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Human Rights in the ACP-EU Development Cooperation

Their Integration and How to Defend Them

Graduation thesis
20 points

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International Law
EC Law

Autumn 2001

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Summary

The development cooperation between the ACP (African, Caribbean, Pacific) Countries and the European Union (The European Community and its Member States) has evolved during a period of about 45 years. The first stumbling steps were directed towards advanced trade but later on other important factors came into play. The trend today is towards deepened discussions in a number of areas, such as human rights.

The Cotonou agreement was signed on 23 June 2000. It is a far-reaching arrangement with consequences for individuals in at least three parts of the world. Article 9 in the Cotonou agreement sets out essential and fundamental elements for the ACP-EU development cooperation. The three essential elements are respect for human rights, democratic principles and the rule of law. All the essential elements are of importance to the individual. Violation of an essential element can bring appropriate measures to the fore. Good governance was proposed by the EU as a fourth essential element during the negotiation talks that resulted in the Cotonou agreement. The term was at first rejected by the ACP Countries but finally got its place as a fundamental element. The meaning of good governance is unclear, as well as its place in the political dialogue.

Human rights can be integrated into the ACP-EU development cooperation through positive and/or negative conditionality. Positive actions are flexible and fit together with a decentralised approach to cooperation. In the past, negative measures have proved ineffective and of questionable value. A new arsenal of so-called “smart sanctions” might hold something good for the individual.

The institutions and agents of the European Union have to answer to the European Court of Justice and the European Ombudsman in their conduct of development programmes. The European Union has to see to it that human rights are respected, not only in ACP Countries but also in its development policy. Human rights are best defended by interaction between individuals and the authorities. It should be made possible for individuals to exert even more influence on the ACP-EU development cooperation.

Preface

“How often we have heard those arguments! ‘Democracy begins with breakfast’, or ‘a hungry stomach has no ears’. But over and over again we have learnt, especially in Africa, that poor people’s stomachs are not filled by rulers who refuse to submit themselves to the people’s judgement. We have learnt that democracy begins at breakfast - that power has to be shared in the home, between women and men, and from there on up to the highest levels of the State, and indeed of the international system.”

Kofi Annan, in an address on 4 December 2000 to the Fourth International Conference of New and Restored Democracies in Cotonou, Benin (West Africa).

On November 3, 2001, the Director-General Jacques Diouf of the UN Food and Agriculture Organisation (FAO) held a speech in Rome, opening up a world conference with delegates from 183 member states. According to Dr Diouf, there are “815 million undernourished people in the world: 777 million in the developing countries, 27 million in countries in transition and 11 million in the industrialized countries.”¹ In 1996, the World Food Summit established the goal of halving the number of hungry people in the world 2015. This is considered in the preamble to the “new” development arrangement between the European Union and the ACP (African, Caribbean, Pacific) States – the Cotonou agreement. The goal is said to provide a clear vision and must underpin ACP-EU cooperation. It would require an average annual decline of 22 million in the number of people suffering from hunger in developing countries. As of today, this number has only been reduced by 6 million. Dr Diouf was pessimistic at the outcome in his speech and said that it will take more than 60 years to reach the objective set out by the world establishment.

The European Union is one of the largest aid donors in the world. In 1997 the EU was responsible for 10 % of all development assistance distributed

¹ http://www.fao.org/WAICENT/OIS/PRESS_NE/PRESSENG/2001/pren0180.htm, 011105

by OECD Countries.² The latest European Development Fund manages more than 14 000 million ECUs.³

When you put the above paragraphs together, you will understand why I consider ACP-EU cooperation to be of interest. Not only does the European Union possess the means to fight poverty and under-nourishment, it is based on the notions of democracy and human rights.

The idea of writing this thesis came about while I was attending a course at the University of Aarhus, Denmark, on the relationship between human rights and development aid (autumn 2000). My teachers Ole Bruun Nilsen and Sten Scaumburg-Müller made me realise that development cooperation is a highly sensitive matter. The partners involved often end up in differences. The conceptions of human rights might not differ, but the ways of expressing them do. It is vital that donors do not simply use aid as a political tool but that they have a true wish for development. Development cooperation is a matter of give and take, and donors can cause much damage by being prejudiced and staying narrow-minded. There lies a great danger in not being aware of your own weaknesses. A closer look unveils that we are all prejudiced.

When I started investigating the *Cotonou agreement*, I found it hard to frame questions that went along with what I had learnt about the relationship between human rights and development aid. I am forever in debt to my supervisor Katarina Tomaševski, at the Raoul Wallenberg Institute in Lund, who reminded me of what human rights truly are. Respect for the individual is important to everyone, and hers is the position one should take when dealing with legal matters. Otherwise you are bound to end up in political concerns or moral rumination. For as long as I live I will try to keep this lesson in mind.

² Crawford 2001, page 7

³ See Annex 1

Professor Katarina Tomaševski put in me in touch with Professor Karin Arts at the Vrije University in Amsterdam. My deepest respect goes out to her for answering my questions so fast and precisely. I have been fortunate to find two skilled advisers of most humble and honest qualities.

I wish to express gratitude to the people working at the libraries of: the Raoul Wallenberg Institute, Juridicum, and various faculties in Lund, Sweden. Acknowledgements to the following for their help and support during my time of work: Anders Wijkman and his staff at the European Parliament, Jean-Louis Cougnon at the European Parliament (Correspondence with the citizen's division), Professor Ulf Bernitz at the University of Stockholm (Faculty of Law), Professor Axel Hadenius at the University of Uppsala (Faculty of Political Science), Thomas Hammarberg at the Foreign Ministry of Sweden, Sigfrid Deminger at SIDA, and Ole Elgström at the University of Lund (Faculty of Political Science).

I am most grateful to Carol Zachs, Lilja Nielsen, and Maciek Boni, who were kind enough to correct my poor English. Extra special thank you to Karl-Göran Sabel for preparing the manuscript. Your good advice made me wiser, as always. Love to my friends and neighbours, even more love to my family. They all stood up with me during long nights of muttering and cursing.

Needless to say, the author is responsible for any remaining misspellings or misunderstandings. With all this made clear I want to wish you pleasant reading.

Abbreviations

ADC	Advanced Developed Countries
Afr CHR	<i>The African Charter on Human and Peoples' Rights</i> (1981)
Am CHR	<i>The American Convention on Human Rights</i> (1969)
CAT	<i>The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</i> (1984)
CEDAW	<i>The Convention on the Elimination of All Forms of Discrimination against Women</i> (1979)
CERD	<i>The International Convention on the Elimination of All Forms of Racial Discrimination</i> (1965)
DAC	The Development Assistance Committee
DRC	The Democratic Republic of Congo
ECDPM	The European Centre for Development Policy Management
ECHO	The European Commission's Humanitarian Aid Office
EDF	<i>European Development Fund</i>
ECJ	The European Court of Justice
EIDHR	The European Initiative for Democracy and Human Rights
Euro CHR	<i>The European Convention for the Protection of Human Rights and Fundamental Freedoms</i> (1950)
FAO	The UN Food and Agriculture Organisation
GATT	The General Agreement on Tariffs and Trade
GSP	<i>The Generalised System of Preferences</i>
ICCPR	<i>The International Covenant on Civil and Political Rights</i> (1966)
ICESCR	<i>The International Covenant on Economic, Social and Cultural Rights</i> (1966)
ICJ	The International Court of Justice

LDC	Less Developed Countries
LLDC	Least Developed Countries
NGO	Non-Governmental Organisation
NIP	National Indicative Programme
OCTs	Overseas Countries and Territories
OECD	The Organisation for Economic Co-Operation and Development
SIDA	The Swedish International Development Authority
TEC	<i>Treaty establishing the European Community (the EC Treaty)</i>
TEU	<i>Treaty on European Union (the EU Treaty)</i>
UNCTAD	The United Nations Conference on Trade and Development
URL	Uniform Resource Locator
WTO	World Trade Organisation

1 Introduction

1.1 Purpose and Research Questions

The partnership of development between the European Union and the ACP (African, Caribbean, Pacific) Countries is based on five pillars:

- Ongoing political dialogue;
- Involvement of social society;
- Poverty reduction;
- A new trade framework;
- A reform of financial cooperation.⁴

The cooperation partners have agreed that the main pillar is poverty reduction, “suggesting an integrated approach to development to ensure complementarity between the economic, social, cultural and institutional dimensions”⁵. An integrated approach will never be achieved if the individual is not respected. Within and around her lie the positive dimensions of economy, social life, culture and institutions. A community that can secure the human rights and fundamental freedoms of its citizens, whoever they might be, is therefore a rich community. The individual is the only reliable indicator for development and its number one safeguard. Every individual is guaranteed certain human rights and fundamental freedoms through various conventions, covenants, *ius cogens* and the *Cotonou agreement* itself.

The purpose of this thesis is to examine some of these rights, their origin and how they can be protected in the framework of ACP-EU development cooperation. My hope is that the analysis will inspire, more than discourage the reader. The weaknesses that are pointed out can be adjusted and faults committed can be compensated.

⁴ <http://europa.eu.int/scadplus/leg/en/lvb/r12000.htm>, 020111

⁵ <http://europa.eu.int/scadplus/leg/en/lvb/r12000.htm>, 020111

At the time of this writing (January 2002), there is much debate on-going in news television programs, papers and magazines about one member of the ACP Group and its present state of affairs. President Robert Mugabe has issued laws that make it illegal for citizens of Zimbabwe to question both his regime and him personally. The parliament of Zimbabwe has recently approved the laws and declared political opposition criminal. This is nothing else than a clear violation of an individual's right to the freedom of thought and speech, expressed in numerous declarations and conventions. The European Union has threatened to imply "smart" sanctions and Zimbabwe has withdrawn its intention to prohibit independent observers of the presidential election, scheduled to be held in March 2002. The situation is politically complicated for the EU; for the people of Zimbabwe it is urgent.

This graduation thesis will describe the EU's developmental policy. It will show what sanctions are and what they have to offer in situations of human rights violations. Moreover, it will present possible ways for every one of us to support the fight against oppressors, in whatever shape they appear. Hopefully the future will make it easier for representatives of the European Union and the ACP Countries to have ongoing political *dialogue*. First of all, they have to deal with uncertainties from the past. The written word is a little contribution in that regard. The rest is up to you and me.

1.2 Outline

The thesis can be seen as divided into two parts. The first part consists of Chapters 2 and 3 and describes the integration of human rights in the arrangements between the ACP Countries and the European Union. It shows what place there is for the individual under the *Cotonou agreement's* supervision. The second part includes Chapters 4 and 5 and deals with practical integration of human rights in the ACP-EU development cooperation. It tries to explain how the individual can be defended against abuses and oppression.

Chapter 2 gives the Historical Background, from the early days of the association system until the signing of the *Cotonou agreement*. The third chapter analyses the *Cotonou agreement* and reviews its human rights provisions. The following chapter explains how positive conditionality can serve the individual's interests. Chapter 4 also exposes the use of negative measures by the European Union. The fifth chapter takes a look at the budget lines for the ACP-EU development cooperation. The thesis ends with some concluding remarks and recommendations for the future.

1.3 Method

Two manuscripts have been fundamental to my line of argument, namely *Integrating Human Rights into Development Cooperation – The Case of the Lomé Convention* by Arts and a chapter on development cooperation in Alston's *The EU and Human Rights*, written by Simma, Aschenbrenner and Schulte. Facts have been taken from them, but not in an uncritical manner and always with the purposes above in mind. My main concern has been to evaluate in what ways the individual can benefit from the *Cotonou agreement*. You will find dialogue with Arts and Simma et al on this particular issue in the chapter on conditionality.

A considerable part of the references can be found on the internet. Well aware of the fact that it is not the most reliable source, I have tried to remain critical in my search for original information. Websites that did not give account of any publisher were not utilised. All the homepages referred to belong to well-established organisations. Since the World Wide Web is under constant reconstruction, the URL addresses might not be correct. In that case, I would suggest that you shorten the string or make a title or author search. The number one database on the subject is, without a doubt, the European Union On-Line (<http://europa.eu.int/>). It is easily accessible but difficult to survey. The information is updated but subjective. The General Secretariat of the African, Caribbean and Pacific Group of States has provided me with a useful counterweight. Its homepage (<http://www.acpsec.org/>) might not be as attractive as the EU network but it is very informative, with official ACP declarations and other documents.

There is a magazine with reviews on ACP-EU development cooperation, called *The Courier*. It is produced and published by the Directory General of Development under the European Commission. Trying hard to avoid overly pro-European material, I have only used articles that were factual and balanced.

