case of a majority of MED countries.

The first step to both enlargement and extension is to implement bilateral free trade between the Community and third countries. The second step is to pursue trade and investment-related institutional harmonisation between the Community and its partners.

This mainly concerns the *approximation and harmonisation* of trade and trade-related policies, legislation and regulations covering matters ranging from customs codes to origin rules in preferential trade with third countries to product standards to the protection of intellectual property.

Institutional harmonisation would then help intensify bilateral trade and investment flows and promote structural economic integration between the Community and its partners, and later amongst the partners themselves.

To achieve these Community objectives, Partner Country economies, their external trade with the Community, and flows of direct foreign investment from the

Community must grow. Engendering such growth requires security, stability (and peace), as well as a congenial administrative and policy environment.

The third essential element of the Community's strategy therefore relies on measures to promote institutional reform in the third countries - in the first place to facilitate the growth of external trade and investment; in the second place to advance institutional harmonisation and structural economic integration; and finally, to preserve security and stability in a sustainable fashion by promoting the general enjoyment of 'shared prosperity' and human rights.

These are essentially the three broad objects of the main reform and accompanying development undertakings supported through MEDA. As pointed out elsewhere in the report, respect for human rights has therefore been recognised as a supporting condition, as an accompanying objective, and as an outcome, but not as an object of the principal reforms themselves.

The EU's Security and Stability-Related Objectives including Promoting Respect for Human Rights

On the other hand, in the MED region the Community has been especially preoccupied with stability, or more precisely, with actual and potential instability in several Partner Countries. Much of this preoccupation is inspired by the fact that the MED region's problems spill over very easily into the Community itself.

In the Community's public and internal discourse on the region, instability is related to a serious deficit of democracy and the rule of law, and to a large collection of structural problems, including underdeveloped and dysfunctional public institutions and public policy, weak and underdeveloped civil societies with little political and economic space to develop, serious internal social and regional inequalities and governmental neglect thereof, and above all, economic stagnation, autocratic regimes, and corruption.

Poor standards of respect for human rights are seen as both a cause (civil and political rights) and an inevitable outcome (economic, social and cultural rights) of the aforementioned structural problems, and a key aspect of their destabilising potential.

To quote from an early draft of a Common Strategy Plan (CSP) for one of the MEDA Partner Countries:

'Tough security measures and internal divisions among the opposition have preserved political stability. However the government's reluctance to sponsor substantial political reform or to allow the opposition real access to the democratic process could provoke more social unrest in the future; it has certainly led to democratic apathy.'

How *governments govern* in the MED region is in fact of vital interest and great concern to the Community, and especially the Member States on its southern tier,

owing in large measure to the Community's awareness of the disturbing impact on Europe of the problems and unrest that can and have arisen when states in the region are not governed well enough to prevent their outbreak.

However, owing to the resistance of most of the region's sitting governments to democratisation, low levels of respect for the rule of law and civil liberties prevail in many of the Partner Countries, and institutions of civil society are weakly developed.

Consequently, scenarios of orderly democratic reform that rest on the ability of a citizenry to exercise their right of recall, the foundation of both political rights and accountable governance, are viewed as improbable. On the other hand, insurrectionist scenarios are viewed as entailing destructive civil strife, the destabilization of the state and degradation of its institutions, and, possibly, the assumption of power by oppositionists inexperienced in government. Barring occasional fits of impatience, the EU has therefore been generally quite partial to a diplomacy that seeks to stabilise the position of sitting regimes whilst promoting a consensual process of reform.

Inspired by the Community's special sensitivity to the risk of instability in the MED region, and by its trade and investment-focused extension objectives, the Community has undertaken a massive effort to promote economic, fiscal and socio-economic policy reform, public institutional development, and public service and infrastructure improvements as a path to achieving economic growth, greater shared socio-economic prosperity, and political stability through co-operation and dialogue with the sitting governments.

The first overarching objective of such an effort would be to accomplish the transition of the Partner Countries' economies into bankable free market economies on a platform of free trade. The Community would offer direct budgetary assistance conditioned on Partner Country implementation of *structural adjustment* objectives agreed to with the Community in the context of programmes approved by the Bretton Woods institutions. Macro-economic balances would be improved. Fiscal and budgetary management and administration, including taxation, would be made more rational, efficient and equitable. Private property rights, including intellectual property rights, would be better protected. The state would withdraw from its extensive direct involvements in goods and services production, including banking, to make way for foreign direct investment.

In parallel to offering these incentives for structural and institutional reform, other elements of the Community's assistance strategy would support measures aimed at helping Partner Countries strengthen their public institutions and improve their public infrastructure and services. Still other elements of the Community's assistance strategy would help them alleviate structural poverty and offset the negative short-term fiscal and socio-economic impacts of structural adjustment and reform with a view to preserving social cohesion and political stability.

Finally, assistance would be provided to help promote greater space for democratic and pluralistic dialogue and develop the role of civil society *in a manner congenial to the above-mentioned aims*.

The achievement of economic growth under this scenario is envisaged as releasing further transforming forces. Expanded fiscal revenues would give the states and their governments more resources with which to improve the quality and inclusiveness of social and economic services and infrastructure, invest in health and education, alleviate poverty, improve the quality of the administration of justice, and so forth.

By succeeding in accomplishing what states are supposed to accomplish, the state, and its governing leadership, would gain greater popular legitimacy and approval and make an important contribution to the state's stability. This would improve the comfort level of its political leadership and reduce its resistance to further reform.

Sound economic and fiscal policies and administration, reinforced by the suppression of corruption, the protection of the most economically relevant civil rights and the sound administration of justice, would attract more private investment and bring more prosperity and stability.

The expanding benefits of free trade and its accompanying reforms should then induce all but the most autocratic of rulers to view with equanimity the emergence of independent and increasingly pluralistic *economic power centres*, generating additional fiscal revenue and social prosperity. The shared interests and interdependence of the governing authority and the private economic sector, each relying on the other, would motivate further liberalizing reform as a concession to the latter's needs.

Inserting some human rights language into this vision, it could be re-stated as: states must acquire the institutional capacities to adequately perform their primary function, supporting and protecting their population's exercise of their human rights, or they will fail. If the state fails, its people will suffer further denial of the entire range of their human rights.

To begin to undertake the political and societal development needed to succeed in broader human rights terms, the state must undergo the political and institutional development needed to succeed economically in a globalised system based on free trade. Governments will become more domestically and internationally accountable when they enjoy stability through shared prosperity driven by free trade, including with regard to their human rights practices.

The next step would be to motivate the governments of Partner Countries to undertake reforms in line with the vision outlined above.

The Preoccupation with Security and Stability: A Goal and a Constraint

The one assured common ground between the Community and each Partner Country would be their mutual desire to preserve the Partner Country's stability and security. A significant potential source of disagreement between them would likely arise from the two sides' differing views regarding the approaches to maintaining stability and security that were desirable, or even acceptable, on both economic and human rights grounds.

To promote reform, the Community would not be prepared to make demands on Partner Country governments which in the latter's eyes posed threats to their security or prosperity. Yet to promote its own security and prosperity, the Community would have to succeed in promoting a sufficient scope and pace of Partner Country reform.

From the Community's standpoint, the first and most essential objective to be accomplished was the implementation of Association Agreements bringing each Partner Country into the Euro-Mediterranean system of preferential trade. On the one hand, this would achieve the extension of the Community's sphere of advantaged trade and investment and serve as a stepping stone to the Partner Country's accession to the WTO.

On the other hand, the general social and economic benefits of growth and reform would moderate the scope and character of the threats to security and stability preoccupying Partner Country governments, as well as their manner of coping with such threats.

However, the Community would initially have to contend with the likely possibility that Partner Countries' governing authorities and their allied elites would feel that the very economic and fiscal reforms entailed in the transition to free trade posed threats to the autocratic foundations of their regimes' own stability, security and prosperity. In addition, Partner Country governing authorities might prefer to maintain stability without undertaking reforms, i.e. through corruption, clientism, patronage and systematic repression.

In this case human rights conditionalities on preferential trade with the Community would not be effective at overcoming this resistance to reform until the implementation of free trade had created a sufficiently strong appetite for and dependence on its continuation.

Direct budgetary support conditioned on structural adjustment measures would not be effective unless the anticipated benefits of expanded trade and investment, together with the value of the direct budgetary finance on offer, outweighed the anticipated costs of the reforms to the other interests and comfort of the Partner Country government.

The EMP's first basket provisions for political dialogue could theoretically come into play. However, establishing such political options independently of strong trade and aid leverage – via an 'expanded political role' for the EU in the Mediterranean region - would require that the Union's Common Foreign and Security Policy be conducted with considerably greater consistency, decisiveness and agility than has proven feasible to date.

The Community would therefore have to focus its limited aid and political leverage on the accomplishment of limited reform objectives concentrated in the spheres of economic and fiscal governance, where at least some of its MEDA Partner Countries desired the benefits of such reforms, and would welcome the Community's assistance in implementing them. In those cases where such economic and fiscal

reform was resisted, the Community would have to adjust its reform goals, cultivate the partner government's appetite for conditioned aid and help it build suitable absorptive capacity. This would entail proceeding gently and postponing attempts to apply particularly exigent reform conditionalities.

Should major Partner Country constituencies, including traditional opponents of the governing elite, be either ill-equipped or ill-disposed to participate in free trade-driven economic growth, or should growth aggravate urban-rural, rich-poor and traditional-cosmopolitan social gaps or generate labour rights abuses, aid measures to preserve social cohesion and political stability would come into play.

The poor quality and accessibility of social services would be improved. Poverty alleviation projects would target the most vulnerable, deprived, disadvantaged groups and regions. Sectoral structural adjustment budgetary support would support health insurance, educational and social welfare administrative reforms. In short, those who could not prosper would be offered a basic social safety net, while the Partner Country's public institutions and infra-structural endowments were shaped to fit, and help it succeed in, the role of economic and social rights guarantor.

Several economically-focused structural civil rights-related gains would be embedded in this transitional free trade-driven scenario in order to enable the Partner Country to attract direct foreign investment and mobilise domestic income-generating investment, two of the highest priority intermediate objectives of the EMP's second basket.

Structural adjustment measures would seek to strengthen the rule of law, transparency, and the effectiveness of key public institutions, including those involved in economic and fiscal administration and taxation. They would seek to promote the empowerment of an independent judiciary and build a culture of professional public service. They would seek to promote the disengagement of the state (and the governing regimes) from private goods and services production – starting with banking – and open them to direct foreign investment. These and other liberal reform measures would encourage the freer flow of information and greater respect for freedoms of speech, association and press.

The Commission, the European Union, and its Member States would keep the themes of civil and political rights active in their political dialogue with the MEDA Partner Countries. Meanwhile, projects promoting poverty alleviation and social cohesion would directly and indirectly contribute to the fuller *de facto* implementation of the affected populations' economic, social and cultural rights. Others, mostly focused on 'strengthening civil society', would contribute to the gentle *de facto* reinforcement of broader civil and political rights.

However, from discussions held with Commission staff it was not difficult to infer that establishing those rights as *entitlements* – assimilating the themes of poverty reduction and freedom into a rights-based platform of 'human person-centred' development in the MEDA – was seen as clearly more than the market would bear.

Rights and entitlements-based discourse focuses not on what the state and the international community do provide, but on what they *should* provide, and on disparities between actualities and entitlements. The problem is that, at least for the time being, too many of the MEDA Partner governments would only be comfortable in the role of unaccountable benefactors of their people.

This is not to say that the Community has not recognized the substantial differences in the state of political, social and economic development among its MEDA Partners. While the general parameters of the MEDA programme appear to have been set to correspond to the lowest common denominator of the Partners, country strategies and programming are tailored to each country. Progress is monitored and assessed. Conditionalities and programming are revised annually.

After the reforms and re-organisation of aid co-operation carried out by the new Commission beginning in 2000, budgeting is also revised annually on a country-by-country basis in light of each country's assessed performance in successfully absorbing project aid, concluding the negotiation of Association Agreements where pending, and, most importantly, satisfying the general and country-specific general and sectoral structural adjustment conditionalities as contracted with the Community.

In this connection, the Commission has indicated, most recently in its *Communication on the European Union's Role in Promoting Human Rights and Democratisation in Third Countries (COM(2001) 252 (May 2001))*, that the Partner Country's 'positive performance in implementing reforms in the area of human rights, democracy and the rule of law has been *'taken into account when deciding country allocation'* under MEDA¹². However, in late 2001, no systematic indication that this was actually being done could be found.

Opportunities have been taken at country desk level in RELEX, and in EuropeAid Co-operation to make references to human rights, along with 'participation', and 'women' in a number of project financing proposals other than those specifically aimed at strengthening civil society. However, in virtually all cases, such references have been weakly or not at all connected to the substance of the project, and its otherwise carefully spelled-out project particulars.

In short, *no systematic procedure or attempt to incorporate human rights concerns appears to exist*, including in any of the ways that will be described in the following sections, in either the programming (Country Strategy Papers and National Indicative Programmes) or implementation phases of the MEDA aid project cycle. This contrasts with the standard checklist of policy themes often found annexed to

¹² Quoted from the first action point listed in the 'Action Points Annex' to the Communication. See also *Preparing for the Euro-Mediterranean Foreign Ministers Meeting, Valencia 22-23 April 2002. Communication from the Commission, 13/02/02, SEC(2002)159 final*).

financing proposals indicating that the projects have been vetted for 'women' and 'environment'¹³.