A little note has to be made on Annex 1. My first intention was to include an extensive survey of development indicators. The deeper I have studied the matter, the more it has made me realise that estimating development is an almost impossible task. Interested readers are recommended to read Arts (1999) on this issue, page 399. *The Human Development Index* described by the United Nations Development Programme has been criticised by different writers for a number of reasons and at the very last moment I decided to leave it out. The ratings made by the organisation Freedom House are likely to include shortcomings as well. They indicate that Freedom House has observed human rights abuses in a number of countries and nothing else.

1.4 Terminology

The words “development cooperation” have been criticised by some writers as being out of touch with reality. They state that it is misleading to refer to “cooperation”, if a relationship is ruled by one part. The critics prefer the sole use of such terms as “development assistance” or “donors’ aid”. At an early stage, I decided to set aside these well-meaning opinions. My reason for doing so was that the Signing Parties themselves have emphasised the necessity of “development cooperation”. This policy supports my line of argument, that the individual should be respected at all times. The individual has a lot to gain from cooperation between the Parties and consequently I have used the words as they were intended. It should be pointed out, however, that I have not excluded alternative terms. Accounts of “development assistance” and “aid” appear in the text.

The Maastricht Treaty, entered into force on November 1 1993, replaced the term “European Economic Community” (EEC) by “European Community” (EC). The correct way to refer to legal matters under the European Community is “EC law”. Development issues fall within the competence of the EC and its Member States, as can be seen in Article 177 of the *Treaty establishing the European Community* (TEC). External human rights matters are related to the Common Foreign and Security policy of the European Union (EU).

In order to make it easy for the reader and for myself, I have decided to stick to a simple use of the terms “EEC”, “EC” and “EU”. The “EEC” and the “EC” are mentioned chronologically in chapter 3. After that “EC,” is replaced by “EU”, whenever applicable. The only time when “EC” might occur is within quotations. I have done like this in order to avoid splitting hairs. In many situations it would have been more correct with “EC” but the decision becomes difficult when one deals with external human rights.

It is understood that the European Commission acts on behalf of the European Community. Community policy in the sphere of development cooperation shall be complementary to policies pursued by the Member States (Article 177 TEC). The Commission is also a representative of the European Union. Decisions by the European Commission influence the Member States when it comes to external human rights. In this regard, it is justified to talk about policies of the “EU”.

2 Historical Background

2.1 Introduction

The history of development aid does not extend more than a period of about sixty years. Never the less, the motivations for aid and policies on how to make it effective have changed noticeably since the early days. The first aid agency was set up in 1943 to forward food and medical products to the victims of the Second World War. As an organisation, it was a forerunner of UNHCR and UNICEF, under the UN supervision.⁶ Nowadays, we see a spectrum of organisations devoted to aid activities, all with different ideas on how to operate. Analysing their work requires hard effort, as every single project changes constantly and undergoes many forms. (It is even hard to say when a project has been completed – not to mention its success. As in life, every action in the world of aid gives ground to conflicting questions and results in reactions. It is therefore important, when dealing with this area of politics and law, to keep an open mind at all times.) We begin this historical summary with some basic facts on the EEC and its development cooperation with former colonies. Then, we move on to the important *Lomé Conventions* and their background. The chapter ends with an introduction to the *Cotonou agreement*.

2.2 The Yaoundé Conventions

The European Union has been dealing with aid and cooperated with countries in the so-called third world since the early days of the Treaties of Rome. The six original countries of the foundation had not yet accomplished their settlements of colonisation when the treaties were signed. This led to the solution that some countries outside of Europe were to be seen as related to the EEC more so than others.

For France, this was an important issue, since the country very much interacted with and within its former overseas territories. Belgium supported the French position but Germany and the Netherlands raised objections. In the end, France threatened not to join the Community if the question was not agreed upon.⁷ The first European fund for development was therefore established in 1958. It underwent some changes until it was finally reconstructed in 1963.⁸ An arrangement was then concluded between the EEC and 18 African states (including Madagascar) in Yaoundé, the capital of Cameroun.⁹

2.3 The GSP System

Later on, the EEC introduced a special order for trade with a number of developing countries. The *Generalised System of Preferences* (GSP) found support in discussions, which had taken place during the United Nations Conference on Trade and Development, UNCTAD, 1968. It was finally enabled by an exception to the GATT rules, agreed upon June 25, 1971. The system provided tariff reductions and included different regulations for industrialised, textile and agricultural products. It is important to keep in mind that the system was based on a trade policy concept and that its quotas had nothing to do with human rights issues. It enabled many developing countries to improve their trade records but left others behind. The GSP still exists but with a somewhat changed focus. Gathering from information provided by the European Commission, it is meant to “promote sustainable economic and social development by taking into account the concerns of environmental protection and the respect of fundamental social rights”¹⁰. Less is said about civil and political rights. About 140 states are involved in the collaboration.¹¹

⁶ Browne 1997, page 3

⁷ Arts 1999, page 98

⁸ Sköld 1992, page 15

⁹ EU-KARNOV 2000, Chapter 38

¹⁰ http://europa.eu.int/comm/trade/pdf/guide_tariffpref.pdf, 011009

¹¹ http://europa.eu.int/comm/trade/pdf/guide_tariffpref.pdf, 011009

2.4 The Lomé Conventions

2.4.1 History

The Conventions of Association from Yaoundé, were replaced by a far more extensive agreement in 1975. Signed in Lomé, Togo, on February 28, it was an important turning point for the enlarged Community when it came to external relations. In the first round, 46 states from Africa, the Caribbean and the Pacific were tied to the text (see Annex 1).¹² They were named the ACP Countries but had, of course, immense differences.

The era of the ACP EEC Conventions of Lomé lasted until 2000. The first convention was upgraded four times. Arts gives us the background to the changes in her book *Integrating Human Rights into Development Cooperation: The Case of the Lomé Convention*. The question of how to implement Human Rights in the legal framework for development cooperation has been debated over and over again throughout the years. The first deliberation in the Council of Ministers on a joint development policy was held in September 1972, inspired by a memorandum from the Commission. The Council established an ad-hoc working group to study the matter more thoroughly. When the Paris Summit Declaration was issued about one month later, it put forward new emphasis on external relations. The main question was how to support international trade but the Community also stressed its will to increase aid efforts.¹³

Denmark, the United Kingdom and Ireland joined the EEC on January 1 1973. The three countries had participated in the Paris Summit and added fresh ideas and valuable standing points to the discussion. The ad-hoc working group managed to bring the different positions together and made it possible for the Council to produce a number of important resolutions on

¹² <http://europa.eu.int/abc/obj/treaties/en/entr6h04.htm>, 010916

¹³ Arts 1999, page 101

development assistance.¹⁴ The ACP Countries discovered mutual understandings in July 1973 and have negotiated by united efforts from then on until today.¹⁵

2.4.2 Sound Economic Management

The year of 1975 began with the signing of the first *Lomé Convention* but it also offered other improvements related to development co-operation. Two new fora appeared as the plot thickened. The Conference on International Economic Co-operation (CIEC) saw daylight in the month of December. It served as a platform for deeper discussions on energy, raw materials and financial matters. Even if the end result of this conference was poor, it put the light on matters that are still crucial. The Community also had its first official meeting with representatives of Non-Governmental Organisations (NGOs). A special committee was created in order to nurse conclusions from that assembly.¹⁶

The 1970s would bring about great difficulties for the developing countries. They had to face exploding debts at the same time as the aid donors adopted new strategies. The focus shifted from project to programme aid. Health, education, drinking water and rural development became the number one questions for simple reasons. More complicated matters as human rights and sustainable development were put on hold. The cold war very much influenced the donors' motives and factors of diplomacy. Politics came into play on every level of decision-making. The Community saw its chance to make trade on favourable terms and suggested questionable deals concerning rare resources. First generation conditionality was born. It was based on the Bretton Woods system and meant that the Community's intervention affected the economic sphere of the recipient countries.

¹⁴ Arts 1999, page 102

¹⁵ Lindström 1996, page 14

¹⁶ Arts 1999, page 103

Assistance should depend more on “sound economic management” and less on actual need.¹⁷

2.4.3 The Pisani Memorandum

Greece joined the Community in January 1981 and Spain and Portugal were to follow in 1986. The Pisani Memorandum was the result of a newly awakened interest for development areas from the European Parliament, elected directly since 1979. The Parliament put pressure on the Commission, which in many ways considered the cooperation to be a failure. The memorandum was a serious attempt to come to terms with misunderstandings from the past. Issued in 1982, it lay down guiding principles for the immediate years to come and proposed a policy dialogue with the governments involved. Arts stresses two important items of the agenda in her book:

“(i) action to promote the self-reliant and sustainable development of those countries, and in particular the poorest, which have been left behind during two development decades;

(ii) action to promote original forms of international economic cooperation, both at the level of direct relations between Europe and developing countries or groups of developing countries and also the North-South level.”¹⁸

Arts remarks that the concept of sustainable development would not be popularised until five years later through the Brundtland Commission Report *Our Common Future*.¹⁹ The Memorandum showed foresight in this and other questions but was also criticised by the Economic and Social Committee for not taking social, cultural and human aspects of development

¹⁷ Alston 1999, page 574

¹⁸ Arts 1999, page 106

¹⁹ The definition of the term given in this report reads “Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” The wording has been modified many times since but its content is still largely accepted. More about sustainable development in Chapter 3.5.2

into account.²⁰ A number of hunger- and food-related catastrophes during the 1980s forced the Community to change priorities. In theory the aid instruments evolved but in practice it was more a question of saving human lives fast. Basic needs had to be supplied and united efforts were directed towards humanitarian relief and food aid.²¹

2.4.4 Article 5 of Lomé IV

It was not until the beginning of the 1990s that human rights implementation once more attracted significant Community attention. This had to do with the disintegration of the Eastern Bloc, symbolised by the fall of the Berlin Wall in November 1989. A change of politics in the Soviet Union finally led to its débâcle in December 1991. The Commission kept its eye on the processes and quickly concluded cooperation agreements with many of the former communist countries. To put it simple; the end of the Cold War gave new hope to old ideas of great value.

The fourth *Lomé Convention* of 1989 dealt with human rights in the preamble and in several articles. Article 5, paragraph 1, was the legal foundation for this major achievement and read:

“Cooperation shall be directed towards development centred on man, the main protagonist and beneficiary of development, which thus entails respect for and promotion of all human rights. Cooperative operations shall thus be conceived in accordance with the positive approach, where respect for human rights is recognized as a basic factor of real development and where cooperation is conceived, as a contribution to the promotion of these rights.

In this context development policy and cooperation are closely linked with the respect for and enjoyment of fundamental human rights. The role and potential of initiatives taken by individuals and groups shall also be recognized and fostered in order to achieve in practice real participation of the population in the development process in accordance with article 13.”

²⁰ Arts 1999, page 107

²¹ Alston 1999, page 575

Much can be said about the paragraph. It has partly been transferred into Article 9 of the new ACP-EU agreement. It is enough to make a couple of observations at this point. Development should be centred on the individual and its success interpreted from his/her point of view²². At the same time, the first sentence pronounced all human rights valuable. The preamble recalled *the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights* and *the International Covenant on Economic, Social and Cultural Rights*. In the days of the cold war, the division of rights from *the Universal Declaration* into two covenants had been a consequence of different economical standards and politics.²³ The revised *Lomé Convention* did not follow this tradition but embraced every quality of life. Whether this was pursued in practice throughout the 1990s is another question.²⁴

²² The use of the word “man” in the original text is unfortunate. It has been changed into “human person” in the new agreement. This should leave no room for discrimination against women.

²³ Malanczuk describes the evolution of human rights standards in his revised edition of Akehurst’s *Modern Introduction to International Law* (1997). His settlement with the notion of different generations of human rights is quite harsh but stands strong in argument. A distinction has been made in the literature between civil rights (first generation) and social rights (second generation). In recent years a third generation of rights has been proposed, consisting of the right to development and the right to a clean environment, to name but a few. Malanczuk very much supports “the concept of human rights as basic rights of the individual human being”. He finds no need for a generation concept and thinks it blurs the discussion. “The real question is only whether individual rights are, or should be, complemented by other rights or values, and be seen in connection with the obligations of the individual towards society (e.g. military service or the duty to pay taxes).” (Page 210) Personally I see the generation model as a way to explain (western) human rights standards and their history. The problem with the concept is that it has been taken to far. It serves no purpose when it comes to implementation of the rights and must not be seen as a way to interpret them.

²⁴ Examined by Crawford in his *Foreign Aid and Political Reform* (2001). Crawford arrives to the conclusion that the EU has concentrated its support on promoting free and fair elections and on civil and political rights (page 151). This conclusion is limited and based on an evaluation of four democracy promotion measures, provided by Beetham & Doyle: Free and fair elections, A democratic society, Open and accountable government, Civil and political rights. Crawford writes about the contested relationship between political and economic liberalisation. To him it remains “complex, contested and unresolved, despite the prevailing donor assumption of mutual compatibility” (page 38). A reflection on the 1990s by Simma, Aschenbrenner and Schulte well compensates for Crawford’s skepticism: “In the overall context, the international community was discovering that there can be no development without a certain degree of democracy, no democracy without respect for human rights, and, finally, no democracy without development.” (Alston 1999, Page 576)

Article 5 pleaded for a positive approach, a dialogue with the countries involved. It left the door open for negative measures however, in assuring a close link between cooperation and enjoyment of fundamental human rights. This reservation has been called second-generation conditionality in aid.²⁵ The cross-reference to Article 13 was probably meant to strengthen the role of minority groups as well as NGO actors. Unfortunately Article 13 was written in a vague manner. It had more the resemblance of a general request, born out of consideration for cultural differences and equality.

2.4.5 The EU Development Policy

The Commission took an important step towards a general development policy with a memorandum dated March 1991. The European Council answered with two resolutions in the summer and winter of 1991, where it officially declared that “[a]ll lasting development should be centred on man as the bearer of human rights”²⁶. Once again the focus was set on the individual.

The 28 November Council Resolution of 1991 made no difference between different rights, whether they were economic, social and cultural or civil and political. As we shall see, this was a signal of importance and has influenced the trend of improvements since. In line with Article 5, the resolution affirmed that negative tools could be used in the “event of grave and persistent human rights violations or serious interruptions of the democratic process”²⁷.

Reality called for action when the humanitarian tragedies in Somalia, Liberia, Rwanda, Yugoslavia and elsewhere were exposed in the media. The European Commission’s Humanitarian Aid Office (ECHO) was set up in March 1992, in order to direct urgent external activities. Its mandate covers

²⁵ Alston 1999, page 578

²⁶ *Declaration on Human Rights adopted at the Luxembourg European Council on 28 - 29 June 1991*

emergency humanitarian and food aid for non-member countries, mobilisation of relief and personnel, disaster prevention and preparedness. The overall responsibility is co-ordination, followed by information.²⁸

The Charter of the United Nations clearly expresses that matters essentially within the domestic jurisdiction of any state is of no concern to others. The universality of human rights has been questioned – yet no government would call itself non-democratic or brutal. The World Conference on Human Rights, held in Vienna in June 1993, tried to put an end to the debate on global validity for human rights and fundamental freedoms.²⁹ In the first chapter of the declaration agreed upon, all human rights were said to be “universal, indivisible and interdependent and interrelated. [...] The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” Accordingly, no difference should be made between civil, political rights and economic, cultural and social rights.³⁰ Section 5 stated that it is the duty of states to promote and protect all these rights. Various historical, cultural and religious backgrounds must be borne in mind but serve as no excuse when it comes to breaches.³¹

The Treaty on European Union entered into force on November 1, 1993. It defined democracy, the rule of law, and respect for human rights and fundamental freedoms as the main objectives of the Common Foreign and Security policy and thereby, moved them into the second pillar.³²

²⁷ Alston 1999, page 578

²⁸ <http://europa.eu.int/comm/echo/en/present/about2.htm>, 011029

²⁹ Afterword in Strezelewicz 2001, written by Thomas Hammarberg. Page 295

³⁰ Afterword in Strezelewicz 2001, written by Thomas Hammarberg. Page 297

³¹ Recent discussions in the human rights field talk about minimum standards (minimum core entitlement), as related to minimum obligations. Every country is thereby forced to guarantee minimum standards of human rights without prevarication. What is more interesting, the countries have to use every last resource to improve the rights. The minimum standards differ. Out of necessity rich countries are able to safeguard human rights better than developing countries but no matter what; the strife should always be towards improvement. Afterword in Strezelewicz 2001, written by Thomas Hammarberg, page 306-307.

³² Article 11 TEU

Austria, Finland and Sweden joined the Community in 1995. This was the year that the Commission proposed a standard set of human rights and democracy clauses, to be kept in mind when cooperation agreements are negotiated with third parties.³³ The article on general non-execution is based on Article 65 in the 1969 *Vienna Convention on the Law of Treaties* and has to be supported by an article defining human rights as an essential element of the agreement:

“If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. These measures shall be notified immediately to the Association Council and shall be the subject of consultations within the Association Council if the other Party so requests.”

The measures referred to can include anything from cancelled meetings to economic punishment. The Commission enclosed a summary of appropriate actions in its communication on the inclusion of democratic principles and human rights:

- “- alteration of the contents of co-operation programmes or the channels used,
- reduction of cultural, scientific and technical co-operation programmes,
- postponement of a Joint Committee meeting,
- suspension of high-level bilateral contacts,
- postponement of new projects,
- trade embargoes,
- suspension of arms sales, suspension of military co-operation,
- suspension of co-operation.”³⁴

³³ *The inclusion of respect for democratic principles and human rights in agreements between the Community and third countries* 1995, page 6

³⁴ *The inclusion of respect for democratic principles and human rights in agreements between the Community and third countries* 1995, page 10

Even if the Commission claims that a human rights clause has been inserted in more than 20 bilateral settlements since 1995³⁵, Arts has shown that it is neither presented systematically, nor as an ultimatum. In the case of Mexico, the clause found its way into the text after a hard debate. When Australia objected the necessity of a specific human rights clause, the Community rather willingly accepted a compromise.³⁶

Later on in 1995 the Commission released a communication called *The European Union and the External Dimension of Human Rights Policy: from Rome to Maastricht and Beyond*. It served both as an overview of activities undertaken in previous years and as a platform for strategies in the years to come. Three basic principles were derived from the *Universal Declaration of Human Rights* and the Vienna World Human Rights Conference, and classified as the keystone of the international system for the protection of human rights:

- “(a) universality, which implies that no provision of a national, cultural or religious nature can override the principles enshrined in the Universal Declaration of Human Rights,
- (b) indivisibility, which precludes discrimination between civil and political rights, and economic, social and cultural rights,
- (c) interdependence between human rights, democracy and development, which is linked to a new definition of development focused on man as a holder of human rights and the beneficiary of the development process.”³⁷

The authors responsible found that the principles above had two corollaries. Firstly, that there exists a strict, complementary link between human rights and democracy. Secondly, that the principle of state non-interference is relative.

³⁵ http://europa.eu.int/comm/external_relations/human_rights/intro/index.htm, 011030

³⁶ Arts 1999, page 122

³⁷ *The European Union and the External Dimension of Human Rights Policy: from Rome to Maastricht and Beyond* 1995, pages 5-6

2.4.6 Revised Edition of Lomé IV

The revised edition of *Lomé Convention IV* (hereafter *Lomé IV-bis*) also appeared in 1995. A number of small adjustments and two considerable changes were introduced. The first amendment was a suspension clause, following the communication mentioned earlier regarding the inclusion of democratic principles and human rights.³⁸ Modification number two had to do with the disbursement procedure of aid. The method used previously was simple enough but not suited for following-up. The specific amounts granted to each ACP country depended on National Indicative Programmes (NIPs). Once a sum was allocated, there was little possibility for the EC to influence its implementation. This could only lead to retroactive conditions, if the money was not handled correctly. *Lomé IV-bis* was based on a system, which split up the money in two transactions. The second payment (of 30 %) depended on the results reached after three years.³⁹

2.4.7 The Treaty of Amsterdam

On May 1 1999, the *Treaty of Amsterdam* added fuel to the work in progress on human rights, with a new Article 6 in TEU, devoted to the policy foundation of the Union. The first paragraph underlines “the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law”. The Union, the second paragraph continues, “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”. The two passages are clear enough and have been joined by a long awaited instrument. The *EU Charter of Fundamental Rights* was officially proclaimed at the Nice Summit in December 2000. It is a crucible of different rights, in the tradition of declarations and with the touch of a treaty.

³⁸ Arts 1999, page 130

³⁹ *Lomé IV-bis*, Article 282

2.5 The New ACP-EU Agreement

The list of ACP countries today consists of 77 names (see Annex 2). Once again the Union is facing a historic change when it comes to external relations. The new ACP-EU agreement was signed in Cotonou, Benin, on June 23, 2000. The level of protection guaranteed by its provisions will be further examined below.⁴⁰

The *Cotonou agreement* will gain legal force when it has been ratified and approved in line with the procedures in Article 93. In the meanwhile, the ACP-EU development cooperation is ruled by provisional arrangements.⁴¹

Last but not least in this historical survey; Article 177 in the *Treaty establishing a European Community*. With one foot in the *Treaty of Maastricht* and one in the *Treaty of Amsterdam*, it is perhaps the most important to us. Its wording leaves no doubt when it comes to the existence of a development cooperation policy. We must now find out what this policy consists of and whether it is effective from the individual's point of view.

Article 177 (ex Article 130u)

1. Community policy in the sphere of development cooperation, 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.

⁴⁰ http://europa.eu.int/comm/external_relations/human_rights/intro/index.htm, 011031

⁴¹ The entry into force is likely to occur in the Spring of 2002. The current state of ratification can be found at the European Union On-Line (http://europa.eu.int/comm/external_relations/human_rights/intro/index.htm)

3 The Cotonou Agreement

3.1 Introduction

The previous chapter was devoted to different aid instruments in the history of the EU. It tried to explain how the cooperation between the Community and the ACP countries has evolved throughout the years. How the first agreement was based more on colonial policy than true solidarity. How this way of thinking proved both old-fashioned and ineffective and why the foundation of the *Lomé Conventions* had to be different. Finally, we learnt that the last *Lomé Convention* contained conditional provisions and that the *Treaty on EU* has been complemented by the *European Charter of Fundamental Rights*.

We shall now examine the new ACP-EU agreement and the legal framework surrounding it. Will it be a useful human rights tool in future development cooperation? Does it contain the articles desired in this area of law? We will try to find answers to these and other questions, when comparing the new regulations to theories and experiences from the past.

3.2 Replacing the Lomé Conventions

So far, we have dealt mostly with the strengths of the *Lomé Convention IV-bis*. We have not looked into the reasons for its replacement by a new agreement. The question that arises is why it had to be replaced. Why was it not considered enough to adjust it once more? Every edition was the result of profound investigations. It seems that the Community took precautions to establish the Lomé articles firmly. Still, they have been revised and reconstructed.

We turn our minds to The European Centre for Development Policy Management to fully understand the origin of the *Cotonou agreement*. The Centre has published a list of four circumstances that supported a new round of negotiations.⁴² They are given here in a somewhat reduced form but some of the issues must be discussed further.

- *Dwindling common interests*. Meaning that strong historical ties have become weaker. The EU has other interests and the ACP countries are low on the priority list.

This may be true when it comes to “geopolitical, economic and security concerns”⁴³. Turning the spotlight to human rights shows that this is not always the case. The values of stability in the third world must not be underestimated. The EU holds a responsibility in keeping an interest alive. It must not be a matter of us versus them but every finger should point both ways.

- *Politics*. “The first three Conventions were primarily concerned with economic cooperation. Europe adopted a neutral stance in political affairs. The democratisation wave that swept across the developing world at the end of the Cold War led to a growing ‘politicisation’ of ACP-EU cooperation. Respect for human rights, democratic principles and the rule of law became ‘essential elements’, whose violation could lead to partial or total suspension of development aid. While these changes reflected legitimate EU concerns to ensure a proper use of taxpayer’s money, many ACP countries feel that in the process, the principle of ‘equal partnership’ has been eroded and replaced by conditionalities.”

As we shall see, holding negative conditions has proved ineffective. On the other hand, it must be possible for the EU to abandon cooperation that does not give fruit in any way. To put human rights issues on the agenda can be controversial. This does not prove that it is wrong to do it.