As will be explained in the following section, something resembling a set of legal firewalls appears to have been created by design to enable the EU to carry forward the EMP with the MED Partner Countries, and the Commission to manage the MEDA programme, without any treaty-based mandate, and therefore with no duty to address human rights objectives or require any standard of respect for human rights on the part of the Community's Partner Countries.

The balance of this report will consider from a human rights perspective how this especially cautious approach has produced certain systematic deficiencies in the MEDA's management, from the drafting of Country and Regional Strategy Papers to the programming of aid. Certain of these deficiencies were found to unnecessarily diminish the relevance of the MEDA programme to the goal of promoting respect or human rights. Others were found to improperly result in a failure to provide against the possibility that MEDA assistance might actually cause injury to human rights.

The major reforms of its aid co-operation management launched by the Commission over the past year, pursuant to the Commission's *Communication on the Reform of the Management of External Assistance* (16 May, 2000), are geared to making 'significant improvements in the quality and timely delivery of projects while ensuring robust financial management and increased impact of EU external assistance'. They are also geared to reinforcing the 'consistency' and 'coherence' of the Community's aid programmes.

It is therefore reasonable to expect that the reforms will also take into account recent developments of Community policy which mandate the incorporation of human rights concerns into the Community's programming and implementation of MEDA assistance.

¹³ Technically, this omission appears to result from the particularly cautious manner in which the objective of 'promoting respect for human rights in third countries' was incorporated into external EU policies under the Treaties of the European Union and Community prior to the Treaty of Nice. The Treaty of Nice was signed 26 February 2001, several months prior to the finalisation of the MEDA CSPs and NIPs by RELEX, but has not yet completed ratification by the Member States



THE COMMUNITY ACQUIS: PUTTING MEDA IN A HUMAN RIGHTS LIMBO?

The Community, and the Union, are defined and held together by the *acquis communautaires*: the body of laws and regulations that govern all Community decision-making and actions carried out within the common policy spheres established under its three 'pillars': the common market, common foreign and security policy, and justice and home affairs.

Anchored in the Treaties of the Community and the Union, these *acquis* both prescriptively and restrictively define what the institutions of the EU, the Community and the Member States *must* do, *should* do, and *may* do under common policies, as well as how those common policies may be created. Maintaining the coherence and consistency of all policies, as well as ensuring their *coherent, consistent* and *correct implementation*, i.e. upholding the rule of law in the Community, is also part of the Community *acquis*, and is the responsibility of the Commission as the 'Guardian' of the Community treaty.

Bearing in mind that the Community can only do what it has duly authorized itself to do, it is also the case that the requirements of consistency and coherence mean that *acquis*, especially intrinsically cross-cutting ones like 'promoting respect for human rights', once established in policies with a limited scope of application, begin to introduce constraints and new requirements, and instigate adjustments, in the way the Community conducts external relations under the Union's first pillar across regional, thematic and sectoral boundaries.

If all *acquis* must not be served in all policies, *none can be disserved or actively circumvented when they would reasonably apply*. These are therefore fair tests to apply in respect of the Community's human rights-related *acquis* and the implementation of the MEDA regulation.

What, then, are the Community *acquis* relevant to 'respecting human rights' or 'promoting respect for human rights'; how, if at all, have they shaped the design and implementation of the MEDA programme? What developments of the Community *acquis* have recently occurred; and how might these propel changes in the MEDA's operation?

1. Regarding: The Duty to Maintain Respect for Human Rights

Article 6 (ex Article F) of the Treaty of the European Union states:

'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the

constitutional traditions common to the Member States, as general principles of Community law'.

This affirms at the minimum a 'duty to maintain clean hands' as far as universal human rights are concerned: a duty to ensure that no policies or measures of the Union, including those carried out under Community co-operation programmes, cause any unnecessary and unjustifiable injury to the human rights of all affected persons, nor facilitate their injury by third parties. In this regard, the applicable human rights standards are those set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Hence, both as the Guardian of the Treaties and as the agency directly responsible for implementing the MEDA pursuant to those treaties, the Commission is responsible for ensuring against any direct or collateral harm to human rights arising out of the design and implementation of MEDA programmes and projects. It therefore appears clearly remiss in failing since 1996 to establish any vetting mechanism for this purpose.

Moreover, under MEDA bilateral project financing protocols and memoranda, the Community in effect contracts the implementation of projects it finances to partner governments under a set of stringent uniform general conditions and project-specific special conditions, the violation of which gives the Community the right to suspend the project's or programme's operation, or the Community's funding thereof.

The Commission maintains oversight to ensure that those conditions, as well as the primary objects and purposes of the contract, are in fact satisfied. It is therefore remarkable that no thought was apparently given to inserting a conditionality clause in the contracts obligating both parties to carry out the agreement, irrespective of its object, in a manner that respected human rights. Viewed together with the absence of a vetting mechanism at the programming stage, the picture emerges of a Community institution that was placed under *no constraints* to operate a Community aid programme within the limits set by Article 6 of the Treaty of the EU as quoted above¹⁴.

¹⁴ By the end of 2001, amongst the Commission's re-organisation measures, AIDCO was preparing to de-centralise its aid administration and to expand the roles carried out within local Commission delegations in respect of project identification and implementative oversight. Plans for launching a process of human rights training for delegation staff were also reportedly under discussion. If these measures represent a belated acknowledgement of the cross-cutting nature of the commitment to maintain respect for human rights established in Article 6, perhaps they will be followed by the inclusion of an appropriate human rights clause in the general conditions or special conditions incorporated in MEDA project financing protocols and memoranda.

2. Regarding: The Commitment to Promote Respect for Human Rights in Third Countries

In its 'Resolution on Human Rights, Democracy and Development' of 28 November, 1991, the European Council affirmed that:

'respecting, promoting and safeguarding human rights is an essential part of international relations and one of the cornerstones of European co-operation as well as of relations between the Community and its Member States and other Countries'.

That Resolution would set into motion a series of developments shaping the Community *acquis* to accommodate each of the three distinct but sequentially ordered purposes to which it alluded: 'respecting' (i.e. maintaining 'clean hands'), then 'promoting', and finally 'safeguarding'.

Its first formal outcome was the incorporation of an article in all of the Community's external economic co-operation agreements defining '*respect for human rights and democratic principles*' as an '*essential element*' of those agreements.

This article would *provisionally* render the Euro-Mediterranean Association Agreements serviceable to each of these three purposes, starting with 'respecting', pending decisions to mandate the proactive objective of 'promoting' and the protective objective of 'safeguarding' through the elaboration of the *acquis* and their application to the EMP.

Common Foreign and Security Policy

In establishing a Common Foreign and Security Policy (CFSP), within the Union's 'Second Pillar', Article 11 of the EU Treaty of Amsterdam (as amended in 1999), states

'The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:

[...]

- *to promote international co-operation;*
- *to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms'.*

The latter objective presumably applies to the first Barcelona basket carried out under CFSP, but arguably not to the second basket, free trade, the related agenda of economic and fiscal institutional reform, and their 'measures of accompaniment', where MEDA sits.

This reluctance to commingle human rights policies and trade-related policies is hardly surprising, since European Union policies do not regard the exercise of

human rights as the principal goal of economic life nor as its principle enabling condition. Rather, the principal goal of economic life is held to be the creation of private and public wealth in what has become a globalised system of free trade and investment.

However, for the creation of wealth to be translated into 'shared prosperity', the policies and institutions of the Community and the EU must promote the creation of wealth with due regard for human rights (public and private 'clean hands'). To maximise the general enjoyment of human rights and promote security and stability, wealth should also be utilised in accordance with egalitarian policies that preserve social cohesion by respecting the economic, social and cultural rights of less-advantaged groups.

In light of the above, what sense can be made of the conditionalities concerning respect for human rights and democratic principles incorporated in all Euro-Mediterranean Association Agreements and other trade-related agreements concluded since 1995?

The first part of the answer has to do with the Community's need to satisfy the requirement of 'clean hands' as evoked by Article 11 of the Treaty of Amsterdam, mentioned above. The Community must require that its agreements with third states be implemented in a manner that reserves the Community the right to disengage from any agreement or obligation of co-operation in order to avoid participating in a *de facto* violation of human rights.

The second part of the answer is that third state practices that disrespect human rights and democratic principles can also cause serious harm to other EU and Community interests, as well as outrage amongst the European public:

*'Corrupt and autocratic governments [...] generate conflict and instability in their region [...] Conflict and instability is costly in human terms. It is also likely to bear upon the EU as the world's largest aid donor, and a favoured destination for immigrants'*¹⁵.

The Community has reserved the right to respond to the persistence of such destabilising practices by suspending or terminating its agreements with the offending states in order to deter and repress their continuation, and in order to satisfy the European public that the Community has, and is prepared to use, such an option in cases of serious and persistent human rights violations.

Development Co-operation

In the Treaty of Amsterdam (the amended Community Treaty of 1999), the Community is charged with promoting respect for human rights in third countries specifically through development co-operation. Specifically regarding development co-operation, Article 177 of the EC Treaty says:

¹⁵ Joint Statement on EC Development Policy, Council and Commission, 10 November 2000.

'1. Community policy in the sphere of development co-operation, which shall be complementary to the policies pursued by the Member States, shall foster:

- *the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them;*
- *the smooth and gradual integration of the developing countries into the world economy;*
- *the campaign against poverty in the developing countries.*

2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.

3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations'.

Given the strict constructionism that characterizes the Commission's application of such *acquis* as a 'public servant' and as a 'Guardian' of the Treaty but not as a policy-maker, the Commission has been required as well as empowered to exercise its executive role in the sphere of development co-operation in a manner that *'shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms'*.

Development co-operation policies *must* foster sustainable development, and in the second place they *must* contribute to building democracy, the rule of law and respect for human rights.

It is also the responsibility of the Commission to design, propose and implement the Community's development co-operation policies in keeping with the 'commitments' and 'objectives' that the Member States' have approved in the context of the United Nations and other competent international organisations, i.e. both the macro-economic and good governance policies championed by the Bretton Woods institutions and the human person-centred principles of development policy championed by the UNDP.

However, outside the sphere of development co-operation (and pre-accession policy) the Commission has not as yet recognized any such empowerment or duty.

Indeed, the preamble to the MEDA regulation of 1996 makes it clear that while many of its objectives and much of its methodology might be drawn from the Community development co-operation policies, the MEDA could not be considered development co-operation *per se*:

'[Whereas] the measures under this Regulation go beyond the framework of development assistance and are intended to apply to countries only in part classifiable as developing countries; whereas, therefore, this Regulation

cannot be adopted other than on the basis of the powers provided for in Article 235 of the Treaty [...].

In light of the above, it is fair to say that until recently the MEDA was excluded, at least formally, from the ambit of the Community *acquis* that tightly join development co-operation policies to the goals of promoting democracy, the rule of law and respect for human rights in third countries.

However, following the formation of the new Commission, repeated experiences of MEDA and other Partner Country failures to achieve, or even credibly embrace, the economic policy and performance goals of their partnerships with the Community, appear to have inspired second thoughts as to the wisdom of maintaining this exclusion.

Persistent advocacy by European parliamentarians and civil society human rights advocates, reinforced growing European perceptions that the Community's trade and investment-related objectives, and their security and stability-related interests in the MED region and elsewhere risked being defeated by Partner Countries' obstructive and socially destabilising styles and cultures of governance.

In the Treaty of Nice (signed 26 February 2001 but still undergoing Member States' ratification)¹⁶, the EU committed itself to '*extend the objective of promoting the respect for human rights and fundamental freedoms, from development co-operation to all forms of co-operation with third countries, including economic, financial, and technical co-operation*'.

In light of the mandatory incorporation of this objective into all Community co-operation programmes, the Commission would be empowered, and indeed obligated, to make the necessary adjustments in its management and implementation of MEDA. One might therefore have expected to find the objective of promoting respect for human rights already incorporated in some recognizable manner in the MEDA Country Strategy Papers and National Indicative Programs - in human rights impact project vetting procedures applied in EuropeAid Co-operation and in the contractual conditionalities under which assistance is provided to Partners under MEDA.

However, while strong indications of Community policy reform-in-progress do exist, and the Commission was indeed undergoing a major re-organisation that should anticipate the entry into force of the Treaty of Nice, no indication of reform were yet evident in the CSPs (a six-year time horizon) and the NIPs (a three-year time horizon) that were finalised in early 2002.

As was pointed out by staff of EuropeAid Co-operation's Directorate B (currently responsible for MEDA in all phases of project implementation starting with project

¹⁶ Article 181bis TEC. '*Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms*'.

identification), project implementation must strictly follow from the CSPs produced by RELEX, following consultation with and approval by the Member States.

Comments by RELEX staff confirmed that in this most recent CSP and NIP preparation cycle, no systematic attempt was made to incorporate new development policy principles or new emphases on human rights was made. Indeed, it was sometimes pointed out that the Commission had not yet been 'empowered' to do so!

Since the Commission will in fact be "empowered" when the Treaty of Nice takes effect, it will soon have to resolve upon a way to mainstream human rights, starting with the principles applied in the Community's Development Policy, into the MEDA programme.

RELEX already has a human rights network in operation, but it remains unclear how and if RELEX's in-house human rights expertise might be enlisted to ensure that the overall conception of country strategies is coherent and consistent with the promotion of respect for human rights.

Staff of EuropeAid Co-operation are currently reflecting on the manner in which its Innovation Unit might address the mainstreaming issue in the context of the horizontal networking that has been implemented for like themes (e.g. 'refugees' or 'health') across geographic regions.