⁴² ECDPM 2001, Chapter 3, History and Evolution of ACP-EU Cooperation

⁴³ ECDPM 2001, Chapter 3, History and Evolution of ACP-EU Cooperation

- *Trade liberalisation.* “Also the Lomé trade régime was increasingly challenged for reasons of both effectiveness and political acceptability. Despite preferential access to EU markets, ACP export performance has deteriorated over the last two decades (its share of the EU market declined from 6,7% in 1976 to 3% in 1998). Diversification away from traditional products also remained very limited (60% of total exports are concentrated in only 10 products).”⁴⁴

Pure economic aspects of trade fall out of the scope of this thesis. We should keep in mind that the question on how to survive always comes first for people who have nothing or close to nothing.⁴⁵ In the eyes of the author the EU acts first of all as a movement based on trade. Its motives for doing so are not questioned here but they can and always will be.⁴⁶

- *Complexity and questionable impact.* Implying that the Lomé Convention had too many objectives, instruments and procedures.⁴⁷ The result was often reflected in “long delays, bureaucratisation, reduced efficiency and questionable development impact”.

Any agreement between 15 member states of the EU and as many as 77 countries on the other side, will always be complex. Its existence is justified by the need of a joint policy and a structured way of working. It must lie in the interest of every partner to keep negative aspects out. The *Cotonou agreement* can hopefully be seen as an improvement in efficiency in the years to come.

⁴⁴ Even if some ACP countries have been involved in development cooperation for more than 40 years, they still remain among the poorest in the world. In the year of 1999 no less than 41 ACP countries were classified as least developed countries (LLDCs). Bretherton & Vogler 1999, page 122.

⁴⁵ “Poor people often lack legal rights that would empower them to take advantage of opportunities and protect them from arbitrary and inequitable treatment. They, more than any other group in society, are adversely affected by laws permitting discrimination, deficient laws and institutions that fail to protect individual and property rights, and insufficient enforcement of these laws, as well as other barriers to justice.” The World Bank 2001

⁴⁶ See for instance chapter 1 in Grilli’s book from 1993, in which he makes an interesting remark concerning what he calls European associationism: “It is the purposes of European associationism that are reflected in Lomé, and not vice versa.”

⁴⁷ The procedures followed by the *European Development Fund* (EDF) have been described elsewhere as working in a situation where “non-decisions are taken over non-lunches over non-papers by non-people”. Bretherton & Vogler 1999, page 125

3.3 Structure of the Cotonou Agreement

In short, the *Cotonou agreement* is an extensive mix of objectives, principles, guidelines and eligibility⁴⁸. The Table of Contents shows no less than 100 articles, divided into 6 parts with many chapters and sections. The articles in the Cotonou agreement that we will deal with here are few in numbers. Article 9 has the subtitle “Essential Elements and Fundamental Element” and it is the heart of the human rights body. Article 20 is called “The Approach” and can be seen as the skeleton, or the framework, holding aims for the future. Part 3, Title 1, Chapter 2, Section 4 of the agreement deals with “Thematic or Cross-Cutting Issues”. One article is of special interest to us, namely number 33, with regard to “Institutional Development and Capacity Building.” The essential elements are of great importance to Article 96 on “Consultation Procedures and Appropriate Measures.” But before we move on to a closer study of the internal parts, let us begin with the Preamble.

3.4 The Preamble

The full title of the *Cotonou agreement* is *Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States, of the Other Part, Signed in Cotonou on 23 June 2000.*

Here we can see clearly that the Parties come from two sides. One side consists of the ACP countries and the other of the European Community and its Member States. The Member States are mentioned, because the partnership is to be seen as complementary to their own efforts in the area of cooperation.

⁴⁸ Description taken from Part 4, Title I, Chapter 1 of the agreement itself

In a customary way, the Preamble is written in rather general terms. Words like affirming, asserting and reaffirming are being used, without certainty but in a high pitched manner. Human rights, democratic principles, the rule of law, and good governance are acknowledged as part of a political environment. The political environment is part and parcel of long term development. The Parties acknowledge their responsibility for establishing such an environment. These are not the exact words used in paragraph four but this is the meaning. It leads to the conclusion that every breach of the principles referred to, constitutes a violation of the agreement. If this sounds too harsh, then what is the correct interpretation? How is the political environment going to survive if the Preamble does not stand up for it? When the Parties refer to the principles of the *Charter of the United Nations*, do they not thereby support them?

Every one of us knows that a preamble is a way of giving guidance to a juridical text. The tone given here is strong in that it recalls every major covenant and convention on human rights. Not only does it support the *Universal Declaration of Human Rights*, it also recalls the *Covenants on Civil and Political Rights* and on *Economic, Social and Cultural Rights*. The *Convention on the Rights of the Child* is being mentioned, as well as the *Convention on the Elimination of all forms of Discrimination against Women* and the *International Convention on the Elimination on all forms of Racial Discrimination*. All instruments that countries can accede themselves to. This has not been done in a few cases⁴⁹ but some of the principles are considered by some writers to be *ius cogens* – “peremptory norms of general international law”⁵⁰.

⁴⁹ See annex 2.

⁵⁰ Malanczuk 1997, page 57. Article 53, 1969 *Vienna Convention on the Law of Treaties*.

Basic rights of the human person attracted attention from the International Court of Justice (ICJ) in the *Barcelona Traction Case* of 1970. Basic rights were said to include the prohibition of slavery and racial discrimination, prohibition of aggression and genocide. They were not put on equal footing with *ius cogens* but they were recognised as “the concern of all states”⁵¹. The Court did not want to risk massive objection against the term *ius cogens* and probably chose another way of expressing the same thing. Prohibition on torture has also been seen as part of *ius cogens*. Torture shows what is typical for the concept; if argumentation on *ius cogens* does not stand up in court, it is still evident that the crime is unacceptable to us.

Throughout this thesis we will remind ourselves of the 1969 *Vienna Convention on the Law of Treaties*. Article 31 gives the General rule of interpretation: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” In addition to the text itself the context can be understood as instruments made by one or more parties in connection with the conclusion of the treaty. They must also be recognised by the other parties as related to the text. *The Treaty Establishing the European Community* was not made between the Parties or in connection with the *Cotonou agreement*. It is important for the European Community and thereby important to us when analysing the behaviour of the institutions. When Article 177 in TEC talks about the respect for human rights and fundamental freedoms, we are not exactly sure what rights and what freedoms it refers to. When working with the *Cotonou agreement*, we must keep the Preamble in mind. Its references are put there for a reason. The Parties have recognised their responsibilities toward them. Clearly, it is meant to guide the Union institutions in the interpretation of Article 177 TEC, pointing towards the *Cotonou agreement*. Whether they like it or not, they will have to stand up for their written intentions.

⁵¹ Malanczuk 1997, page 58

The Parties are said to consider the *Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe*, the *African Charter on Human and Peoples' Rights* and the *American Convention on Human Rights*. They are “considered as positive regional contributions to the respect of human rights in the European Union and in the ACP states”. If we divide the statement into three the explanation becomes clearer.

The Conventions and the Charter are considered as positive regional contributions. And yes, they are regional and they are directed towards the people who live in the regions. They are different in language and in the view of some of the rights. The African Charter for instance, covers in addition a right to economic, social and cultural development. It is the duty for the signing States to ensure the exercise of the right to development. Article 24 manifests for all peoples the right to a general satisfactory environment favourable to their development. Some of these positions have been criticised⁵² but the texts are to be seen as positive contributions. Their differences are to be acknowledged as strengths. The Preamble says do not mind the differences – embrace them!

The Conventions and the Charter are contributions to the respect of human rights. They are contributions on different levels. The European Convention has a long tradition and is much respected. It is backed-up by the highly acclaimed European Court of Human Rights. The African Charter and American Convention are growing in influence. An African Court of Human Rights has been discussed but not yet constructed.⁵³ The Inter-American Court of Human Rights is doing its best to build up a good reputation. With some 20 years of existence it has made a difference but is still working on the basis of regular sessions and not all year round.

⁵² Lindholdt 1997

⁵³ There is a Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights but it is not in force. Ratification information can be found at <http://www1.umn.edu/humanrts/instree/ratz2afchr.html>. At the time of this writing (011210), only Burkina Faso, Gambia and Senegal had ratified the protocol.

The European and American Conventions and the African Charter are considered in the European Union and in the ACP states. The rights defended by the regional commissions and courts are the ones expressed in the considered instruments. The defendants are the signing states. It is up to the individual to seek justice. State Parties can file complaints against each other but this has rarely ever been done. One condition is always that domestic remedies have been exhausted.

3.5 Article 9 – Essential Elements and Fundamental Element

3.5.1 Human Rights and Sustainable Development

“1. Cooperation shall be directed towards sustainable development centred on the human person, who is the main protagonist and beneficiary of development; this entails respect for and promotion of all human rights.

Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development.”

When the Commission on Environment and Development (the Brundtland Commission) published its report *Our Common Future* in 1987, the perhaps most important contribution was a detailed examination of (how to reach) sustainable development. With illustrative examples it both managed to give expression to the words, as well as to show a conceivable way of progress for future generations. The phrase has been firmly rooted by the Rio Earth Summit held in 1992⁵⁴ and through the Agenda 21 plan adopted there.

⁵⁴ United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, 3 to 14 June 1992.

Principles 3 and 4 from the *Rio Declaration on Environment and Development* give us a good idea of the concept:

“Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”⁵⁵

A sustainable development requires two things; careful planning and close evaluation of every action taken. It is a way to explain the close link between the state of the environment and economic development. Dwivedi describes it as a “closed circle” in his book on *Development Administration*⁵⁶. This closed circle demands caution from the Parties to the *Coutonou agreement*. Before any measure is recommended, in whatever field or area of cooperation, every effect of it has to be considered. If, for instance, a hydroelectric power plant is to be constructed, the consequences of constructing it must be raised. An industrial expand and fast profit speaks for the project but it may be less favourable in the long run. The local environment might never recover from such an interference and the lives of people in the area will never be the same again. The Brundtlandt commision uses the water dam as a warning example. A situation where it is difficult to say no when it is in fact the only right thing to do.⁵⁷

A sustainable development does not leave room for exploitation of any kind. Simply to reason from a perspective based on economic growth will not do. Poverty can live on side by side with an increase in the production. Ruthless investors try to take advantage of this situation. They disregard environmental values and ignore international standards.

⁵⁵ *Rio Declaration on Environment and Development* (1992)

⁵⁶ Dwivedi 1994, page 95

Poverty is a threat to the environment, because desperate people do not afford the luxury of secondary concerns. For the sake of mankind, we must secure a certain standard of living for everyone living on this planet.⁵⁸ We must spread the width of our knowledge and share new technology and scientific findings with everyone. It seems that this aspect of sustainable development could have been better expressed in Article 9 of the *Coutonou agreement*. Respect for fundamental social rights are an integral part of sustainable development but on a wider scale than the word fundamental implies. Sustainable development calls for equality and a fair distribution policy. The European Union has to make sure that it does not favour one market to the expense of another. To act otherwise would be against the true meaning of sustainable development.

A fair distribution policy is challenging enough but the framework for sustainable development does not stop here. It may also have to vary from country to country.⁵⁹ Greed evolves in the footsteps of economic growth. The welfare state constitutes a more dangerous threat to the environment than the poor country ever will. Technology and science have to be adjusted to fit the conditions of the third world. This can only be done on national level.⁶⁰ Here we can acknowledge Article 9, with its demand for democracy based on the rule of law and transparent and accountable governance.⁶¹ Towards the end of Article 9, development strategies for the future are outlined. They go hand in hand with our findings so far and can hardly be criticised for lack of understanding.

⁵⁷ Hägerhäll 1988, page 68

⁵⁸ Hägerhäll 1988, page 58

⁵⁹ Dwivedi 1994, page 96

⁶⁰ Hägerhäll 1988, page 76.

⁶¹ "One also needs to bear in mind that, to be effective, measures taken in support of development, democracy, human rights or good governance need to fit with and be attuned to the national and local circumstances." Arts in Ginther et al (eds) 1995, page 264

At the same time, the European Union and the ACP Countries have put enormous pressure on themselves in regards to using sustainable development as a matter of measurement. The goal includes so much more than talking about respect for all human rights and fundamental freedoms. It calls for a determined fight against injustice. What better way to start this fight than to secure rights for individuals living in different conditions? In my eyes there can be no sustainable development without Courts and strong decision makers working on behalf of the *Cotonou agreement*. We will come back to this subject later on.

3.5.2 Democratisation

“2. [---] The parties reaffirm that democratisation, development and the protection of fundamental freedoms and human rights are interrelated and mutually reinforcing. Democratic principles are universally recognised principles underpinning the organisation of the State to ensure the legitimacy of its authority, the legality of its actions reflected in its constitutional, legislative and regulatory system, and the existence of participatory mechanisms. On the basis of universally recognised principles, each country develops its democratic culture.”

The European Commission expressed its view on democratic principles in a Communication to the Parliament and Council in March 1998. The Communication tried to clarify different concepts cited in Article 5 of the revised *Lomé Convention (IV-bis)*. The term “democratic principles” was – and still is – used to enable every country to choose and develop its own model for organisation of the State, provided that it can guarantee enjoyment of rights and fundamental freedoms. Democratic principles also serve to “accentuate the dynamic process leading to democracy”⁶². In 1998, the concept was defined by three characteristics: legitimacy, legality and effective application. It would lead too far to examine the components in detail but without doubt, they are of importance to the *Cotonou agreement* as well. For example, they apply to non-discrimination and an appropriate

constitutional, legislative and regulatory system. They serve as a background to the notions of rule of law and good governance.

The Communication from 1998 was published by one of the Signing Parties. It is interesting to compare it to a position taken by the then President of the ACP Council of Ministers, at the opening of the first negotiations leading to the *Cotonou agreement*, in Brussels 30 September 1998.

“Some of those social and political objectives are not matters on which the ACP as a Group need to be lectured. Democracy, the rule of law and respect for human rights in my part of the ACP world, for example, are part of our national civic ethic. If they were pre-requisites of development in the sense that is sometimes conveyed, namely, that if you get these fundamentals right the economic harvest will follow, we should be among the richest and in need of no assistance. What these virtues and values constitute are attributes of development, and as such they are vital to sustained development; they will never be a substitute for it - or for our attention to the economic essentials.”⁶³

It should not be doubted that the EU and the ACP states had a similar approach to the importance of democratisation during the negotiations. The problem was their attitude toward each other.⁶⁴ The EU came to the first meeting in Brussels with two detailed guideline papers⁶⁵ and issues for “political dialogue”⁶⁶.

⁶² *Democratisation, the rule of law, respect for human rights and good governance: the challenges of the partnership between the European Union and the ACP States* 1998, page 8

⁶³ http://www.acpsec.org/gb/lome/future/minsp1_e.htm 011218

⁶⁴ ECDPM 1999, page 74

⁶⁵ *The Commission's Green Paper on relations between the European union and the ACP countries on the eve of the 21st century - challenges and options for a new partnership and The Commission's Guidelines for the negotiation of new cooperation agreements with the African, Caribbean and Pacific countries*

⁶⁶ “[...] political dialogue is a more ambitious rendition of the earlier concept *policy dialogue* introduced in 1979 during the Lomé II negotiation – that has since become a feature of ACP-EU relations. At first, most ACP countries viewed policy dialogue as an avenue of undue interference in their internal affairs and resisted the idea. However, as more and more countries came to accept the policy conditionalities of Bretton Woods institutions during the 1980s, and with the gale force winds of *glasnost* blowing beyond the borders of the former Soviet Union, policy dialogue became more or less a *fait accompli* in ACP-EU relations.” Makhan 1998, page 8

The ACP Countries wished for more meaningful participation in the world economy and were tired of having the Sword of Damocles hanging over them, in the shape of conditionality.⁶⁷ *The ACP Group Negotiating Mandate* aimed at enhanced support to strengthen management, reform and modernisation of the State. One area in need of support was “democratic institutions-building which enable citizens to better exercise their rights”⁶⁸. The EU negotiating group did not want to discuss just economics and practicable business but also stressed policy making. Its perspective was that implementation and follow-up of commitments is a question of political will and action and not simply economic and technical support. The attitude found the following expression in *The Commission’s Green Paper on relations between the European union and the ACP countries on the eve of the 21st century*:

“As far as the ACP States are concerned, the necessary changes and reforms will not be made without a radical transformation of political and social structures. EU support measures for economic policies and institutional reforms may have major political repercussions on these countries. Experience of past cooperation has furthermore shown that this support is appropriate only when certain conditions – mainly political – are met.”⁶⁹

Naturally, this initial standing point caused irritation amongst the ACP delegates, who were only trying to get through their point of view. The European Union could certainly have chosen a more appropriate language in a paper meant to “provide food for thought, trigger wide-ranging debate and pave the way for dialogue”⁷⁰.

⁶⁷ *The ACP Group Negotiating Mandate* was very clear on the issue: “[...] the ACP States do not accept the unilateral withdrawal of development assistance whenever the EU considers that any of the essential principles have not been respected.”

http://www.acpsec.org/gb/lome/future/negman_e.htm#Political%20Dialogue 020103, point 13

⁶⁸ http://www.acpsec.org/gb/lome/future/negman_e.htm#Political%20Dialogue 020103, point 96

⁶⁹ *The Commission’s Green Paper on relations between the European union and the ACP countries on the eve of the 21st century - challenges and options for a new partnership* 1996, page 61

⁷⁰ *The Commission’s Green Paper on relations between the European union and the ACP countries on the eve of the 21st century - challenges and options for a new partnership* 1996, page 3

It seems that the somewhat aggressive style was toned down during the negotiations. There is a sense of consensus in the article's feature of democratisation. Both sides were familiar with the term from the *Lomé Conventions* and the formulation agreed upon allows for national identification.

Democratisation is a complicated matter and has been the scope of an immense amount of articles and papers. One of them was written by Hadenius and Ugglå in a report commissioned by the Swedish International Development Authority (SIDA) in 1995.

“The growth and preservation of democracy depend ultimately on the support this form of government has in the hearts and minds of the people. No democratic order can be sustained, if not the prime practitioners, namely the people, is [sic!] prepared to stand up firmly for the principal rules of the game. As it has been said: democracy cannot do without democrats.

This spiritual support for democracy's fundamental principles can be created, essentially, in just one way: through the experience gained from a long-standing participation in democratic structures. It is a matter, in other words, of socialization into democratic norms, through a process of learning by doing.”⁷¹

Donors of the world were hereby urged to see democratic principles in a wide perspective. Democracy does not occur in a day's work. It is not a fixed concept.⁷² To terminate cooperation is a risky business and the individual has the right to ask for more than considerable consideration in this field.

⁷¹ Hadenius & Ugglå 1995, page 4

⁷² “We need to understand that there is much more to democracy than simply which candidate, or which party, has majority support. [---] Democracy can only work if all groups in a society feel that they belong to it, and that it belongs to them. Often that means ensuring, one way or other, that minorities are given a permanent share of power.” UN Secretary General Kofi Annan in an address on 4 December 2000 to the Fourth International Conference of New and Restored Democracies in Cotonou, Benin.

3.5.3 Rule of Law

“2. [---] The structure of government and the prerogatives of the different powers shall be founded on rule of law, which shall entail in particular effective and accessible means of legal redress, an independent legal system guaranteeing equality before the law and an executive that is fully subject to the law.

Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.”

The Development Assistance Committee (DAC) under OECD, in 1993 set up an Ad-Hoc Working Group with the mission to identify components of participatory development and good governance. The Ad-Hoc Working Group published its final report in 1997. It put out the following tasks to governments all over the world when it comes to rule of law:

“- Government should exercise authority in accordance with the law approved by the legitimate representatives of the people.
- The judicial system should be independent.
- The Constitution should submit the government and the administration to the rule of law, which entails the right for the judicial system to question the lawfulness of administrative actions and to hold the State liable for its acts.”⁷³

To my knowledge, this is one of the best wordings of the rule of law yet accomplished. It is in accordance with the European Commission’s Communication from March 1998 on *Democratisation, the rule of law, respect for human rights and good governance*. The Commission added comments on the prison system and police force to the list.⁷⁴ It also brought forward the summary “a legal system guaranteeing equality before the law”. Develop equal standing for citizens and state representatives before the law and you move towards rule of law.

⁷³ DAC 1997, page 13

⁷⁴ In full text “a prison system respecting the human person” and “a police force at the service of the law”. *Democratisation, the rule of law, respect for human rights and good governance: the challenges of the partnership between the European Union and the ACP States* 1998, page 4

At an early stage of the negotiating procedure leading to the *Cotonou Agreement*, the ACP Countries committed themselves to the rule of law (and other values), as set out in the existing *Lomé Convention (IV-bis)*.⁷⁵ The need for more intensive political dialogue had been affirmed at a summit of ACP Heads of State and Government, held in Libreville, Gabon, 7 November 1997. The *Libreville declaration* did not enclose the words rule of law⁷⁶ but they were recognised in the *ACP Group Negotiating Mandate*. The ACP Group called itself willing to see rule of law carried over into a new arrangement. It reminded the EU that “measurable standards” and “verifiable indicators” had to be developed for the provision.⁷⁷

The subject rule of law was also touched upon in *The Commission’s Guidelines for the negotiation of new cooperation agreements with the African, Caribbean and Pacific countries*. The European Commission called observance and working of the rule of law fundamental to the objectives of human rights and economic and social development. Fairness, performance, accessibility and transparency of the legal system were put forward as components of particular interest.⁷⁸

The definition of rule of law finally adopted came to connect the wish for measurable standards with three important aspects: effective and accessible means of legal redress, an independent legal system guaranteeing equality before the law, an executive that is fully subject to the law. We can see that they are all of interest to the individual and can be questioned by her. In the way that they refer to legal redress they even go further than the definition made by DAC.

⁷⁵ ECDPM 1999, page 74

⁷⁶ http://www.acpsec.org/gb/summit/final_gb.htm 020104, Chapter D

⁷⁷ http://www.acpsec.org/gb/lome/future/negman_e.htm#Political%20Dialogue 020104, point 13

⁷⁸ *The Commission’s Guidelines for the negotiation of new cooperation agreements with the African, Caribbean and Pacific countries*, Chapter 3.2

Out of the objectives in Article 9, rule of law is now perhaps the hardest one to fulfil, because no authority is blameless when it comes to administration.

3.5.4 Good Governance

“3. In the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption. Good Governance, which underpins the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute a fundamental element of this Agreement. The Parties agree that only serious cases of corruption, including acts of bribery leading to such corruption, as defined in article 97, constitute a violation of that element.”

The term “good governance” dates from 1989, when the World Bank published a report called *From crisis to sustainable growth - sub Saharan Africa: a long-term perspective study*. As can be understood from the title, it was an analysis mainly concerned with economic growth. It did not bother with people’s need for democracy as such but tried to explain why crisis of governance leads to national bankruptcy.⁷⁹ Since then, the World Bank has expounded its view on the issue. Governance is now being defined as “the institutional capability of public organizations to provide the public and other goods demanded by a country’s citizens or their representatives in an *efficient, transparent, impartial and accountable* manner, subject to resources constraints”⁸⁰ (Italics added.)

⁷⁹ The World Bank 1989

⁸⁰ Information provided at a lecture on Good Governance, given by Ole Bruun Nilsen and Sten Scaumburg-Müller at the University of Aarhus, Denmark, 4 October 2000.

In 1995 DAC's Ad-Hoc Working Group on participatory development and good governance published a brochure where it tried to formulate areas of and guidelines for donor support. DAC identified the following dimensions of (good) governance: the rule of law, public sector management, controlling corruption and reducing excessive military expenditures⁸¹. Good governance is not only related to economic growth but can be seen as a necessary condition to guarantee people's democracy. It is a way to ensure that representative government is upheld from top to bottom and vice versa. One key issue here is public sector management. Please observe that rule of law was apprehended as part and parcel of the good governance concept.

Good governance was a highly controversial question during the agreement talks. The EU proposed good governance as a fourth essential element of Article 9, in order to put pressure on the ACP Countries regarding management of public resources. Another motive for the suggestion was the fight against fraud and corruption. If good governance was made essential and connected to an article on consultation procedures, the EU could initiate talks whenever it felt that decisions had been taken out of wrong reasons. The ACP Countries rejected good governance as a fourth essential element with much force. Mr Adamou Salao, Minister in charge of the development in Niger, tried to explain why to *The Courier* magazine:

“Neither the ACP nor EU states are against good governance. The main contention concerns its inclusion as an essential element in the future agreement. We all aspire to the optional management of development budgets to combat poverty and under development. Beyond that, none of the ACP countries want to see good governance become an essential element, which if violated would trigger the non-execution clause and potentially lead to sanctions. Indeed there is no precise definition of the concept or means available to measure it. Even the EU has had its own mismanagement problems. The EU should assist us in the on-going process of developing better management methods and mechanisms for ever efficient methods of public resources.”⁸²

⁸¹ DAC 1995, page 14

⁸² Ofoegbu 1999, page 9

At first, the ACP States argued that good governance was covered by the three essential elements: respect for human rights, democratic principles and the rule of law. When the negotiations came to a standstill, the ACP Countries responded with their own declaration on good governance. They pointed out that it is important to distinguish what is good and bad management of public affairs. The EU ought not to be blinded by numbers and figures. Even if institutions are weak, situations exist that might be described as good governance.⁸³ In the end a compromise was reached. Good governance got its place in Article 9 but in a separate point and with the status of fundamental element. It was agreed that only serious cases of corruption should constitute a violation of the agreement.