The 'Inter-Service Quality Support Unit' that has been operating in the Commission to ensure that all country strategies are coherent and consistent with Community policies and with each other may now consider whether MEDA country strategies are in fact coherent and consist with respect to the Community's human rights-related *acquis*.

On the other hand, as things now stand, in both RELEX and EuropeAid Co-operation, bureaucratic firewalls continue to separate the Commission's human rights project funding effort from other areas of assistance. Human rights continue to be treated as an accompanying objective, with its own spoken-for projects, rather than a mainstreamed crosscutting objective to be served in all assistance programme sectors¹⁷.

¹⁷ The new directions that have been signalled in the recent communications by the Commission on *'The Role of the European Community in Promoting Respect for Human Rights and Democratisation in Third Countries'* (see above), and on *'The Community's Development Policy'* (COM(2001) 381 final, Brussels, 3 July 2001), suggest how attention to promoting respect for human rights might and might not be expected to occur in the coming period, perhaps in connection with the upcoming annual assessment and revision of the CSPs and NIPs to be carried out by RELEX with the Member States.

Conditionalities

When the Community enters into agreements with third parties pursuant to the Treaties of the EU and EC and the policies they mandate, the Community *acquis*, and the need to ensure that all Community relations are transacted in accordance with them, necessitate the introduction of certain conditionalities into those agreements.

As the 'Guardian of the Treaties', the Commission's principal duty is to ensure that the Community Treaty and all agreements concluded pursuant to it are properly implemented by all parties. The incorporation of suitable conditionalities is therefore essential to 'empower' the Commission to fulfil its guardianship role properly. Conditionalities also give the Commission and the Council a right to inject the subject of the conditionality (e.g. respect for human rights) into the process of political dialogue mandated under all recent Community external co-operation agreements.

Three types of conditionalities are involved:

In the first place, agreements are made with third parties to accomplish some object and purpose. '*Hard*', or '*material*' conditionalities involve definite and therefore enforceable positive duties, the proper performance of which is *necessary* to accomplish the object and purpose of the agreements. In accordance with the law of treaties, the violation of such duties entitles the Community to defend its rights by taking unilateral measures, including the partial or full suspension and termination of the relevant agreements, if it so chooses.

In the second place, all activities that the Community transacts with third parties must *conform* to the mandatory norms and principles that govern the actions of the Community and its institutions themselves. '*Preservative*', or '*normative*', conditionalities concern duties that are established under the Community's agreements to satisfy the Community's need to ensure that their implementation is consistent with its *acquis* and does not entangle the Community in transactions that give rise to contraventions of Community law. They are 'cross-cutting' duties that establish conditions which must be satisfied in the course of implementing all elements of the relationship under the agreements.

To accomplish this, the cross-cutting duties in question must be explicitly tied to the right to take unilateral measures, including the partial or full suspension of the relevant agreements, should their improper implementation by a Community partner lead to such contraventions. The "human rights article" common to all of the Euro-Mediterranean Association Agreements concluded since 1995 establishes this type of human rights conditionality, inasmuch as it requires both parties to conduct their relations under the Agreements in a manner *consistent* with respect for human rights and democratic principles. No remotely comparable human rights conditionality was found to have been incorporated in the bilateral instruments under which the MEDA programme is being implemented.

In the third place, the Council's pursuit of *ad hoc* common policy objectives agreed amongst the Member States, but not mandated *per se* by the Community *acquis*,

may require that the Community's external co-operation instruments incorporate conditionalities suitable to being selectively invoked at the discretion of the Council in support of anticipated needs to take action through those instruments. '*Expedient*', or '*soft conditionalities*' involve duties that are not necessitated by the object and purpose of the agreements in question, nor by the Community's need to remain in compliance with its own law. No duty in law compels their application. Rather, they are principally tools of Common Foreign and Security Policy that provide the European Union with additional means of persuasion to be used as and when it recognises the need to do so.

Without overlooking the somewhat disreputable characteristics of soft conditionalities, it is significant to note that no provision for applying even such '*soft*' human rights conditionality was found to have been incorporated in the bilateral instruments under which the MEDA programme is being implemented.

This is not to say that the MEDA regulation does not contain clear human rights language and robust, but non-specific and therefore non-exigent allusions to a human rights teleology. This is also not to say that the Barcelona Declaration, the foundation of the multilateral EMP, does not contain similar language and teleological commitments. However, the MEDA regulation is only binding on the Community institutions, who then must ensure its proper implementation through the negotiation of suitable bilateral agreements - and the Barcelona Declaration is just that: a declarative instrument unenforceable by design.

The following chapters consider how three important recent developments of Community *acquis* may necessitate important changes in the manner in which MEDA assistance is programmed and implemented by the Commission.

With the completion of Member States' ratification of the Treaty of Nice, the objective of promoting respect for human rights in third countries will become a mandatory or '*essential element*' of all Community external assistance programmes including MEDA.

The treaty-based requirements of '*consistency*' and '*coherence*' within and between Community policies will mean that the human rights and '*human person-centred*' imperatives of the Community Development Policy, along with the entirety of that policy, must be recognised as applicable to all Community external assistance programmes which incorporate poverty reduction objectives, including the MEDA programmes.

The Commission's responsibility to conserve and safeguard the proper use of the Community's own resources will now extend to protecting Community aid investments from being wasted and diverted from their intended purposes as a result of the autocratic and corrupt governance and negligent and abusive human rights practices of Partner Country governments.

These developments should, at the very least give rise to the incorporation of '*preservative*' and possibly '*hard*' human rights conditionalities in some if not most of the MEDA financing instruments. They should also spur the creation of mechanisms

within the Commission to ensure that MEDA programming and project execution is carried out consistently with the above-mentioned imperatives and their supporting conditionalities.



DEVELOPMENT AND HUMAN RIGHTS: A SHARED AND SHAREABLE VISION

'Poverty eradication without empowerment is unsustainable. Social integration without minority rights is unimaginable. Gender equality without women's rights is illusory. Full employment without workers' rights may be no more than a promise of sweatshops, exploitation and slavery. The logic of human rights in development is inescapable'.

Mary Robinson, United Nations High Commissioner for Human Rights¹⁸.

Initial Concepts

In its Human Development Report for 2000 the UNDP states an obvious truism:

'Human rights and human development share a common vision and a common purpose – to secure for every human being, freedom, well-being and dignity.' In other words, development and human rights are inextricably linked through their shared aim of guaranteeing to everyone a dignified and meaningful existence. The more developed a human being, the greater their capacity to effectively exercise their rights. That is not to say that development is a precondition for the holding of rights – these are entitlements that are inherent in all persons to the same level and extent regardless of capacity. Merely that the more access to goods and services a person has, the greater the likelihood that they will be able to enjoy the fullest range of rights to the greatest extent possible. Further, where they cannot obtain access through their own efforts there is a role for the state to assist them. In turn where the state itself is still developing its own economic and institutional capacity to provide for its people wealthier states either alone or in concert, as in the case of EU, have a role to assist'.

Hence, although development has traditionally been cast as a collective good, it is important to recognise that it is firmly rooted in the rights of individuals.

However, this realization has only emerged recently. For at least the first three decades after the introduction of development aid in the late 1940s most institutional donors (including the UN) and even many NGOs did not recognise the value of conceptualising any link. In fact it has only been the last decade which has witnessed any sustained commitment at the international level to promoting the integrated approach with the series of international summits¹⁹.

¹⁸ Quoted at <http://www.unhchr.ch/development/>

¹⁹ All of the world conferences on the environment (Rio, 1992); human rights (Vienna 1993); population (Cairo, 1995); social development (Copenhagen, 1995); women (Beijing, 1995) recognised the right to development and its fundamental importance in guaranteeing other rights.

At the same time human rights activists did not make the link between poverty and repression, concentrating their energies on civil and political rights violations rather than denial of economic and social rights. Hence the narrow remit of Amnesty International and many of the leading human rights NGOs that followed it.

In retrospect, such a failure now seems odd, if not bizarre, given the basis on which the modern international order was created. The original UN Charter had three fundamental aims: peace, development and human rights, which it explicitly links together in Article 55. The Universal Declaration of Human Rights (UDHR) and the two International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR) underpins all other rights with the right to self-determination (which includes the '*right of all peoples to freely pursue their economic, social and cultural development*')²⁰ as well as stressing the importance of mutual responsibility²¹ and assistance²².

However, it took until 1986 before the UN explicitly recognised that a right to development existed and that it played a crucial role in guaranteeing other rights²³. Even then it failed to incorporate it into a binding treaty.

It is clear that even before the more explicit shift of the late 1990s much of development policy and practice implicitly adopted a rights approach. Examples include the International Development Targets towards poverty reduction which are derived from UN human rights activity and the World Bank's Poverty Reduction Strategy papers' focus on economic, social and cultural rights. However, the last few years have witnessed a sea change amongst international agencies as to their stance on the issue. In particular, the UNDP has now placed the interdependence of human rights and development at the centre of its programming activity.

In terms of implementation, human rights and development share many commonalities: a holistic approach to dealing with concerns, an emphasis on performance targets and accountability and the belief in international partnership²⁴. At the micro level, history has demonstrated that if development projects are to be successful they require the genuine participation of all effected stakeholders – in particular the beneficiaries – who must therefore be able to exercise their civil rights of free expression and association. At the macro level, donor agencies have increasingly realized that programmes promoting good governance and the rule of law are vital in creating the type of environment in which the benefits of social programmes can reach the most vulnerable:

²⁰ Common Article 1 of the ICCPR and ICESCR.

²¹ See for example Article 29 UDHR.

²² Article 2(1) of the ICESCR talks of realization of economic and social rights through international assistance and co-operation, especially economic and technical', whilst Article 11 refers to 'international co-operation' to guarantee people an adequate standard of living.

²³ See UN Declaration on Rights to Development (adopted by General Assembly resolution 41/128 of 4 December 1986).

²⁴ Further see ODI Briefing *What Can We Do With a Rights-Based Approach to Development?* (1999, London).

'Development is unsustainable where the rule of law and equity do not exist; where ethnic, religious or sexual discrimination are rampant; where there are restrictions on free speech, free association and the media; or where large numbers of people live in abject and degrading poverty. Similarly, human rights are enhanced when gender equity or poverty reduction programmes empower people to become aware of and claim their rights'²⁵.

Sustainable development can guarantee rights for future generations and in so doing have an impact on the enjoyment of human rights that stretches beyond contemporary concerns. Furthermore, as a right with collective aspects it underlines the mutual responsibility and solidarity of the human rights concept instead of the rampant individualism that has dominated the Western paradigm.

Human rights in their turn provide a clear ethical and objective framework against which development projects can be assessed. They have universal applicability and are politically neutral. At the same time they are broad enough to encompass different political and economic systems as well as divergent religious and cultural traditions. In the case of the MEDA partnership, almost all of the EU Member States and the Med partners have ratified the six major UN human rights treaties, together with their respective regional instruments where appropriate.

The fact that it took the international community more than 30 years to recognise these links is more a testament to their strength than their weakness since the reasons were largely political rather than intellectual.

Added Value of Human Rights: Normative Level

All development organisations clearly operate within normative frameworks, either implicitly or explicitly. However, by adopting a human rights approach to their work they adopt the added value of a global legitimacy. Specifically a number of key normative principles can be derived from human rights with regard to the promotion of sustainable development. These fundamental cross-cutting principles are non negotiable and *sine qua non* in any impact assessment.

Firstly, *rights are universally applicable to all holders and under all circumstances*. This does not mean that implementation must not have regard to different cultural sensitivities and traditions. However, it recognises that if a state has ratified a human rights treaty then it is obliged to uphold the standards contained therein for all those entitled to its protection unless it has made a specific reservation to the contrary.

Secondly, *all rights are indivisible and interdependent*, recognising that all are of equal worth and mutually reinforcing. The Final Declaration of the Vienna World Conference on Human Rights (1993) underlines this by stating that developing countries are not allowed to deny civil and political rights to their citizens by declaring

²⁵ UNDP policy document *Integrating Human Rights with Sustainable Human Development'* (1998).

that basic economic and social needs take priority²⁶. Implicit in this principle is the need for beneficiaries to exercise their right to genuine participation throughout the development project process.

Thirdly, *all rights must be guaranteed without discrimination* either as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status²⁷. This is further underscored by the elaboration of two of the six major human rights treaties, which focus specifically on discrimination: the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention on the Elimination of Racial Discrimination (CERD). These have been ratified by all members of the EU and all MED partners with the exception of Turkey (CERD) and Syria (CEDAW).

Fourthly, *to secure other rights the enjoyment of certain instrumental rights are vital*. These include the right to free expression and association implying genuine participation and inclusiveness and the right to information implying transparency throughout the project process.

Finally, *human rights implies accountability enabling the victims of rights violations to secure redress*. This principle can be extended to poorly planned and/or executed development projects that result in detrimental loss for either the intended beneficiaries or third parties. The issue is then whether such victims are able to seek redress from international donors due to a lack of appropriate mechanisms or standing.

Progress at the Global Level

From its inception, the United Nations affirmed the importance of human rights and development in guaranteeing peace and stability²⁸ and for the need for international co-operation to achieve those goals²⁹. The conceptual link was given even greater force with the elaboration of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. Both contain a common Article 1 which in guaranteeing to everyone the right of self-determination equates this with the right to economic and social development and thereby implicitly the right of developing countries to seek assistance from the developed³⁰.

The same year that the Covenants were promulgated saw the establishment of the UNDP, reflecting the increasing concern at the international level with the provision of development aid. However, apart from some General Assembly resolutions³¹ this

²⁶ See paragraph 5.