Every individual must be able to trust the popularly elected. This can only be done if governance is maintained in a good manner. It is not hard to understand why the European Union wanted to put public sector management on the negotiation agenda. A fourth essential element would have given the EU a superior position, dictated by donor interests. Out of a cooperation perspective, it was not correct of the European Union to insist on the inclusion of good governance in Article 9. It is a weakness of point 3 that it uses so many words to express what has already been made clear elsewhere. Even if the text means to express political will, it would have been preferable to strengthen the role of specific instruments of control. The parties assure us that they will devote themselves to the control of corruption. Consequences will occur in serious cases of corruption. Appropriate measures are the cure available but what it holds for the individual remains obscure (for the time being). Reducing excessive military expenditures has been completely left out.

⁸³ Solagral 1999, page 46

Good governance is watered down to a substance subject to resources constraints. The individual will have to look after her interests in relation to the purposes of equitable and sustainable development. Here she has the right to ask for clear decision-making procedures as well as transparent and accountable institutions.

3.6 Article 20 – The Approach

*“The objectives of ACP-EC development cooperation shall be pursued through integrated strategies that incorporate economic, social, cultural, environmental and institutional elements that must be locally owned. Cooperation shall thus provide a coherent enabling framework of support to the ACP's own development strategies, ensuring complementarity and interaction between the various elements. In this context and within the framework of development policies and reforms pursued by the ACP States, ACP-EC cooperation strategies shall aim at:
[---]
b. promoting human and social development helping to ensure that the fruits of growth are widely and equitably shared and promoting gender equality;
[---]”*

Article 20 of the *Cotonou agreement* is part of the general framework surrounding development strategies. We will only pay attention to three features that hold consequences for the individual. In order to make it simple for us, we stress their importance by pointing out their negations; cooperation that does not incorporate elements that are locally owned can be questioned, cooperation that does not support the ACP's own developing strategies can be questioned, cooperation that does not promote human and social development can be questioned.

We repeat the contents in a rhetoric manner to show that they hold bearing when cooperation is to be evaluated. None of the features are directly linked to Article 96 with rules for consultation procedures and appropriate measures. Yet, to compare development intentions with the strategy setting might be the only possibility for an individual to come to terms with a project that has backfired.

All of the negations above are dependant on other articles in the agreement. Local ownership has to do with the headlines sustainable development and democratisation. The same applies for the ACP's own developing strategies. Promoting human and social development has to do with sustainable development but also with economic, social and cultural rights.

3.7 Article 33 – Institutional Development and Capacity Building

*“1. Cooperation shall pay systematic attention to institutional aspects and in this context, shall support the efforts of the ACP States to develop and strengthen structures, institutions and procedures that help to:
[---]
b. promote and sustain universal and full respect for and observance and protection of all human rights and fundamental freedoms;
c. develop and strengthen the rule of law; and improve access to justice, while guaranteeing the professionalism and independence of the judicial systems;
[---]”*

Let us underline the most apparent advantages for the individual in Article 33 (linked with Article 7). Cooperation shall pay systematic attention to institutional aspects. In order to do this, the Parties have to secure a system of checks and balances. That system is best maintained by control from the individual. The individual must have access to independent courts, free information and media, educational institutions and financial centres, to mention but a few components of a modern, democratic society.

Moreover, the individual is guaranteed additional mechanisms that can help her defend her human rights and fundamental freedoms, such as contact with established ombudsmen and control authorities. She has the right to participate in groups, meetings, and she has a right to associate herself with others (see Article 7). She has the freedom of religion and thought. She has the right to question any authority that does not help her maintain her rights and freedoms.

Cooperation that hinders or obstruct any of the rights we have dealt with so far can be questioned.⁸⁴ The European Union has put an obligation on itself to support the ACP States in their efforts to secure human rights and fundamental freedoms. The European Union must answer to citizens of the ACP States and the Union itself if it takes an interest in operations of another kind.

⁸⁴ Article 2 (3), 18, 19, 21, 22 ICCPR. Article 6, 9, 10, 11 European CHR. Article 7 – 11 African CHR. Article 8, 12, 13, 15, 16 American CHR.

3.8 Article 96 – Consultation Procedures and Appropriate Measures

3.8.1 Consultation Procedures

Article 96 describes consultation procedures and appropriate measures as regards human rights, democratic principles and the rule of law, set out in paragraph 2 of Article 9. Article 97 has a similar structure but comes into play in serious cases of corruption. They both follow the intention of the human rights and democracy clauses issued by the Commission in 1995. The idea in Article 96 is that the Parties shall find solutions together to any problems or misunderstandings. If a dispute remains unsolved, Article 98 gives the rules for settlement.

3.8.2 Locus Standi

“1. Within the meaning of this Article, the term “Party” refers to the Community and the Member States of the European Union, of the one part, and each ACP State, of the other part.”

The *Lomé Conventions* did not open up to individual parties. *Lomé IV-bis* had Article 5 on human rights and a suspension clause but it did not make it possible for individuals to bring action directly against a government or state. “In the case of breach of Article 5, therefore, although individuals have been empowered with rights under the Convention, the enforcement of their rights remains in the hands of the Contracting Parties”⁸⁵, Noor-Abdi wrote in 1997. Arts arrived to the same conclusion in her book of 1999 on the *Lomé Conventions*.⁸⁶

⁸⁵ Noor-Abdi 1997, page 256

⁸⁶ See for example pages 162-166 and pages 202-204 in Arts 1999.

What about the *Cotonou agreement*? Article 2 states that it shall be open to different kind of actors, including the private sector and civil society organisations. The purpose is to encourage the integration of all sections of society into the mainstream of political, economic and social life. Article 6 dwells upon the actors of cooperation. “Recognition by the parties of non-governmental actors shall depend on the extent to which they address the needs of the population, on their specific competencies and whether they are organised and managed democratically and transparently” (point 2).

The Parties recognise the contribution of civil society to development and promises to support and strengthen community organisations and non-profit non-governmental organisation in Article 7. A political dialogue with such organisations are encouraged in Article 8, point 7. Greater involvement of an active and organised civil society and the private sector are considered in article 10. The actors are said to contribute to a stable and democratic political environment.

Including NGOs and to some extent the private sector in the agreement must be seen as another evidence of progress in the ACP-EU development cooperation. It enables human rights organisations to act on the behalf of individuals through dialogue.

Organised or not, individuals are not encouraged in the *Cotonou agreement* to speak-up for their cause and use the articles directly against a mistaken government or institution. The articles referring to human rights are not formulated in that manner and the individual is not mentioned as a party or an actor of the agreement.⁸⁷ In a dispute of the agreement they do not have *locus standi* and cannot initiate talks in a consultation procedure. What exists is an option to relate to the text in other procedures. Lobbying is not the only way for an individual to attract attention.

3.8.3 Appropriate Measures

“2.a. [---] If the consultations do not lead to a solution acceptable to both Parties, if consultation is refused, or in cases of special urgency, appropriate measures may be taken. These measures shall be revoked as soon as the reasons for taking them have disappeared.

[---]

c. The "appropriate measures" referred to in this Article are measures taken in accordance with international law, and proportional to the violation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort. [---]”

We must remind ourselves of the previous chapter to find out what lie behind the measures called appropriate. In the eyes of the Commission they are postponement of new projects, trade embargoes, suspension of arms sales, suspension of military co-operation and so forth.

Suspension is seen as a measure of last resort. This is the only proper way to interpret the 1969 *Vienna Declaration on the Law of Treaties* and the 1986 *Vienna Convention on the Law of Treaties between States and International Organizations*.⁸⁸

The use of the word appropriate leaves a considerable margin of appreciation to the Parties of the agreement. We understand that the measures can be invoked by one Party (i.e. the European Union) to influence another (i.e. one of the ACP countries). The legitimate purpose is to change a behaviour that does not conform to paragraph 2 of Article 96 (and indirectly to Article 9). If one of the Parties thinks that another Party should hold consultations relating to paragraph 2 of Article 9 and the other one does not agree, it has the right to call on measures. Different tools might have to be used in different situations but if a remedy has no purpose and is not believed to have any effect, it cannot be seen as appropriate.

⁸⁷ “It was not meant to have such effect by the parties, and also, the nature of the provisions/substance of the Agreement is not fit for direct effect”, Arts writes in an e-mail to the author 21 november 2001.

⁸⁸ Arts 1999, pages 194-195

As soon as the reasons for taking one or several measures have disappeared, they have to be revoked. This is the case if the other Party agrees to hold consultations and/or learns how to compromise. It could also be relevant if a case seems to be urgent.

Another restriction in paragraph 2 has to do with proportionality. This is a well-established principle in the European Union and also when it comes to humanitarian law. It simply means that the response taken should answer to the violations committed. The proportions depend on the breaches – understood here as consultation differences or cases of special urgency. We shall examine the actual practice further in the next chapter, in order to establish what is allowed and appropriate with measures being used.

4 Positive / Negative Conditionality

4.1 Introduction

So far, we have examined the historical background to the *Cotonou agreement* and made a textual – contextual if you like – analysis of its Preamble and articles. What we have in front of us is a closer look at the implementation of the principles we have found. There are a number of ways in which the individual should be able to defend her human rights and fundamental freedoms. We will examine what impact some of them can have on the *Cotonou agreement* and the Signing Parties. The list of actions below is not and cannot be exhaustive. It would be a contradiction to impose that demand when dealing with cooperation that is undergoing constant changes. Especially here and now, the Parties find themselves in a state of evolution. The reason for taking a close look at action is to make sure that they move forward and do not forget the goal of development. That every step is aiming in the right direction, even if it is but a small one.

Simma, Aschenbrenner and Schulte in 1999 declared that the European Union has rarely used the notion of human rights in its own right. According to them, the Commission has treated human rights as a development factor, necessary to promote the rule of law, a pluralist civil society and so on. Simma et al referred to the Resolution of the Council from 28 November 1991 that talks about human rights as part of “a larger set of requirements”⁸⁹. They agreed with Arts’ finding that human rights in the past have been built into a triptych consisting of human rights, democracy and the rule of law, where good governance is the all-embracing principle.⁹⁰

⁸⁹ *Resolution of the Council and the member states meeting in the council on human rights, democracy and development*, 28 November 1991

⁹⁰ Alston 1999, page 577

Actually, the Resolution was not so simple as to deny human rights a place of their own in development cooperation.

“The Council shares the analysis contained in the Commission's communication of 25 March 1991 and acknowledges that human rights have a universal nature and it is the duty of all States to promote them. At the same time, human rights and democracy form part of a larger set of requirements in order to achieve balanced and sustainable development. In this context, account should be taken of the issue of good governance as well as of military spending.”⁹¹

When reading the whole passage we see that human rights were to be treated as part of a larger set of requirements but also as a separate goal. Eventually, the original intention was forgotten and the theory of human rights as a development factor got the upper hand. The contrast is frustrating because it seems better to use development as a human rights factor. The concern should not be how to adjust human rights so that they fit into criterias of development cooperation, the relevant question is how we can adjust development cooperation so that it fulfils human rights.

We need not treat the triptych as a reminder of what has been. It is enough to compare it with Article 9 in the *Cotonou agreement*, to see that it is still valid. At the same time, we have Article 33 that separates the triptych and acknowledges human rights and fundamental freedoms by their own means. Article 9 and Article 33 taken together supports the idea of a place for the individual in the agreement. In that sense we have tried to turn the triptych in the individual's favour. It must now be put into service. Article 33 helps us understand how.

⁹¹ *Resolution of the Council and the member states meeting in the council on human rights, democracy and development*, 28 November 1991

The actual place for human rights has been carelessly described for a lot of different reasons, stemming from a long negotiating process. The ACP-EU agreement addresses both sides of a complex picture. What we have done is to place the individual in the middle of that picture, no matter where she comes from. Now, with the rights in the right hands, we will calculate options to safeguard them.