²⁷ See for example Articles 2(2) ICESCR and 2(1) ICCPR. Article 2(1) of the Convention on the Rights of the Child also includes disability.

²⁸ Article 55 UN Charter.

²⁹ Ibid. Article 56.

³⁰ See also Article 2 ICESCR.

³¹ See GA Resolutions 2077 (XX) of 1965 and 2542 (XXIV) of 1969 elaborating a Declaration on Social Progress and Development.

increased activity did not herald any acceptance that human rights concepts had any part to play in development. UN agencies saw the Basic Needs Strategy (BNS) as the answer to the perceived failure of the trickle down theory. Instead of merely hoping that the benefits of economic growth would trickle down to the poor BNS would fulfil their essential needs ensuring equal access to public goods and services.

Clearly BNS encompassed more than just basic material needs of food, water, shelter, etc., but also those goods such as healthcare and education which enabled people to lead dignified and meaningful lives in peace and security. Moreover, it signalled a shift away from large-scale development to more appropriate grassroots projects involving basic education and primary health care. However, it was criticised for its vagueness and low aspirations.

At the beginning of the 1980s, leading exponents of human rights, particularly those working on economic and social rights, began to argue that a rights-based approach offered a clearer and more inclusive vision for implementing development projects³².

At the forefront of this new thinking was the idea that there was a need to move away from envisioning development as merely being about either growth or welfare but about individual entitlements to goods and services coupled with the need to enhance the capability to make free and informed choices³³.

Rights provided the vehicle to exercise these entitlements through corresponding obligations. Hence it was possible to argue that issues such as poverty and hunger could be brought within the human rights paradigm and that the definition of 'freedom' should be expanded to encompass economic and social concerns³⁴. Whilst the scope of this report cannot explore all the different aspects of these theories, it is clear that this thinking had a profound impact on the development movement during the late 1980s and early 1990s. Agencies such as the UNDP and the World Bank shifted their approach away from solely economic growth and basic needs to focus on the individual as a rights holder. Above all it recognised that human development is an integral part of enhancing certain capabilities which people need to live meaningful lives.

The advantages of such an approach are clear. Human rights can provide a comprehensive and clear set of ethical standards by which progress can be measured and more enforceable claims for individuals: to have a right to health care is far more compelling than simply to need it. In addition, in contrast to Basic Need Strategy, human rights by emphasising the importance of participation, non-discrimination and the indivisibility of rights recognises that true development cannot flourish in an environment of repression or powerlessness.

³² See Alston Human Rights and the Basic Needs Strategy for Development (1979; *Working Paper for Anti-Slavery*).

³³ See in particular Sen, A. K. *On Ethics and Economics* (Blackwell, Oxford 1987). For a good summary of Sen's work see ODI Briefing Paper *Economic Theory, Freedom and Human Rights: The Work of Amartya Sen* (November 2001).

³⁴ See Sen, A.K. *Development as Freedom* (OUP 1999).

The Right to Development

At the international level, an important staging post in the adoption of a more rights-focused approach to development came in 1986 with the adoption of the Declaration on the Right to Development by the UN General Assembly³⁵. Although it is not a treaty and therefore does not lay down any binding commitments it is a strong statement of intent enjoying increasing moral force with the passage of time³⁶.

The Preamble provides arguably the clearest and most explicit statement in an international document of the close nexus between development and human rights, arguing that to promote the latter requires the urgent and equal implementation of civil, political, economic, social and cultural rights. This is followed in Article 6 by an emphasis on non-discrimination whilst Article 8 details the broad range of economic and social rights: access to basic resources, education, health services, food, housing, employment and the fair distribution of income, together with the right to participation³⁷ particular that of women, which underpins development. The recognition that international co-operation must play its part in delivering these economic and social goods is repeated throughout the document³⁸.

One of the most concrete legacies of the Declaration was the establishment of a Working Group on the Right to Development. From the outset the Group has promoted the right to development as a vital entitlement in guaranteeing access to other rights.

However, despite its significance the only explicit reference to the right to development in a binding human rights treaty remains in the African Charter on Human and People's Rights which recognises that all peoples have the right to economic, social and cultural development, and that contracting states are under a duty, individually or collectively, to ensure the exercise of this right³⁹. In the context of the MEDA, of the North African Med partners who come within its ambit, Algeria and Egypt have ratified the Charter whilst Morocco and Tunisia have yet to accept its terms.

Nevertheless, despite the lack of institutional enforcement there has been a continued recognition at the international level that a right to development exists and is inextricably linked to other rights. The Final Declaration and Programme of Action of the landmark Vienna Conference on Human Rights in 1993 states that '*Demo-*

³⁵ The Declaration was adopted by a vote of 146 to 1 (the USA) with 8 abstentions (the Nordic countries except Norway, Israel, Germany, Japan and the UK).

³⁶ It is open to debate whether the Declaration has the status of customary international law.

However, even if the entire document does not enjoy such force, certain elements may well. See Rosas 'The Right to Development' p.249 in Eide, Krause and Rosas *Economic, Social and Cultural Rights: A Textbook* (1995, Kluwer).

³⁷ See also Article 2(1) on the human person as 'an active participant and beneficiary' of the right to development and (3) on the 'active, free and meaningful participation in development of all individuals'. Article 8(1) guarantees women an active role in the development process.

³⁸ See Articles 3,4 and 7.

³⁹ Article 22.

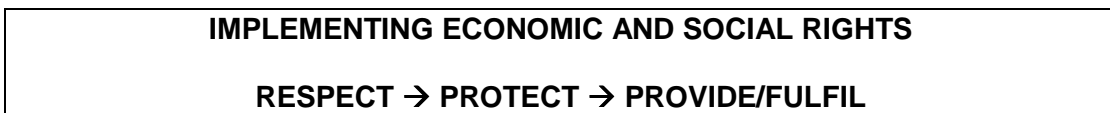
*cracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing*⁴⁰ and that '[...] the right to development, as established in the Declaration on the Right to Development, [is reaffirmed] as a universal and inalienable right and an integral part of fundamental human rights [based on] 'human person [as] the central subject of development'⁴¹.

The importance of Vienna is its universal acceptance by all states, including the United States. Although there is continuing debate on content and meaning there is now a consensus that the right to development is a valid concept mutually reinforcing other human rights⁴².

Holding Economic and Social Rights Violators to Account

During the same period the international community was recognising the increasing links between development and human rights work that was being undertaken by the UN Economic, Social and Cultural Rights Committee on providing a framework for states to implement their treaty obligations and for this to be assessed.

The result is a typology adopting the basic principle that implementation often begins with respecting people's own economic and social resources. At the next stage the state is obliged to protect those resources from incursion by third parties, e.g. private individuals or companies. Hence it is only where people are unable to provide for themselves through their own capabilities and assets that the state (and ultimately international donors) need to step in and make provision for them. This typology shown below is now the standard for assessing different level of state obligations:



At the same time efforts have been made to elaborate a means of assessing where violations of such rights take place. The traditional view is that only civil and political rights are capable of being violated and subject to some form of redress. This is reinforced by the fact that the main UN economic and social rights treaty, the International Covenant on Economic, Social and Cultural Rights, refers to 'progressive realization' of the substantive rights protected by it⁴³ rather than immediate implementation as implied by the corresponding Civil and Political Rights treaty.

However, there has been an increasing recognition that people can also have their economic and social rights violated and that the abuser should be held accountable.

⁴⁰ Paragraph 8.

⁴¹ Paragraph 10.

⁴² See also paragraphs 25 and 26 of the Final Declaration of the Copenhagen Social Summit 1995.

⁴³ See Article 2(1) ICESCR.

Currently there is no dedicated international mechanism available for victims to bring their complaints⁴⁴, making it difficult to put the case for effective enforcement.

In the absence of institutional mechanisms, scholars and lawyers have elaborated a conceptual framework which could also serve as an assessment matrix for evaluating the enjoyment of such rights in development programmes such as the MEDA. The approach takes as its starting point the fact that everyone is entitled to a minimum core aspect of a right: e.g. nobody should be denied access to basic shelter, education, health care, etc. Moreover, however big the cake for everyone in a country to share they must all receive an equal piece. In this respect, non-discrimination and equality are fundamental cross-cutting principles that should be implemented immediately rather than be subject to the progressive realization formula.

Building on these concepts, a group of influential human rights activists have produced a set of guidelines for identifying economic and social rights violations. Divided into acts of commission and omission these are an attempt to elaborate a framework for holding 'States or other entities insufficiently regulated by States' accountable for their deliberate actions or neglect. Whilst designed to have direct relevance for the UN ESCR Covenant, they clearly also have a wider applicability, if not legally then at least morally. The non-exhaustive list is reproduced below

VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Violations through Acts of Commission

- The formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural rights that is currently enjoyed;
- The active denial of such rights to particular individual or groups, whether through legislated or enforced discrimination;
- The active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights;
- The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realisation of economic, social and cultural rights for the most vulnerable groups;
- The adoption of any deliberately retrogressive measure that reduces the extent to which any such rights are guaranteed;
- Calculated obstruction of, or halt to, the progressive realization of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*;
- The reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.

⁴⁴ Although a complaints mechanism for the UN Convention for the Elimination of Discrimination Against Women recently came into force in December 2000.

Violations through Acts of Omission

- The failure to take appropriate steps as required under the Covenant;
- The failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant;
- The failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant;
- The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights;
- The failure to utilise the maximum of available resources towards the full realisation of the Covenant;
- The failure to monitor the realisation of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance;
- The failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right guaranteed by the Covenant;
- The failure to implement without delay a right which it is required by the Covenant to provide immediately;
- The failure to meet a generally accepted international minimum standard of achievement, which it is within its powers to meet;
- The failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organisations or multinational corporations⁴⁵.

Can such an approach be applied to a development programme such as the MEDA? The first step is to recognise that such programmes are subject to relevant human rights, both civil and political and economic and social: e.g. the rights to health care and services and information in a primary health care programme. This in turn creates relationships of accountability between the rights holders – beneficiaries and other affected individuals – and the duty bearers.

Traditionally, the bearer will be the state, but here the international donor also plays a role. Hence the next logical step is to argue that there should be some means of holding not just the state to account for its actions but also the donor. For many it is recognised that this will be a radical departure, but it is in line with the increasing belief within the human rights community that its reach must extend beyond the state to other entities such as multinationals⁴⁶.

It also re-emphasises the role that the international community has in supporting individual states in the implementation of economic and social rights as elaborated in Article 2 of the Covenant. Indeed clause 19 of the Maastricht Guidelines make clear that international organisations made up of Member States, such as the EU, are

⁴⁵ Source: Clauses 14 and 15 of the Maastricht Guidelines on Violation of Economic, Social and Cultural Rights (SIM 1999)

⁴⁶ See for example clauses 18 and 19 of the Maastricht Guidelines which discuss the role of non-state actors and international organisations in the violation of economic and social rights.

under a specific obligation to *'revise their policies and programmes to take into account issues of economic, social and cultural rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international institutions on their decision-making affecting economic, social and cultural rights'*.

The next is to produce some means of assessment for determining to what extent the particular rights have been enhanced by the project, or whether any negative consequences have flowed, and if so, whether violations have occurred. Sources can include judicial precedent in the case of civil and political rights (and to a lesser extent in the case of economic and social rights) since there is relevant case law at both regional and domestic level⁴⁷ complemented by other non-legal sources such as the guidelines above.

Drawing on these principles a proposed assessment matrix is shown below which is not far from much the same employed now in traditional development assessment tools such as the logical framework.

Correct layout of matrix

	Procurement	Decision making	Planning	Implementation	Monitoring	Evaluation	Impact
Right to Education							
Adequacy							
Accessibility							
Affordability							
Adaptability							
Participatory							
Right to Housing							
Adequacy							
Accessibility							
Affordability							
Adaptability							
Participatory							
And so on [...]							

⁴⁷ For example the Council of Europe's European Social Charter employs a collective complaints mechanism, whilst countries such as South Africa and India have an increasing amount of jurisprudence on economic and social rights.

Definitions

Adequacy: must be of such a standard to meet at least the basic needs of everyone intended to benefit from the programme.

Accessibility: must be designed to be accessible to all whatever personal circumstances (e.g. disability).

Affordability: service must be affordable to all whatever level of income.

Adaptability: must be culturally sensitive to needs of minorities.

Participatory: beneficiaries must have participated in all of the key stages of project process.

Comments

The matrix can be broken down into further sub-categories and each stage of the project assessed according to rights holders and with reference to a scoring system. In addition, each duty holder's obligations can be defined according to the appropriate level: respect, protect, and provide.

The Changing EU Approach⁴⁸

The EU's current development policy is anchored in Articles 11 of the EU treaty, and (as mentioned above) particularly, 177 of the Community Treaty. Article 11 requires that the common foreign and security policy should aim '*to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms*'. Article 177 requires that development co-operation, in complementing policies pursued by Member States, shall foster economic and social development, in particular of the disadvantaged, whilst contributing to the overall objective of Article 11. Together with the other international standards, they provide the benchmark against which the MEDA programme should be assessed.

This linking of human rights and development is, as in the case of the UN, a relatively recent concept. For the first 30 years of EU aid ⁴⁹ human rights were a marginal concern and only raised on a very ad hoc basis. In parallel to the UN, the EU overall development policy continued to be governed by a belief in the Basic Needs Strategy as the most concrete approach to managing the development process.

It was within the framework of the African-Caribbean and Pacific (ACP) region that a shift in direction began and the region has continued to be at the forefront of progress.

⁴⁸ This section draws on '*Human Rights Considerations in the Development Co-operation Activities of the EC*' by Simma, Aschenbrenner and Schulte p.571 in *The EU and Human Rights (1999) Alston (ed.) (OUP)*.

⁴⁹ The European Union's development aid policy stretches back to 1958, although its legal standing only dates from the Maastricht Treaty of 1992.

The Lomé III treaty of 1984 marked the first real attempt to incorporate human rights into development. However, even this only had brief references in the Preamble (and one other article) and human rights remained outside the overall policy framework. A more dramatic break came in 1989 with the drafting of Lomé IV. For the first time a major EU instrument explicitly recognised the importance of human rights in guaranteeing effective development⁵⁰. It then went on to detail a variety of economic and social rights in areas such as environmental protection⁵¹, rural promotion⁵², cultural development⁵³, education and training⁵⁴, advancement of women⁵⁵ and improved access to health care⁵⁶, although civil and political rights were not seriously addressed.

Two years later this approach was extended to all the EU's aid programmes. Following a memorandum from the Commission the Council passed resolutions in June and December 1991 which took as their starting point that *'[all] lasting development should be centred on man [sic] as the bearer of human rights'*⁵⁷.

10 years later they remain key statements of the institution's thinking on development. Human rights and democracy issues, and their observance in the recipient country, are essential elements in the formulation of the overall development policy making process. Moreover, although sanctions are retained for grave and persistent human rights violations or serious interruptions of the democratic process, they were not merely to be viewed in a negative light but to be actively encouraged through positive measures. Examples of positive measures that have and are being undertaken include the promotion of civil society, particularly NGOs, to strengthen pluralism; strengthening the rule of law through reform and establishment of new judicial institutions; promoting equal opportunities for vulnerable groups and economic and social rights. This last measure recognises that equal emphasis needs to be placed on both sets of rights.

However, the reality has often failed to live up to the rhetoric over the last 10 years, with many aid programmes tending to equate 'human rights' with civil and political rights whilst adopting a BNS approach to economic and social rights.

In addition, the Resolution recognises that without a certain degree of democracy development is not likely to be effective, whilst in turn there can be no democracy without respect for human rights and that democracy can not flourish without development: *'In short it is now the accepted view that these concepts are interrelated and interdependent and constitute equal pillars of development co-op'*⁵⁸.

⁵⁰ See especially the Preamble and Article 5.

⁵¹ Title I Lomé IV 1989.

⁵² Ibid. Art 49.

⁵³ Ibid. Arts 139-40.

⁵⁴ Ibid. Art 151.

⁵⁵ Ibid. Art 153.

⁵⁶ Ibid. Art 154.

⁵⁷ *Bull. EC* 6-1991.

⁵⁸ *Supra* n. 4, p. 576.

The two recent Communications by the Commission: *The European Community's Development Policy* by the Development DG (2001) and *The European Union's role in Promoting Human Rights and Democratisation in Third Countries* (8 May 2001) take this principle substantially further⁵⁹.

Constraints

Whilst all of the EU's aid programmes do now recognise the importance of human rights in their work, they do so to varying degrees. The most explicit support is found under the Cotonou agreement for the ACP countries. Similarly, the regulation for the provision of aid to the Asia and Latin American bloc (ALA) emphasises the important role that positive initiatives in relation to human rights and democracy can play as preconditions for real and lasting economic and social development⁶⁰. For the Eastern European countries benefiting from the Phare programme there are specific pre-accession criteria to full EU membership based on the need for stable institutions which guarantee democracy, rule of law and respect for human rights combined with a functioning market economy and economic stability⁶¹.

In contrast to other programmes MEDA has tended to focus more on the need for political stability⁶², arguably at the expense of human rights, despite the fact that the Barcelona Declaration makes clear that political stability within the Euro Med partnership is built on respect for human rights, democracy and good governance.

Furthermore, it is not clear how far partner governments in the region are genuinely committed to democracy and human rights, an essential precondition for positive measures to have a lasting impact. In the absence of a clear will to reform donors may be left with a policy of retrenchment confining support to civil society. The picture is further complicated by the continuing residual support for a culturally relativist approach to human rights within the region, and also to the fact that the fusion of human rights thinking and development strategies has not yet 'spilled over' to programming and implementation of EU economic assistance to the Mediterranean, i.e. the MEDA programmes.

In the next chapters, the report ventures into a more detailed analysis of main elements of these programmes: structural adjustment, social alleviation and civil society support, before concluding with an overall assessment of the main policy instruments regarding the MEDA programmes, the Country Strategy Papers and the National Indicative Programmes.

⁵⁹ Op.cit. for references.

⁶⁰ Article 2 of the ALA Council Regulation 443/92 [1992] OJ L52/1.

⁶¹ See also the Tacis programme covering the former Soviet Union/CIS countries.

⁶² See Article 2 of the MEDA Council Regulation (1488/96 [1996] OJ L189/1), which outlines political stability as one of the main objectives of the programme.



STRUCTURAL ADJUSTMENT: TRANSMITTING THE COMMUNITY ACQUIS THROUGH THE APPLICATION OF HARD CONDITIONALITIES

As the Commission points out in its Communication on 'The European Union's Role in Promoting Human Rights and Democratisation in Third Countries' (op.cit):

'States are primarily responsible for upholding human rights and fundamental freedoms. They are answerable to their citizens, the international community and the UN for failure to respect human rights in their countries. The most effective way of achieving change is therefore a positive and constructive partnership with governments, based on dialogue, support and encouragement. This should aim to improve mutual understanding and respect, and promote sustainable reform. However a prerequisite for success is that these states are genuinely ready to co-operate. The EU should pursue this approach wherever possible, while recognising that in some cases, the third country may have no genuine commitment to pursue change through dialogue and consultation, and negative measures may therefore be more appropriate. This is the basis on which the EU's essential element agreements, and the 'suspension clauses' operate'.

Within the EMP, 'Structural Adjustment Facilities' (SAF's)⁶³ represent the one group of bilateral aid instruments dedicated to effecting change through Partner Country compliance with 'hard' conditionalities.

On the website of EuropeAid Co-operation the Commission describes these aid (and policy) instruments in the following manner:

'Structural Adjustment Facilities (SAFs) consist of budgetary assistance unrelated to specific expenditures. They aim at supporting national measures for modernising the economy and facilitating transition towards the future Euro-Mediterranean Free-Trade Area'.

The Commission goes on to report that:

'Since 1996 fourteen MEDA Structural Adjustment Programmes have been implemented in seven MED countries involving the expenditure of 1,067 million Euro (675 million under MEDA I and 392 million under MEDA II). Eight other structural adjustment programmes are currently being implemented - in Algeria, Lebanon, Morocco, Tunisia, Turkey, and the West Bank and Gaza Strip totalling 597 million Euro'.

⁶³ 'SAFs' refer to both macro-economically focused general 'structural adjustment' direct budgetary support facilities and a newer variant: 'sectoral adjustment' direct budgetary support facilities.

'In 2000, structural and sectoral adjustment facilities accounted for 40% (292 million Euro) of all the MEDA program's bilateral co-operation projects. Other bilateral operations accounted for 47% (337.6 million Euro) and the payment facility for the Palestinian Authority accounted for 12.5% (or 90 million Euro) of the total commitments made under bilateral co-operation'.

SAFs are the only MEDA aid instrument that employ hard conditionalities (cf. Chapter 4) to directly promote institutional and policy reform. The object and purpose of all SAF financing agreements, their 'essential element', is the Partner Country's implementation of the specified reforms.

The structural adjustment efforts of the Community under MEDA I (1996 – 2000) were mainly focused on helping partners improve 'macro-economic balances': better managing the balance and composition of public revenues, public debt and debt service burdens, recurrent and non-recurrent public spending, GDP, GNP, current trade and national accounts, and similar.

The Community's preoccupation with preserving stability in the MED region appears to have led it to adopt a reasonably gentle and supportive approach to improving beneficiary country macro-economic balances (although there was no opportunity to investigate this question objectively in the course of preparing this report). By the time of writing Commission staff reported that in the Commission's view, the objective of macro-economic balance had been for the most part realised amongst the countries that had undertaken macro-economic structural adjustment programmes under MEDA.

Under MEDA II the Community's structural adjustment efforts have been more focused on sectoral reform initiatives. These have included efforts focused on banking reform, investment and security market regulatory reform, health insurance, health services and pension reform, educational reform, water supply, distribution and water resource administration reform, and fiscal administration reform.

The size of individual multi-year SAFs initiated since 2000 range from 40 to 150 million Euros, with the exception of several smaller direct budgetary support facilities concluded with Palestine.

Skimming the titles of tied aid projects carried out under MEDA yields a very large number of references to 'reform' and 'consolidation of reform', 'modernisation', 'strengthening', 'capacity building' and 'rehabilitation', all applied to Partner Country public institutions ranging from ministries to customs services to health insurance administrations to state information media.

These are not SAFs. However, many such tied aid projects supply goods and services, including technical assistance, intended to help build the infra-structural, technical and human capacities needed to operate reformed institutions and implement reformed policies effectively. Still other tied aid projects seek to mitigate the negative short term collateral social impacts of the structural adjustments and reforms being carried out. Hence, the amounts of Community aid applied to

accomplishing the objectives of the SAFs are probably considerably larger than the amounts of direct budgetary support delivered.

How Structural Adjustment Facilities Operate

After considering the situation in the Partner Country and the objectives of its government, reforms to be promoted by the Community are first outlined by RELEX in Country Strategy Papers (CSPs). In consultation with each Partner Country a programme of mutually-agreeable reforms is then finalised and incorporated into a three-year National Indicative Programme (NIP). Following the recent reform of the Commission's management of the Community's external assistance programmes, Member State delegates in the MED Committee review the CSPs and NIPs prior to their finalisation, and then EuropeAid Co-operation takes over programming responsibility.

Pursuant to the NIPs, SAFs are implemented by EuropeAid Co-operation following the signing of bilateral 'framework financial protocols' and 'budgetary support financing protocols'. The latter specify both the Community's financing commitment and the 'hard conditionalities', or 'performance criteria' to be satisfied by the beneficiary country.

The 'beneficiary' country undertakes to implement specific general or sectoral institutional reform measures in a manner and to a schedule agreed to with the Community, and in phase with Community disbursements. Conditionally on the Partner Country's performance, the Community undertakes to disburse financial grants in scheduled instalments ('tranches'), thereby augmenting the beneficiary country's general revenue and reducing its budgetary deficit.

Since the funds are streamed into the beneficiary country's general treasury account, no accounting for how the funds are spent is required. However, the Community actively monitors beneficiary country progress in implementing the agreed reform measures and suspends the disbursement of further scheduled instalments should progress fall short of the agreed 'performance criteria'.

Are Structural Adjustment Facilities Political Interventions?

Considering that the range of reform measures contracted by the beneficiary country often includes the amendment of existing legislation and the creation of new legislation, SAFs can easily be viewed as entailing rather substantial interventions in the political life of the beneficiary country.

Among the criticisms levelled against the structural adjustment programmes of the Bretton Woods institutions is *the circumvention of democratic principles* entailed in a private international organisation's, or any foreign power's, use of finance to induce policy reforms of the foreign power's own choosing. In the case of MEDA an impolitic response to this criticism might be that there is little operative democracy to circumvent, and that, in any event, the decision of the beneficiary country to

undertake the reform measures in question had been already taken with the Bretton Woods institutions.

On the other hand, Commission staff have maintained that it would be incorrect to characterise SAF grants as 'buying' policy concessions from reluctant governments. Rather, it was argued that they enable Partner Countries wishing to implement reform measures agreeable to the Community to do so without aggravating their budgetary imbalances.

However, the Commission's recent announcement of its intention to intensify its coordination with the Bretton Woods institutions - to the point of mounting joint structural adjustment operations and adopting a common set of conditionalities to gain 'synergies'⁶⁴ - suggests that the Community's structural adjustment engagements with at least some beneficiary countries may not be formulated with quite so much deference to the desires and preferences of the beneficiary country's government and populace.

Much in fact rides on the consensual dynamics involved: whether SAFs are the outcome of selective Community decisions to facilitate Partner Countries' accomplishment of their own chosen reform objectives; or whether SAFs are instruments for inducing the adoption and implementation by Partner Countries of reforms that the Community wishes to promote, by offering a suitable financial consideration.

How this question is answered has a bearing on the nature of the Community's accountability for the choice and formulation of the reforms and reform measures, including with regard to human rights.

If the Community has simply established a set of rules and a constrained universe of opportunities with the aim of stimulating reform initiatives and the formulation of reform measures chosen principally by Partner Country governments in dialogue with the Community, the Community's responsibility falls mainly in the area of 'clean hands': the duty not to participate in or facilitate any measure that contravenes, or has effects that contravene the Community *acquis*⁶⁵.

If, on the other hand, the Community substantially controls the choice and formulation of SAF-supported reforms and reform measures, subject to its gaining the agreement of the Partner Country against a proffered financial consideration, then the Community bears responsibility for ensuring that the *choice of the object and purpose of the reform*, as well as the *effects of the reform measures* carried out under the SAFs are consistent with all applicable Community *acquis*.

There is no question that the 'conditionalities' or 'performance criteria' incorporated in MEDA SAF and budgetary support financing protocols are 'hard' conditionalities

⁶⁴ As related in a Commission's Report to the MED Committee, June 2002.

⁶⁵ As noted earlier, Article 6 of the Treaty of the European Union establishes a *duty to maintain 'clean hands'* as far as universal human rights are concerned.

within the terms of those protocols. There should also be no question that they can only be regarded as the Community's conditionalities attached to the Community's fulfilment of its financing commitments.