4.2 Positive Conditionality

4.2.1 Political Initiatives

The Council Resolution from November 1991 classified human rights as both independent and dependent principles, and tried to endorse a positive approach. The Council wanted an open and constructive dialogue between the Community, its Member States, and governments of developing countries. Various initiatives were proposed and active support for:

- “- countries which are attempting to institute democracy and improve their human rights performance;
- the holding of elections, the setting-up of new democratic institutions and the strengthening of the rule of law;
- the strengthening of the judiciary, the administration of justice, crime prevention and the treatment of offenders;
- promoting the role of NGOs and other institutions which are necessary for a pluralist society;
- the adoption of a decentralised approach to cooperation;
- ensuring equal opportunities for all.”⁹²

⁹² *Resolution of the Council and the member states meeting in the council on human rights, democracy and development, 28 November 1991*

Positive measures benefit by their nature of being unconstrained. While negative measures can be neglected as infringement upon a State's sovereignty, positive dialogue is not so easy to dismiss.⁹³ Even more so today when the European Commission has manifested that the EU is willing to discuss human rights and democratisation issues within its own borders.⁹⁴

Positive measures have the strength of being easy to adjust. They change with goals achieved and work on different levels at the same time. They are preventive rather than reactive (and reactionary). The focus is on the individual and her needs to influence the initiatives, instead of on attempts to solve problems from the outside.⁹⁵ It is easier to find support within the EU for positive measures than negative ones. The Member States do not have to risk economic loss or diplomatic failures. Active support can even be given underground and need not attract direct attention from those who violate human rights.

Still, there are dangers with positive initiatives. Continued dialogue in unsettled times can be comprehended as support for parties committing wrongful acts. Simma et al gives the example of Ethiopia, where financial support for the regime between 1991-1994 was spent on questionable operations in the civil war.⁹⁶ Crawford puts forward the idea that lack of EU sanctions in Equatorial Guinea and Guinea in the beginning of the 1990s diminished the potential of other measures.⁹⁷

⁹³ Alston 1999, page 579

⁹⁴ *The European Union's role in promoting Human Rights and Democratisation in Third Countries* 2001, page 9

⁹⁵ Alston 1999, page 580

⁹⁶ Alston 1999, page 581

⁹⁷ Crawford 2001, pages 188-189

In order to help a country develop a strong system for the protection of human rights, it is necessary to embrace a multiple choice of initiatives. Taken together, the initiatives might become stronger but it goes without saying that preferences occur. Every choice to support one function in society affects others. For example; promoting certain NGOs may very well hinder collaboration with the government, the adoption of a decentralised approach could leave control mechanisms with less impact, strengthening the judiciary can lead to a distortion of power. It is therefore important to calculate the consequences of an action before taking it.

4.2.2 A Decentralised Approach to Cooperation

A decentralised approach to cooperation is under current construction in the EU. The attitude safeguards projects on a micro level and seeks to develop relations on a local and regional level. There is a Council Regulation from 1998⁹⁸, which acknowledges the concept. Recently (November 2001) the Commission has put forward a proposal for a regulation of that regulation to the European Parliament.⁹⁹ The expressed purpose is to amend and extend decentralised cooperation. Article 70 in the *Cotonou agreement* is not mentioned but unfolds the underlying intentions in due course.

The idea of decentralised cooperation goes well in hand with the principle of subsidiarity. For people of the Union it means that decisions should be taken as closely to the citizen as possible. For people outside of the Union this could be translated into another form. If the principle of subsidiarity is to be respected when it comes to integration of human rights, it means that every action has to be deeply rooted in the minds of the people. It is wrong for the high authorities to carry through a project or programme that does not have support from the local majority.

⁹⁸ Council Regulation (EC) No 1659/98 of 17 July 1998 on decentralised cooperation, Official Journal L 213 , 30/07/1998 p. 0006 - 0008

⁹⁹ Commission Proposal - COM (2001) 576 final

Indeed, research findings show that human rights will not last long if they are simply implemented from above.¹⁰⁰ They have to be founded on the will of the people.

Poul Nielson, Commissioner for Development and Humanitarian Aid, explained the Commission's view on cooperation with civil society in a speech delivered in front of the ACP-EU parliamentary assembly, 30 October 2001.

“[...] there are two basic elements that we should always keep in mind. Firstly the primary objective of the participatory approach under Cotonou is to support the dialogue between governments and their civil society. The Commission can only be a facilitator. Secondly, the success of the process does not depend only on public authorities. Cotonou provides a favourable framework for an active civil society. They should themselves take advantage of the possibilities for action which Cotonou offers. At the same time, the traditional, highly valuable instruments of Parliamentary Democracy have to be strengthened.”¹⁰¹

Referring to speeches, we are not even dealing with soft law. The extract merely reaffirms that cooperation with civil society must be maintained at national level. The EU has experimented for two years with a budget heading (*B7-6002 – ex B7-6430*) for decentralised cooperation. The Commission wants to extend the validity period until 2003.¹⁰² It remains to be seen what the outcome - not to forget the size - of the draft budget for 2002 will be.

¹⁰⁰ Alston 1999, pages 608-613. Blair & Hansen, pages 16-27. Browne, pages 27-33. Conclusions supported by the so called *Paris Principles regarding National Institutions for the Promotion and Protection of Human Rights*. Supported also by the *Copenhagen Document* from 1990.

¹⁰¹ http://europa.eu.int/comm/commissioners/nielson/speech/20011030_en.htm, 011213

¹⁰² *Commission Proposal - COM (2001) 576 final*

4.2.3 The Holding of Elections

The EU has supported a vast number of election initiatives in the ACP Countries throughout the years. The support has been administrated mainly through pre- and post-election activities, such as civic education and training of electoral bodies. In a few cases only has the EU sent its own election observers to recognise elections fair and equal.¹⁰³ There is once again a danger with the EU participating too much in internal matters of the ACP countries. Elections can be held in many ways and what seems to be fair by one party can be understood as unfair from a different angle. The EU has been wise to concentrate its efforts on the individual, rather than on politics. It has enabled electors to come to terms with their wishes of none restricted dialogue in the preface and open evaluation in the post face of an election. Private initiatives can be successful through election projects that require few means and easy planning.

Simma et al points out (in line with Amnesty International) that free elections and multi-party systems are no guarantee for human rights (or democracy for that matter).¹⁰⁴ If an election simply renders legislation to an unwanted regime, as with Robert Mugabe in Zimbabwe, it does the individual great disservice. This is why private initiatives are in the interest of foreign donors. Here lies the only possibility for them to guarantee fair and equal treatment in the long run.

¹⁰³ Alston 1999, page 597

¹⁰⁴ Alston 1999, page 599

4.2.4 Strengthening the Rule of Law and the Judiciary

When it comes to strengthening the rule of law and the judiciary, the EU has supported a limited number of NGOs, Councils and the United Nations. Different projects have offered legal assistance and tried to build up human networks, as well as physical facilities, in the ACP Countries.

One programme from France, that was granted EU money during 2001, will last for two years and is intended to “bring about” rule of law in the Democratic Republic of Congo (DRC). The programme summary involves a support fund for Congolese civil society organisations and means for conflict mediation and containment.¹⁰⁵ Another project, initiated by the British Council, will create an electronic information resource for civil society in Nigeria. It includes sophisticated databases, with information from donors and NGOs on policies, organisations and budgets.¹⁰⁶ These are just two projects that unveil a donor based thinking in the granting of money from the EU. The programme summaries made by the EuropeAid Co-operation Office are of course optimistic but they make you wonder. How can rule of law be brought about in two years time in a country recently described by Human Rights Watch as a “continuing human rights disaster”¹⁰⁷? How will databases come to use in a country where the adult literacy rate in 1999 was estimated at about 63 percent¹⁰⁸?

Maybe this scepticism sounds too prejudiced but there are certainly areas where support for private initiatives from within the ACP countries would be of more help than donor based activities.

¹⁰⁵ The European Human Rights Foundation. EIDHR – Macro Projects, Compendium 2001, page 70

¹⁰⁶ The European Human Rights Foundation. EIDHR – Macro Projects, Compendium 2001, page 71

¹⁰⁷ <http://www.hrw.org/campaigns/congo/>, 020103

¹⁰⁸ The United Nations Development Programme 2001, page 143

4.3 Negative Conditionality

4.3.1 Appropriate Measures

As we have seen, the Commission enclosed a list of appropriate measures in its 1995 communication on the inclusion of democratic principles and human rights¹⁰⁹. A comparison with recent history brings about the ones in key position. The European Union has repeatedly reduced and suspended cooperation with different ACP countries. Another popular strategy has been to express diplomatic concern, so far in hundreds of resolutions and démarches (sometimes in confidential manner¹¹⁰). Every year, the General Affairs Council adopts an *Annual Report on Human Rights in Europe and the world*. The European Parliament has its own annual report. On the Commission's website you will find a great number of monthly reviews of human rights and democratisation. These texts concentrate on specific problems in specific countries and they recommend the European Union to act in order to get things right.

When it comes to negative actions, it is always in its place to ask whether they are effective or not. There are a number of problems related to negative (reactive) response to human rights abuses. Marantis exposed six apparent weaknesses of negative measures in a 1994 article on “the European Community Model” for human rights, democracy and development.

First of all, Marantis found that negative measures do not address the root cause of excesses. What they do is to “punish governments and populations for the consequences of inadequacies in their legal, political, economic and educational systems”¹¹¹. Accordingly, negative measures can be accused of having government officials and others interfere with internal affairs of the

¹⁰⁹ *The inclusion of respect for democratic principles and human rights in agreements between the Community and third countries* 1995. See page 21!

¹¹⁰ The European Council of General Affairs 2000, page 28

¹¹¹ Marantis 1994, page 12

country subjected to criticism. This would counteract a reactive policy, as it assumes that the recipients are receptive to new ideas (“capable and willing to respond”¹¹²). A major setback with negative measures is that they often have devastating impact on donee populations. They have not been guided by “coherent implementation criteria”¹¹³. The final objection from Marantis to the use of negative measures was that they ignore economic, social and cultural rights.

In October 2001, Mr Cheltenham from Barbados presented a report before the ACP-EU Joint Parliamentary Assembly on the impact of sanctions. He defined sanctions as an umbrella term, which includes everything from diplomatic measures to embargo and boycott of imports and exports. Cheltenham also made reference to the *United Nations (UN) Charter* and its article 41¹¹⁴. The word sanction is not used there. As later observed, the article is really about measures to maintain or restore international peace and security. Be that as it may, our “rapporteur” wanted to show that the last decade has made a wide arsenal of measures available to the sanctioning states.¹¹⁵

¹¹² Marantis 1994, page 13

¹¹³ Marantis 1994, page 13

¹¹⁴ “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.” Article 41 of the *UN Charter*

¹¹⁵ Empowered by whom one might wonder. Tomaševski has written about *Case C-120/94 R*, in which the Commission was seeking suspension of measures adopted by Greece with regard to the former Yugoslav Republic of Macedonia (“FYROM”). The European Court of Justice made the following observation in paragraph 94 of its order on interim measures: “...it is not possible to confirm that the Hellenic Republic has committed a manifest breach of Community law, as the Commission maintains, since without detailed consideration of the matter it is not possible to establish that the Greek Government relied improperly on Article 224 of the Treaty or made an improper use of the powers provided for by that article.” As long as the Member States do not infringe upon Community Law it is up to them to decide what measures to impose in their own interests. (Tomaševski 1997, page 218) The Court did not, however, omit the possibility that measures adopted can be against the interests of the European Union. Please note again that the opinion above was based on an application for interim measures to be described. The Court’s final position on Member State sanctions cannot be deduced from the order.

Cheltenham went on to describe the prevailing view on “targeted” and “smartened” regimes of sanctions. Efforts have been undertaken over the last few years to improve the efficacy of sanctions and to reduce their humanitarian impact on civilian populations. Mainly, this has been done by attempts to reach those in power. Two examples, known to us from national law, are travel restrictions and freezing of bank accounts belonging to criminals.¹¹⁶ Cheltenham welcomed the refinements but reviewed them as “too recent to be reflected in current sanctions policy”¹¹⁷.

The Cheltenham report then concentrates on case studies of nine countries. Six of them are parties to the *Cotonou agreement*, namely: Angola, Burundi, Nigeria, Rwanda, Sudan and Fiji. The studies were based on information given to the “rapporteur” during deliberations held in a Working Group organised by the ACP-EU Joint Parliamentary Assembly. In a couple of cases there were little detailed information (Nigeria) or information provided by only one part of a conflict (Fiji). We will leave them aside as much as possible (although it is hard to estimate how much they influenced the final conclusions made by Cheltenham).