When the Treaty of Nice comes into effect, Article 181(bis) will empower the Commission to apply MEDA structural adjustment and other direct budgetary support instruments to promoting respect for human rights in the Partner Countries. The Community's efforts in this respect need not be more exigent, but should not be less exigent than the efforts applied to promote and support institutional reform in the spheres that have been tackled. The second set of recommendations presented below outlines how this can be done.

Using Preservative Conditionalities

One of the axiomatic concerns associated with direct budgetary support is the fungibility of the resources provided to states. Direct budgetary support rendered against the implementation of 'good policies' cannot be separated in fact from the resources employed to carry out 'bad' policies which clearly violate human rights.

As argued earlier, Article 6 of the Treaty of the European Union already obliges the Commission to ensure that appropriate 'preservative' conditionalities are incorporated into MEDA direct budgetary support programmes. Firstly, the Commission must make the necessary provisions to ensure that the character and impact of the particular measures of reform carried out in fulfilment of the conditionalities attached to SAFs do not cause harm to human rights. Secondly, the Commission must make the necessary provisions to ensure that the beneficiary country's budgetary resources are not being used to finance practices which clearly violate human rights.

However, in the contractual instruments under which direct budgetary support measures are implemented under MEDA, no provisions exist at present that give the Community the right to suspend any or all direct budgetary support disbursements to states which engage in serious violations of human rights.

At the programming level (i.e. EuropeAid Co-operation) no managerial provision is made to systematically assess whether the general and sectoral structural adjustment measures mandated under SAF programmes are coherent with the human rights gains sought through development assistance under MEDA and consistent with the principles on which the Community's Development Policy is based,

Neither does the Community have a publicly transparent and effective mechanism to monitor and evaluate Partner Country performance with respect to their general duties to maintain respect for human rights under the Association Agreements. Hence, the Community is not yet in a position to properly exercise the rights of enforcement it must reserve for itself in applying preservative as well as hard human rights conditionalities.

Employing Hard Conditionalities

With the coming into effect of the Treaty of Nice, and in light of the human rights records of many if not all of its MEDA Partner Countries, the reasons to include human rights objectives, including judicial and legislative sectoral reforms, among the *hard conditionalities* targeted by SAF programmes will become all the more compelling.

On grounds of consistency and coherence, the Commission should now equip itself to ensure that the range of sectoral reform measures it is promoting through direct budgetary support are formulated so as to optimise their positive human rights dividends.

It will not be enough for the Commission to claim that human rights are being respected and served through the poverty alleviation, social cohesion building, and civil society support components of MEDA (as the next chapter will show).

It will not be enough to support institutional reform measures that 'do no harm' to human rights while neglecting the need to strengthen them. It will be necessary to incorporate respect for human rights as a cross-cutting condition to be satisfied in the programming of all even indirectly-related structural adjustment and sectoral reform measures.

The scope and pace of institutional reform the Community aspires to in the MED region, and the proportionality of the financial resources applied to promoting that reform should be re-considered. In particular the dividends to human rights of free trade-driven institutional reform and the dividends to free trade of human rights-driven reform should be carefully examined.

In this light the Community should consider a more ambitious programme of direct budgetary support finance with a distinct human rights institutional reform component.

While the promotion of institutional reforms through SAFs has thus far been undertaken in support of the beneficiary country's successful implementation of free trade and integration into the global economy, there is no apparent reason why the SAF instrument could not be adapted to support measures of institutional reform aimed at correcting serious deficiencies in the legal and de facto protection of human rights in the beneficiary country.

Economically-focused structural adjustment interventions can indeed promote respect for human rights, enable the fuller exercise of human rights and help defend people's human rights against the disasters of poverty, war and the failure of the state.

However, to place the legitimising mantle of human rights on SAF interventions, the Commission will have to make some discernible effort to ensure a *bona fide* correspondence between the structural adjustment and reform conditionalities

applied by the Community on the one hand, and benefits to human rights on the other. In this context it may have to scrutinise and possibly reconsider its decision to intensify the linkages of Community structural adjustment programmes with those of the Bretton Woods institutions, unless it can also get the Bretton Woods institutions to accommodate the Community's need to begin integrating its human rights-related external relations objectives - i.e. "respecting", "promoting" and ultimately "safeguarding" human rights - in the structural adjustment programmes it supports.



SOCIAL ALLEVIATION PROGRAMMES

From the inception of the MEDA, the EU recognised the need for a social programme to alleviate the negative impacts of economic transition. Dubbed 'social cohesion' or 'social cushioning' its significance to the success of structural adjustment progress was underlined by the Commission in its first major assessment of the MEDA in 1999:

'Strengthening of social cohesion and environmental integration is an important accompaniment to the process of economic transition, on the basis of a sustainable development approach. In order for structural economic reforms to be successfully applied and accepted there must be a consensus in society about the objectives and the methods of reform. This implies continued determined efforts to improve the standard of living of less favoured groups of society, in particular through well-targeted interventions. Moreover, the ongoing process of demographic transition implies a rapid growth of the labour force in the short and medium term. If the unemployment situation is not to deteriorate any further, and in order to improve the sustainability of the transition process, the social cohesion issue should be taken systematically into account in the design of transition strategies. No economic reform programme is sustainable in the long-term unless it is accepted by the people'⁶⁶.

At the same time this statement implies that the social programmes play a *derivative role* – an important 'accompaniment' - in supporting and sustaining economic transition rather than operating on their own rationale. It calls into question whether they can be deemed 'classical development'⁶⁷ as the Commission asserts. It is clear that they do have development modalities - working in areas such as primary health care, basic education and irrigation - and hopefully outcomes, but it is less clear whether they are part of a concerted development programme.

Further doubts are raised when the MEDA process is put under the microscope. As already outlined, recent reforms have seen responsibility for development project implementation transferred to EuropeAid, a subsidiary but autonomous agency within External Relations. However, determination of policy, in the form of drafting of Country Strategy Papers (CSP) and National Indicative Programmes (NIP), is retained within External Relations proper. Both are distinct from the Development DG which has no involvement in the MEDA process at all. Would this imply that foreign policy and security concerns take precedence over development considerations in the formulation of MEDA policy? If yes, it is not surprising that the recent policy statement by the Development DG on mainstreaming human rights into development programmes has had little impact on the MEDA!

⁶⁶ MEDA report 1999 COM (2000) 472, 20.12.2000.

⁶⁷ Euro-Mediterranean Partnership Information Note p.10.

However, whether social alleviation can be classified as a development programme or not, there remains the question whether it seeks to genuinely adhere to and incorporate human rights principles throughout its activity. Clearly, every project has an impact on the rights of those affected be it for good or ill. For the most part it is hoped that it will be beneficial, enhancing people's economic and social rights in areas such as health, education and job creation. However, do the Commission's present strategies and operations for the MEDA make it well placed to assess this impact?

The need for such an approach is further reinforced by the Community's own evolving policy strategy. For the past decade there has been a clear recognition that respect for and promotion of human rights should form the cornerstone of Community policies and particularly in relation to development activity. The two recent Commission communications to the Council and European Parliament⁶⁸ have taken this a stage further by reiterating the need for rights to be mainstreamed through external relations, including development.

The social alleviation programme, as with other MEDA activity, is divided into two phases. Under MEDA I from 1995 to 1999, social alleviation projects received 40% of total funds compared to 46% allocated to structural adjustment (16%) and support to economic transition and private sector development (30%). However, the extent of social cushioning varied tremendously across the region. Some countries, such as Algeria and Syria, received very little or no assistance, whilst others such as Egypt and Turkey received significant support outstripping their economic transition funding.

Given that the average implementation period is between 4 to 6 years it is still too premature to assess impact of many of the projects. Moreover, analysis is further hindered by restricted access to project documentation.

The following country-by-country analysis is based on available information – current CSPs and NIPs, MEDA reports and evaluations plus some limited individual project documentation.

MEDA I

Algeria

Social alleviation programmes were mainly focused on development schemes in the North-East region and the reform of vocational training. In addition, small grants were allocated for support of development NGOs.

Egypt

Between 1996-98 some €360 million was allocated to social programmes in Egypt under three broad areas: phase II of the Social Fund for Development (SFD) (€155 million, in collaboration with World Bank); an Education Enhancement Programme

⁶⁸ *The EU's Role in Promoting Human Rights and Democratisation in Third Countries* (op.cit) and *The European Community's Development Policy* (op.cit).

(EEP) (€100 million, in collaboration with World Bank) and a Health Sector Reform Programme (HSRP) (€110 million). The SFD is the major vehicle for mitigating the adverse effects of economic transition through job creation. The EEP aims to improve the quality of basic education through increased access to compulsory education, particularly for girls and under-privileged children, together with an improvement in quality through reducing inefficiency and ensuring the attainment of basic skills. The objective of the Government's 15 years HSRP is universal access to high-quality and cost effective services through a sustainable and efficient health and health insurance system with the initial focus being on primary care. Compared to many other countries this amounted to a significant commitment from the EU towards social policies reflected in the fact that it represented (slightly) the majority of funding allocation for the country at 53%.

Jordan

The programme concentrated on two main activities. Firstly, support for the restructuring and rehabilitating of Amman's water network through the financing of the management unit (€5 million) with the aim of significantly reducing water loss. Secondly, the Protection and Promotion of Cultural Heritage (€3.9 million) aimed at enhancing awareness and strengthening protection of Jordan's cultural heritage whilst further developing the tourism sector. Together they represented less than 7% of total commitments.

Lebanon

In December 1999 a €25 million grant supported the creation of a social and economic development fund to provide a safety net for lower income groups through micro-credit schemes, community development and social services. This represented less than 14% of total commitments.

Morocco

Between 1995 and 1999 the Commission approved a large and varied range of social alleviation projects, including rural water and sanitation, slum clearance in Tangiers, support for health sector management, basic education and employment creation, rural road building, participatory development of forested areas in Chefchaouen province, hydro-agricultural improvements and integrated rural development. Together this amounted to over 55% of disbursed funding.

Syria

Social alleviation was not seriously addressed if at all under MEDA I with less than 7% of funding going to the development of cultural tourism, support for the forest sector and an archaeological training programme financed through the global allocation budget.

Tunisia

Support involved an integrated rural development programme and employment creation. In addition at the end of 1999, the Commission committed another €40 million to support a major project to reform Tunisia's health insurance system. Together they represented just under 21% of total funding.

Turkey

Similar to Morocco, a varied range of projects were supported amounting to 63% of total funding - the largest proportion of social alleviation funding for any country – including the Jean Monnet Fellowship Programme, modernisation of education and vocational training, improving drinking water supply, reproductive health, urban community empowerment and promotion of women entrepreneurs.

West Bank and Gaza Strip

Social alleviation was predominantly based on meeting the recurrent costs of the Education Ministry (over 90%), with the remainder supporting the monitoring of 'Israeli colonising activities'. Support amounted to 18.5% of total disbursements.

MEDA I Summary

In 1998 a detailed evaluation of EU Development Aid to the Med region, including the MEDA programme, was carried out. Covering the first three years of MEDA I, the evaluation found a distinct lack of human rights focus. One of its key recommendations was the development of strategies on Governance, Human Rights, Democratisation and Migration as a matter of priority. It further emphasised that policies on human rights, democracy, poverty, gender, environment, trade and structural adjustment must all be linked and non-contradictory.

However, it appears that whilst some of the evaluations other recommendations in relation to process and structures were accepted and implemented, leading to the reforms of MEDA II, there is little evidence to suggest that the deeper policy issues were taken on board. The above analysis of CSPs and NIPs developed after the evaluation (but prior to the two recent Commission policy statements on human rights and development) demonstrate a continued absence of substantive and coherent human rights thinking in the programming exercise.

MEDA II

Algeria

The NIP sees as a main priority the need to develop human resources. It foresees a programme for the reform of the primary education system and continuation of the development programmes for the North-East, as well as support for development NGO activities. An important programme deals with the rehabilitation of areas 'devastated by terrorism'. However, programme design is not related to human rights, which are not mentioned at all.

Egypt

The CSP, whilst discussing the need to support balanced socio-economic and environmentally sustainable development, continues to make no reference to human rights either as guiding principles or operational benchmarks. There is only a passing reference to the progress made by the government on workers' rights and the low priority given to the rights of vulnerable groups such as child labourers, prisoners and homosexuals.

In the NIP the main proposed action comes under Social Development and Civil Society, which seeks to address 'the needs' of the most economically and socially vulnerable groups. This type of language suggests a return to the old BNS and this is borne out by the only very limited reference to rights throughout the programme description (see Civil Society below). Performance Indicators are not framed in terms of rights and tend to be quantitative rather than qualitative (e.g. numbers of street children in work; improvements in employment rates).

Jordan

By 2000 the Commission had recognised the need to target the most 'disadvantaged layers of the population' through support for micro-credit programmes and social funds. Assistance is focused on poverty reduction in disadvantaged areas and on disadvantaged groups with special attention being paid to the position of women. Again, given Jordan's severe water shortage, poverty reduction measures include access to potable water and water treatment. There is also a potential for reform of the health sector. However, the CSP makes only one brief reference to economic and social rights: the decision to preserve employees' rights following privatisation.

The NIP fares little better with no mention at all of rights within the priority area of social reforms and human resources. Specific objectives include the re-integration of the displaced work-force into the economic process following industrial modernisation, the social protection of the vulnerable, and reform and development of the higher education system. Again, human rights are missing not just from the project descriptions but also from any expected results and performance indicators.

Lebanon

The CSP notes the need to pay particular attention to the role of women in Lebanese society and the negative impact on their rights of various factors such as honour killings and low participation in public life. However, beyond this the economic and social analysis of the country is devoid of a rights analysis.

The NIP emphasises that the socio-economic balance is especially important in a country with relatively weak social institutions after 16 years of civil war, with particular support needed for the more vulnerable groups (such as those living in South Lebanon). In this regard special emphasis is placed on poverty alleviation, improved access to a range of resources - housing, credits, social security, infrastructure, education and health – for both rural and urban populations, gender issues, and to support for the environment.

However, despite the clear importance attached to achieving a socio-economic balance and helping vulnerable groups, this is not viewed through the prism of human rights, which warrants no mention at all in the document. The main course of action, the social and rural integrated development programme for alleviating poverty, whilst discussing the intended benefits for the target population of improved economic activity, jobs and higher incomes, concentrates on the technical aspects of the programme rather than the wider rights-based political dimensions. In this respect, performance indicators are again quantitative: e.g. number of new agro-industries established.

Morocco

Reflecting the long-term objective of accelerating sustainable socio-economic development and improving living conditions, the NIP states that socio-economic balance is one of the government's major priorities. Despite this the allocation has fallen to 32 percent and there is very little reference to rights, only discussed in relation to the protection of women's rights.

In addition to overall reform of the education and training system, a range of activities are envisaged, including promotion of employment, improving access to basic services, extending of health insurance and social welfare, involving women in local development processes, development of rural infrastructure in the Northern Provinces and combating desertification.

Syria

The CSP again makes no reference to economic or social rights, and the NIP is solely focused on public sector and economic modernisation and training at the expense of any form of social alleviation. Hence primary health care and education programmes have been replaced by those focusing on modernising the banking sector and supporting the expansion of the private sector. In this context it is not surprising to find no reference to human rights.

Tunisia

Making the most of human resources occupies a central place in the strategy with a secondary education sector. This represents about 20 % funding. The only reference to 'rights' per se is in relation to the funding of projects under MEDA Democracy. The Commission has apparently been highly satisfied by Tunisia's implementation of economic reforms and capacity to absorb assistance. However, there are indications that in the political dialogue the Commission is pressing Tunisia on human rights issues, while it is acknowledged that in the MEDA based relationship, human rights remains 'disconnected'.

Turkey

Programmes are grouped under the title 'Investment Support' rather than 'Socio-Economic Balance', perhaps reflecting Turkey's more developed economy. The aim is stated as helping Turkey to mobilise the investment needed to bring its industry and infrastructure up to Community standard. This focus on meeting EU accession criteria is carried through into human rights with the need to meet 'Copenhagen criteria' for EU membership.

The most substantial financial contribution from the Community to Turkey is the €100 million allocation to a project improving basic education. The project supports the reform to extend primary education for children age five to eight years. Moreover, substantial support will be given to implement educational reform in the 12 most disadvantaged provinces, aiming at the quantitative and qualitative improvement of education, in particular for girls and women.

Assistance also focuses on providing support for the country's poorest regions of Eastern and South-Eastern Turkey, in particular the Gap region with emphasis on

agriculture and animal production but also on social, environmental and gender aspects. These are not specified except in relation to women being a specific target group for training, technical assistance and educational support. The other main plank is the funding of micro-credit operations in rural and urban areas based on models developed in other countries. In addition EIB loans for environmental projects through interest rate subsidies. Taken together they amount to 25% of total funding.

West Bank and Gaza

Due to the outbreak of the Al Aqsa Intifada plans for MEDA support to the Palestinian National Authorities has not materialised in a Country Strategy Plan. A draft version made prior to the Intifada mentions Palestinian water rights and the fact that human rights abuses also occur in PA areas, but nothing else.

The NIP (also drafted before the Israeli incursion into areas under the Palestinian Authorities) elaborates that co-operation is directed at continuing support for Palestinian Authority initiatives with the aim of underpinning the Middle East peace process by way of fostering social and economic development and addressing the needs of the most disadvantaged layers of the population. Special attention will be paid to developing gender equality and enhancing the position of women. However, there was no reference to human rights at all.

Summary: Lack of a Human Rights Approach

Analysis of available documentation leads to the conclusion that programmes and projects are not conceived in terms of human rights. This is further reinforced by discussions with officials involved in implementation. The prevailing attitude appears to be that the EU is clearly engaged in human rights work in this area of social alleviation, but does not need to be explicit about it.

The failure to seriously address social alleviation projects in the CSPs and the NIPs in terms of human rights is a major omission seen in the light of a demonstrated surfeit of existing authority – not just at the international level, but within the EU itself – to enable the Commission to take a more proactive stance on human rights issues. Both the CSPs and the NIPs are the prime means for defining the EU's relationship with Partner Countries based upon an honest and transparent assessment.

Of course it is recognised that omitting to use the words 'rights' in programme and project documentation does not mean that they are failing to address rights issues, and successful implementation is leading to greater enjoyment by beneficiaries. Conversely, the mere inclusion of rights language does not of itself mean that the project will be any more successful in delivering benefits. However, omission is symptomatic of a failure by the EU to recognise that conceptualising social alleviation projects in human rights terms offers tangible and sustainable benefits.

What then needs to be done? First and foremost there needs to be a concerted effort to mainstream human rights through the programme process consistently and comprehensively. *This means more than just making oblique references to rights in project documents*, although even here the EU is clearly inconsistent.

Mainstreaming takes as its starting point the recognition that beneficiaries are not merely the passive recipients of aid, but have certain entitlements that both the Partner Country, as a party to various binding international commitments, and the EU, as a donor providing assistance to that country, are under a duty to fulfil.

Adopting the principles of indivisibility and non-discrimination, the human rights approach further recognises that, irrespective of their personal circumstances, all the people living within the Partner Country have the same entitlements to exercise, in this case, the full range of economic, social and cultural rights. In addition it requires that such entitlements must be progressively realized over time and that a lack of tangible progress can represent a violation of those rights.

This conceptual framework provides the basis for formulating overall strategies for fulfilling the rights to the greatest possible extent. Integral to the process is the need for a holistic approach that acknowledges the significance of the indivisibility principle. This means that projects should not be commissioned, designed and implemented in isolation, but form part of an integrated strategy to enable people to live dignified and meaningful lives. Beneficiaries' participatory rights guarantee their full and genuine involvement in the project process from initial consultations on their needs through to project design, implementation and evaluation.

Finally there should be a right to redress when things go wrong. This is predicated on two factors. Firstly, there must be a means of assessing the human rights impact on those affected by the project, not just the beneficiaries, but also third parties. Secondly, if there has been a negative impact there must be an accessible means of securing appropriate relief such as damages or restitution.

One practical way this might be achieved is through the establishment of a dedicated unit with the specific mandate of bringing greater synergy between the EU's human rights policy and its development work and to develop pilot projects aimed at implementing the mainstreaming of human rights into MEDA project cycle.

Such a body should be able to work with the newly decentralised MEDA country offices to develop strategies; training manuals and guidelines to make the operationalisation of human rights in the social alleviation programmes a reality. Reference should be made to the work of other international agencies, such as the UNDP and UNICEF together with NGOs, in order to both draw on their experiences and provide a consistent approach for local partners.



CIVIL SOCIETY PROGRAMMES

The third basket of the Barcelona Declaration (Partnership in Social, Cultural and Human affairs) explicitly promotes the involvement of civil society in the Barcelona process:

'[The participants] recognize the essential contribution civil society can make in the process of development of the Euro-Mediterranean Partnership and as an essential factor for greater understanding and closeness between peoples [...and] will encourage actions of support for democratic institutions and for the strengthening of the rule of law and civil society'.

Despite these express statements of intent, the promotion of civil society in the region has remained a problematic activity for the EU. This is reflected in the fact that the main support initiative, the MEDA Democracy Programme (MDP), was only instigated at the behest of the European Parliament and has therefore remained dislocated from the main MEDA initiative. Therefore whilst the main thrust of MEDA funding has focused on economic reform and accompanying social alleviation programmes, the promotion of human rights and democracy under the MEDA Regulation through civil society and other initiatives has remained a marginal and, in some cases, fractured activity.

It is true to say that the region has done relatively well receiving some 14% of the overall EU budget for human rights and democracy assistance between 1996 and 1999. However, this should be put in context, since it only amounted to no more than 0.3% of total aid to the region - less than two hundred times the amount allocated for economic transition and structural adjustment programmes (48%). Most individual country allocations amount to no more than 5% of total disbursements whilst some appear to be non-existent (see further below). For example in Egypt, democracy projects have received less than one hundredth of the funds allocated to the Social Development Fund. Civil society initiatives have very much played third fiddle to economic reform, social alleviation reflecting the EU's overall priorities for engagement in the region.

The reasons for this are clear. On the one hand, promoting civil society is a key mechanism for supporting the protection and promotion of human rights and encouraging greater pluralism and social inclusion. On the other, it risks instability in the Partner Country where civil society is the main vehicle for political change. The picture is further complicated by the potential danger of concentrating on civil society at the expense of tackling more difficult issues such as fundamental political reform⁶⁹. In the MED region with its relatively high number of closed and repressive societies such factors are particularly acute and have tended to result in the EU paying lip service to the idea of creating genuine plurality.

⁶⁹ See Richard Young, The EU and Democracy Promotion in the Mediterranean: A New or Disingenuous Strategy, in *The European Union and Democracy Promotion: The Case of North Africa, Democratisation*, Spring 2002.

The Cotonou agreement with the ACP countries does signal a renewed commitment to promote civil society by formally giving it an enhanced role in the ACP aid programme. Indeed the value of this approach for all development programmes is recognised by the Development DG in its recent cross-cutting policy statement:

'Implementation of an approach that encourages greater participation by non-governmental organisations, economic operators, social partners and the private sector must be encouraged in the context of the Union's relations with the rest of the world. It is of quite particular importance to reinforce the partnership with the NGOs, both in Europe and in the developing countries and to support capacity-building among non-State players in the Partner Countries in order to facilitate their participation in the dialogue on strategies and in the implementation of co-operation programmes [para 38]'.

However, enhanced participation and dialogue as a core principle for programming and implementing EU assistance has not yet translated into systematic practice within the MEDA.

The MEDA Democracy Programme (MDP) 1996-99

Established in 1996 under the Political and Security Chapter on the initiative of the European Parliament, the MDP was designed to complement the already established European Initiative for Democracy and Human Rights (EIDHR) begun in 1994 to fund positive initiatives on human rights, democracy and conflict prevention.

During its time as a discrete programme it received some 36 million euro to support 171 projects through subsidies to non-profit making associations up to 80% of total budget. These fell into five main categories: support for democracy, support for the rule of law, freedom of expression, freedom of association and the protection of vulnerable groups such as women and youth.

Examples of projects funded included workshops in Turkey to discuss women's issues, migrants' welfare and employment opportunities, a public education campaign on women's rights and a family counselling service by a woman's NGO in Jordan

An analysis of the breakdown of funding between 1996 and 1998 demonstrates the problems facing the programme. For example, whereas in the relatively pluralist societies of the Palestinian Authority and Morocco 28 and 16 projects were funded respectively between 1996 and 1998, in more restrictive countries the numbers were much fewer e.g. in Tunisia only three operations were funded, in Syria four, in Turkey three and in Egypt eight.

An evaluation in 1999 examining the impact of the first three years of the MDP did provide an overall favourable assessment, concluding that the initiative had correctly addressed the issues most relevant to human rights and democracy and that projects were mostly well designed and efficient and relevant to need. However, it also identified a number of major defects. In particular, the strategy to address

human rights problems in Tunisia and Syria needed a major overhaul; the funding of Egyptian projects failed to meet requirements. Generally the report criticised the failure to provide sufficient support for civil society and recommended a greater focus on 'bottom up' targeted strategies⁷⁰.

The MDP continued to be plagued by recurring implementation problems and in 2000 was integrated into the cross-cutting European Initiative on Human Rights and Democracy. Whilst this might have the benefit of providing greater coherence between the MDP and other human rights/democracy initiatives, it also has the danger of further distancing civil society initiatives from the main MEDA programme.

The EIDHR does have the added advantage that activities do not need to be agreed with the Partner Country enabling potentially controversial human rights projects (eg. those promoting civil society) not to be blocked. Still, more than ever MEDA assistance programmes tend to appear to be about economic reform and limited development activity rather than promoting human rights and civil society.

The European Initiative for Democracy and Human Rights (EIDHR) and MEDA II 2000 onwards

Although the absorption of MDP within EIDHR may well be a positive step, it is clear that the latter is not without its problems. Following an audit on the implementation of the EIDHR in 2000 the Commission recognised that it needed to have a more strategic, prioritised and longer-term approach in order to maximise its impact and effectiveness. In particular, there has been a lack of definition of human rights and democracy in country strategies – something which the MEDA continues to suffer from. Further projects have been too thinly spread over too many interventions limiting their impact combined with shortcomings on project management⁷¹.

Moreover, the future arrangement raises question of how easily the MDP/EIDHR will be able to operate within the overall constraints of the MEDA programme. In its communication of May 2001 on *'The EU's Role in promoting Human Rights and Democratisation in Third Countries'* the Commission notes the added value of the EIDHR complementing existing programmes such as the MEDA. In relation to civil society this means working directly with NGOs and other organisations rather than through governments and potentially without the consent of the latter. On a political level the Commission notes that the EIDHR can be used to protect potentially vulnerable civil society organisations vis-à-vis repressive governments through the provision of grants that are seen to have the EU's backing. Furthermore the programme is described as a form of 'human rights capital venture fund', allowing potentially risky, experimental projects to be undertaken.

⁷⁰ Cf *Final Report. Evaluation of the MEDA Democracy Programme 1996-1998*. Prepared by Nadim Karkutli and Dirk Burtzler, Brussels, March 1999. See also the EMHRN Policy Paper on *The MEDA Democracy Programme*, Copenhagen, May 2000.

⁷¹ See *Special Report No 12/2000* on the management by the Commission of European Union support for the development of human rights and democracy in third countries, together with the Commission's replies, OJC 230.

One of the EIDHR's four thematic priorities for 2002 onwards will be support to strengthen democratisation, good governance and the rule of law. This will focus on *inter alia* working with civil society to promote greater participation of people in decision-making at all levels, including an equal participation of men and women, and different identity groups. On this basis, the Commission sees civil society as playing a pivotal role in transforming societies:

'A flourishing civil society, able to draw on an independent and impartial legal system, plays a fundamental role in holding governments accountable and denouncing human rights abuses'⁷².

This will be enhanced through a renewed emphasis on micro-project funding through country delegations in order to improve flexibility and local capacity building.

Furthermore, in line with its new overall policy of concentration efforts to a limited number of countries in order to obtain a 'critical mass effect', the Commission has now chosen the five following focus countries in the region to receive the major part of funds at the exclusion of the other MED countries: Algeria, Israel, Tunisia, Turkey, and the West Bank and Gaza.

It remains unclear how this renewed commitment to civil society will be transformed into practice in the MED region given the clear overall strategic priorities of political stability and economic reform. Will the MDP/EIDHR truly have a cross-cutting role or will it continue to be marginalized? Analysis of the MEDA NIPs for 2000-2002 gives us a clue of future priorities. In this respect they present a very mixed picture with regard to the extent of envisaged support offered to civil society both quantitatively and qualitatively:

Algeria

In the case of Algeria, and prior to the creation of the EuropeAid Agency, programmes envisaged specific support for the democratisation process paying particular attention to the participation of women in decision-making. Specific programmes focused on support for the media by strengthening the role of the independent private press and improving its quality as well as human rights training for the police.

After having been selected as a focus country for EIDHR programmes, a new programming exercise is being undertaken in the field of political and civil rights. In addition, the NIP tables a large scale programme for the modernisation of the judiciary which has as parts of its aim the consolidation of the rule of law and respect for human rights and penal reform. The latter (as those foreseen for Morocco and Tunisia) is to be implemented under the aegis of the Ministry of Justice and it remains to be seen whether any link will be established between EIDHR and MEDA programmes within this field.

⁷² Commission Communication on Human Rights, 8 May 2000, op.cit.

Egypt

The political analysis section of the Egyptian CSP gives quite a candid assessment of the situation of civil society describing the government's attitude as 'complex': Most NGOs are very small and poorly organised, with the more efficient ones being used as delivery agents for social development and receiving high level patronage. It contrasts this with civil society work on civil and political rights which is viewed with suspicion and has led to several high profile prosecutions. It also cites the 'wholly unsatisfactory legal and regulatory framework on registration and funding'.

The response of the EU to the vulnerable position in which Egyptian NGOs find themselves is to use the MEDA primarily to support those who are working in the less controversial area of social development whilst ignoring those working on civil and political rights! In addition, Egypt is not among the focus countries chosen by the EIDHR for civil society support for political and civil right activities.

Under the social development and civil society rubric, the NIP envisages providing capacity building and a funding facility for these NGOs whilst at the same time facilitating a dialogue between them and the state. The most significant action for civil society is a programme to improve the legislative instruments covering the operations of the NGO sector, together with the rights of vulnerable groups.

Israel

The EU has no Country Strategy Paper for Israel. Because Israel is excluded from MEDA programme support due to high per capita income level, no NIP has been established. Nevertheless, Israel has been selected as one of the EU's focus countries for EIDHR programmes. For the time being, however, programming missions have been postponed.

Current EIDHR projects in Israel target civil rights programmes for the Arab-Palestinian minority, legal aid, human rights education and awareness raising.

Jordan

In Jordan the NIP envisages the strengthening of pluralism, civil society and the rule of law as continuing to be a priority based on past operations through the MEDA-Democracy programme. However, Jordan is no longer to be a priority country under the replacement EIDHR. Therefore, in order to continue support for what the NIP describes as an 'active but fragile civil society', all activity will be supported through the MEDA programme directly concentrating on the strengthening of women rights, protection of right of the child, promotion of freedom of media, association and assembly, together with the strengthening of civil society generally.

Expected results and performance indicators include improved mechanisms available and operational to protect women rights (e.g. law enforcement, availability of social structures, etc.), the number of women representatives in local and national parliaments, the number of women entrepreneurs and women representatives in professional associations/chambers, the existence of operational mechanisms to care and educate children in risk situations, and the more effective involvement of civil society in promoting social development (note the absence of projects emphasising civil and political rights issues). However, broader initiatives are

currently only on a reserve list for further intervention depending on the success of initial projects. If successful the pilot may form the basis for a broader support programming under the next programming period.

Lebanon

For Lebanon improving human rights is a clearly stated priority but nothing specific is mentioned regarding action to be taken on civil society and rights promotion and no budget is allocated for this purpose. When looking into the list of EIDHR funded programmes prior to the final draft of the CSP and NIP, projects on migrants and refugees, women's rights, human rights education and civil society development⁷³ can be identified. These do not seem to have been integrated into the programming of the NIP.

Morocco

Despite the fact that the CSP for Morocco recognises that a major challenge is the consolidation of rule of law and the development of civil society, no project is designed to follow-up measures begun under MEDA I (NGO support within development) nor the 14 projects currently supported by the MEDA Democracy Programme!

Morocco is not among the focus countries chosen for the region and the only human rights component arises in relation to a programme providing institutional support for immigration and in particular for defending the rights of migrants and ensuring their better integration. In addition, a large-scale programme is envisaged to up-grade the judiciary system. However, as in the case of Algeria, the latter remains under the authority of the Ministry of Justice.

Syria

The CSP for Syria again uses the same wording as Algeria and Jordan to establish as a key principle the widening of the base of the Euro-Mediterranean Partnership by involving various non-state actors apart and bringing together more closely regional and local authorities, economic and social partners and NGOs in the hope of creating a broad consensus on the reforms within the population in order to sustain the transition process.

This tends to suggest that a standard formula is being adopted rather than focused strategies based on the particular circumstances for each country. However, this will only apparently take the form of indirect support through the integration of NGOs into community health programmes.

The CSP admits that given the difficult political context for human rights initiatives in the country, activities of international as well as local NGO's have been and still are very limited. Hence the regional MEDA Democracy programme has focused on non-controversial issues (women empowerment activities, disabled, institutional capacity-building for local NGO's etc.), the assumption being that in the long run this will gradually promote human rights and democratisation in Syria.

⁷³ European Commission, *Projects Receiving EIDHR Funding in the Middle East Region*, Brussels 2002.

Hence it sets itself a long time-scale, stating that 'over the next few years' the EIDHR will replace the MEDA Democracy programme since activities under this programme do not need to be agreed with the Partner Country it is better suited for human rights-related work in Syria. Actions will focus on support for democratisation, good governance and the rule of law, initially covering the same type of issues as MEDA Democracy, with a gradual opening towards issues with a more direct bearing on good governance and rule of law as well as democratisation.

In the context of support for the rule of law, the EC also plans to assist in the modernisation of the judiciary, primarily through training and the exchange of information. In addition, it will also strengthen co-operation with Syria in other areas relevant to the rule of law, namely the fight against drugs and organised crime, and the management of migration and refugees. In this context, 'it will be important to raise awareness and exposure to human rights principles and to improve skills and capacity in related areas. '

However, Syria is also not among the four 'focus countries' chosen by the EIDHR for the MED region. No particular initiative within this framework is therefore envisaged at present. Beyond the general statements of intent there are no specific projects with time-scales outlined in the NIP.

Tunisia

In Tunisia, despite very little activity under MEDA democracy (only three projects were initiated between 1996 and 1999), support for civil society is, according to the NIP, seen as a key principle for EU-Tunisia co-operation, with the raised profile and involvement of economic partners and non-governmental organisations helping social cohesion to counter-act any envisaged possible instability resulting from the introduction of the free trade zone.

In this regard, assistance will take several forms: a programme to bolster the media through training of journalists and equipment of government controlled press is envisaged in line with Tunisia's commitments under the Barcelona process to respect the right to freedom of expression; a large-scale programme for the modernisation of the judiciary which has as parts of its aim the consolidation of the rule of law and respect for human rights. The latter, however, is to be implemented by the Ministry of Justice.

In addition, Tunisia has been selected as a focus country for EIDHR programmes aiming at promoting civil and political rights and also for support to build up the capacity of NGOs in order to meet the demands thrown up by the gradual withdrawal of the state during the process of economic and social transition. It remains to be seen what results the current programming exercise will bring and to what extent EIDHR will meet with sufficient political support to implement projects independent of government control.

Turkey

Under MEDA I, a framework programme for the development of civil society aimed at 'supporting citizens' initiatives' and 'to establish a more balanced relationship between the society and the state' was established.

Current projects under the EIDHR comprise: promotion of human rights in primary and secondary schools, human rights awareness raising among workers, and support of rehabilitation centres for the victims of torture. In addition, Turkey has been chosen as a focus country of the EU and programme identification is currently being undertaken.

West Bank and Gaza

No NIP or CSP is available for the West Bank/Gaza following the *Al Aqsa Intifada*. An early draft version envisages a programme to provide extra human and physical resources to the judicial system to help it meet the backlog of cases.

Palestine has been a main recipient of grants for projects within the field of civil and political rights since the initiation of the MEDA Democracy Programme and following the restructuring of the EIDHR. Recently the West Bank/Gaza was chosen as a 'focus country' for EIDHR programmes but identification of projects and programming has been postponed.

Current projects include human rights education, training of the security services, training of teachers, women's rights, promotion of the independent media, legal training, etc.

However, the expected outcome of support for human rights projects in the West Bank/Gaza might be compromised by EU unwillingness to bring into effect the human rights clause of the Association Agreement with Israel.



OVERALL ASSESSMENT OF COUNTRY STRATEGY PAPERS (CSPS) AND NATIONAL INDICATIVE PROGRAMMES (NIPS); CONCLUSION AND RECOMMENDATIONS

During the period in which this report was researched, the CSPs for 2002-06 and NIPs for 2002-04 were finalised. The initial drafts made scant reference to human rights concerns, either in the political analysis of the countries or in the EU response. However, by the time of final publication at the end of December 2001 most had been strengthened in response to ongoing reform of the management of the EU external assistance. Thus the Common Framework for Country Strategy Papers (CSP Framework) explicitly demands that CSP include information about: democratic participation, human rights and the rule of law⁷⁴.

The changes are welcome, although significant deficiencies remain. For example, as part of the political analysis, all the CSPs now make some reference to the international human rights obligations entered into by each country. However, the descriptions are inconsistent and in some cases unclear: e.g. 'Lebanon has joined several international agreements on human and civil rights' (query how human rights differ from civil rights?). Analysis of the human rights situations within each country, again, is more robust than previously. However, some are pitifully brief: e.g. on Syria:

'The policy agenda in the areas of political system, human rights and civil society remains extremely modest. Though a gradual opening towards political pluralism is probably envisaged by Bashar Al-Assad, the political reform agenda currently appears to be put on hold. However, a more relaxed atmosphere is accompanied with a certain openness to the concept of human rights and to the idea of a dialogue with the EU on these issues'⁷⁵.

Whilst the CSPs are clearly not meant to be the equivalent of an Amnesty International or US State Department Report they do form the basis for the MEDA response and therefore the analysis should present a detailed and accurate picture in order that appropriate priority responses are made.

Another major deficiency is the lack of reference to economic and social rights apart from some isolated examples (e.g. the progress of Egypt on gender and workers' rights whilst lack of action on vulnerable groups such as child labourers and homosexuals).

This is reflected in the fact that human rights issues tend to be slotted into the political analysis section of the CSP rather than the economic and social analysis sections. Moreover, this omission occurs not just in relation to the analysis of the country situation, but also, more importantly, in relation to the priorities for the EU's response which shape the NIPs and in turn the MEDA programmes.

⁷⁴ Cf. http://europa.eu.int/comm/external_relations/reform

⁷⁵ CSP for Syria 2002-2006 p. 3.

The translation from overall strategy into action programmes also presents a mixed picture, with some countries receiving little or no action on human rights in the short-term: e.g. Lebanon (not until 2005 at the earliest) and Syria ('during the next few years ... based on a gradual opening'). Even where there is more of a specific human rights focus, such as Jordan with a dedicated priority area for action, it remains predicated on equating human rights in terms of civil and (to a lesser extent) political rights rather than addressing economic and social rights.

In conclusion, it may therefore be said that although the EU in recent years has put substantial thinking into bringing more coherence and consistency to its human rights policies, and although noticeable progress has been made and is in the making, a great deal still needs to be done in order for the Community to begin to competently assess the implications of its MEDA programmes on human rights in the Mediterranean region.

The report has sought to shed light on the main gaps which exist and to propose ways forward. Its recommendations are found in the introduction to the report and are based on the findings presented in the body of the report. The EMHRN believes that, if implemented and backed-up by necessary political support, they will help create coherence and consistency between the three baskets of the Barcelona Declaration and provide the Euro-Mediterranean Partnership with strong instruments to take the human rights dimension of the Barcelona process several steps further.