For measures to be appropriate, they have to be intended to fulfil a purpose. The intention must be likely to occur, otherwise they cannot be called appropriate. What Cheltenham found was that all sanctions have limitations and that they seldom achieve their purpose.

In the case of Rwanda 1994-95, the aim of the arms embargo imposed by the United Nations clearly failed. It did not cease the hostilities and did not stop the mindless violence conducted during the internal war. The embargo was believed to have had some impact by making arms more expensive. EU development cooperation was suspended between April and June 1995.

¹¹⁶ Cheltenham 2001, pages 3-4

¹¹⁷ Cheltenham 2001, page 4

The representative of Rwanda felt that this had had negative effects on the population. Dr Mullen from the University of Manchester pointed out that there had been “a crisis with development financing by bilateral and multilateral donors and a dislocating effect on investment”¹¹⁸.

In the case of Burundi, EU development cooperation was suspended between January 1997 and July 1998. Humanitarian aid continued. The culminated effects of international sanctions imposed on Burundi were hard to evaluate. They could not be discerned from the effects of the civil war and population displacement. The same Dr Mullen proposed that “sanctions had had their maximum impact on the most vulnerable”¹¹⁹.

In the case of Angola 1993-98, sanctions were never imposed on the Government of Angola but on the aggressive side of UNITA (the National Union for the Total Independence of Angola). The UN Security Council had authorised sanctions against the sale of arms. There had been a number of other “smart” sanctions, including restrictions on the import of diamonds into the European Union. Although the sanctions had not been effective enough, they stood out as more method-based than previous ones in the report. The Working Group felt that “some legal resource should be available to punish sanctions-busters”¹²⁰.

In the case of Sudan from 1996 and onwards, EU sanctions arose in conformity with article 366 of the *Lomé IV Convention* and have been upheld under Article 96 of the *Cotonou Agreement*. There is nowadays a change of attitude in the international community towards Sudan. One reason for this seems to be that Sudan has become an oil-exporting country.

¹¹⁸ Cheltenham 2001, page 18

¹¹⁹ Cheltenham 2001, page 19

¹²⁰ Cheltenham 2001, page 22

The civil war in Sudan is still raging. The EU has renewed its dialogue with the Government and offered rehabilitation aid.¹²¹ The Working Group believed in October 2001 that the situation in Sudan was “still quite alarming”. It felt that the imposition of sanctions had worsened the country’s overall economic situation and made it “more precarious for the people”¹²².

In his final conclusions, Cheltenham referred to comprehensive sanctions as too “blunt” to coerce a change of policy. They cause unacceptable suffering on the part of the populations. He agreed with Kofi Annan’s opinion that sanctions have the potential to encourage political dialogue. He also referred to the Secretary-General of the UN in his preference for targeted sanctions.¹²³

Crawford evaluated the use of political conditionality used by four international donors in a book published in 2001. The four donors were the United Kingdom, the United States of America, Sweden and the European Union. In the chapter on effectiveness of economic conditionality, Crawford discovered a progressive trend towards democratisation and greater protection of civil and political liberties in 13 out of 29 examined countries. Donor pressure deserved some credit for progression in 9 of the 13 cases. Significant contribution by sanctions was only established in two cases; Malawi and Guatemala. Malawi is of extra interest to us, being part of the Cotonou group. Crawford claims that suspension of aid “provided a clear signal to Banda’s regime that he could not hold out indefinitely in the face of both national and international opposition”¹²⁴. He does not conceal that Banda’s loss of support from the apartheid regime in South Africa contributed as much to transitional democracy.

¹²¹ Van Beurden 2001, page 63

¹²² Cheltenham 2001, page 25

¹²³ Cheltenham 2001, page 36

¹²⁴ Crawford 2001, page 187

Failure to influence political change in 18 out of 29 cases was the main finding of Crawford's close investigation. In his search for reasons, he explored two dimensions. Either negative measures are to blame for being weak in nature or recipient countries are strong enough to resist their impact. In many cases, there will be a combination of the two factors. We have already exposed the relative weakness of economical sanctions. Crawford adds lack of coordination in applying punitive measures as another problem. If one donor acts with punishment and another one's programme remains unaffected, the result is null and void. An example is Guinea, where the US and the EU were out of step with each other.¹²⁵ The punitive actions taken by the US amounted to nothing.¹²⁶

As far as national independence was concerned, Crawford looked into 7 cases where full suspension of aid had been imposed without any effect: Burundi, Liberia, Nigeria, Rwanda, Somalia, Sudan and Burma. "Only the governments of Burma and Nigeria could be described as relatively strong and immune to aid sanctions, due mainly to a firm grip of power through military control and severe political repression, as well as less economic vulnerability."¹²⁷ Nigeria is another country where oil plays a key role. Both the US government and the EU Member States decided against an oil embargo.¹²⁸ The rich became richer and the poor remained without aid. Gathering the facts we see that bringing cooperation to an end does no good at all for the individual.

¹²⁵ Crawford 2001, page 199

¹²⁶ Crawford 2001, page 189

¹²⁷ Crawford 2001, page 198

¹²⁸ Crawford 2001, page 198

Tomaševski has analysed the use of sanctions by the European Union at numerous times. Over and over again she has found that they have been misused - arbitrarily and without proper concern. In 1997 she observed that:

“The European Parliament has been *the* international body calling for sanctions. Because it is an exclusively donor-composed body, the EP’s resolutions on human rights in ‘third countries’ are different from those of recipient-donor composed bodies, such as the human rights bodies of the United Nations, but less so when compared with the joint assembly established within the Lomé model. The fact that the EP has so often called for sanctions to be imposed upon recipients reinforces the image of sanctions as a phenomenon created by and aimed at donors’ political constituencies.”¹²⁹

One motive maintained for imposing economic sanctions is to turn citizens of a country against their wrongdoers and enforce a change of the general attitude towards human rights.¹³⁰ The illogical aspect of such reasoning is that people are more inclined to see the immediate cause for their suffering, than what is said to be the effects of lack of empathy from their leaders. The victims have felt the negative effects of negative internal actions, now they must experience negative actions from the outside as well. Threats to their very existence appear everywhere. The individual is already in favour of human rights and fundamental freedoms. It would be more rational to lend her a helping hand in a difficult situation, than to make it worse with a reactive slap in the face. This can only lead to a negative response from her side. The individual will apply for help from the same government that was previously her enemy. In a worst case scenario, negative measures might even strengthen oppression and give unwanted excuses for more ruthless acts by the authorities. By all means necessary, the latter will use the measures to legalize their own wrongful behaviour.

¹²⁹ Tomaševski 1997, pages 41-42

¹³⁰ Cortright & López 2000, page 19

With all this in mind, only a few negative measures from the past can be called appropriate. The suspension of development cooperation is not one of them. Only the new kind of so-called smart sanctions can hold anything good for the individual. On the other hand, quite a few sanctions would constitute a breach of the individual's human rights, if they were decided by her own government. They include discriminatory embargoes and boycotts, as well as some cultural and communications measures (such as unfounded "cancellation of telephone links"¹³¹).

4.3.2 The European Court of Justice

Fundamental rights form an integral part of general principles defended by the European Court of Justice. The rights are not independent of international standards or constitutional traditions common to the member states.¹³² In the *Nöld* case the Court stated that "international treaties for the protection of human rights, on which the member states have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law"¹³³.

Contracts concluded by the ACP States and financed by the *European Development Fund* are to be treated as national contracts.¹³⁴ According to Article 57(3) "eligible non-State actors may also be responsible for proposing and implementing programmes and projects concerning them". Individual claims will determine the scope of this paragraph.

¹³¹ Cheltenham 2001, page 3

¹³² Craig & De Burca 1998, page 303

¹³³ Case 4/73, *Nöld v Commission* [1974] ECR 491, par 13

¹³⁴ Article 57(2) in the *Cotonou agreement*, Case 33/82, *Murri Frères v Commission* [1985] ECR 2759, par 33; Case 118/83, *CMC cooperativa muratori e cementisti and others v Commission* [1985] ECR 2325, par 28; Case 126/83, *STS Consorzio v Commission* [1984] ECR 2769

Acts or conduct by the Commission or its officials and agents might cause damage to third parties. It would be wrong to shut down the possibility for individuals to bring action against them.¹³⁵ The European Court of Justice is open to non-contractual liability claims stemming from Article 177 TEC. The jurisdiction of the Court is outlined in Articles 235 and 288 TEC. The competent body is the Court of First Instance. Compensation may be claimed by other than EU nationals.¹³⁶

Simma, Aschenbrenner and Schulte have found that the conditions for success are rather strict in these matters. The standard of proof has to be taken into account. It depends on the nature of the activity concerned. In case of a legislative sort, the applicant has to demonstrate a sufficiently flagrant violation of a superior legal rule for the protection of the individual. An initial decision that does not satisfy human rights demands might have to correspond to this requirement. In case of administration, it is enough to prove faults committed.¹³⁷

The existence of fault on the part of the Commission has to be established. The applicant has to show a casual link between the reality of the damage and the unlawfulness of the alleged conduct.¹³⁸ Personally, I have not found one case where the court did not deny causality. This is where argumentation has to be strong and relentless. Rights of the individual have to be put into focus. The applicants of almost all the cases referred to (the *Nöld* case and the *Adams* case disregarded) were tenderers who found themselves passed over in one way or another. It is clear that this is hardly

¹³⁵ Case 118/83, *CMC cooperativa muratori e cementisti and others v Commission* [1985] ECR 2325, par 31; Case 267/82, *Développement SA and Clemessy v Commission* [1986] ECR 1907, par 16

¹³⁶ Case 145/83, *Adams v Commission* [1985] ECR 3539, Case T-185/94, *Geotronics SA v Commission* [1995] ECR II-2795

¹³⁷ Alston 1999, page 620

¹³⁸ Case T-175/94, *International Procurement Services SA v Commission* [1995] ECR II-729, par 44

valid cause in the eyes of the Court, since tenderers have to bear the ordinary risk of taking part in a tendering procedure.¹³⁹

Simma et al points out that only physical injuries and clearly economic loss are recoverable. Finally, they reason that “a valid claim can only be made by the individuals who suffered injury themselves”¹⁴⁰. Representation by other parties, interested NGOs or citizens of the Union is ruled out. It is my belief that these are two demands that are fulfilled in a number of situations. Just think hypothetically of cases where natural findings have been exploited, contractors and workers underpaid, possessions lost, land expropriated or people’s good health have been risked. Think of the case of the Kibale Forest and Game Corridor in Uganda, when forcible evictions were arranged during a project funded with EU money.¹⁴¹ The Commission has denied responsibility but evictions serve as an example where economic loss and a valid claim could appear at the same time. What the individual needs is economic support and legal advice, enabling her to defend her rights. The judicial means are there but the support system has to be improved.

4.3.3 National Courts

Articles 235 and 240 TEC taken together prevent national courts from deciding non-contractual liability by any institution of the EU. The jurisdiction is given to the European Court of Justice exclusively. At the same time, there is no provision in the TEC for an individual to bring action against a Member State before the ECJ.¹⁴² The Commission is entitled to do so in Article 236. Other Member States may bring matters against each other according to Article 237.

¹³⁹ See for instance the Court’s reply on maintained strict liability in case 267/82, *Développement SA and Clemessy v Commission* [1986] ECR 1907, par 33

¹⁴⁰ Alston 1999, page 620

¹⁴¹ Alston 1999, page 618

¹⁴² Craig & De Búrca 1998, page 540

National law governs actions brought against a Member State before the national court. That court is under the obligation to respect and uphold Community law. It must provide an effective remedy for the enforcement of directly effective Community provisions. The remedies must answer to the ones that exist in domestic matters.¹⁴³

4.3.4 The European Ombudsman

The competence of the European Ombudsman is given in Article 195 TEC. The Ombudsman is appointed by the European Parliament to examine complaints against the institutions, with the exception of the Court of Justice and Court of First Instance acting in their judicial role. Any citizen of the Union or any natural or legal person residing or having its registered office in a Member State can lodge complaints. Provided that the complaint has not been the subject of legal proceedings, it is up to the Ombudsman to conduct inquiries. The outcome of the inquiries undertaken is made available to the applicant, the institution concerned and the European Parliament.

Through Article 195, the Ombudsman is authorised with complete independence. He (she) shall neither seek nor take instructions from anybody in the performance of his (her) duties. If reasons for dismissal should appear the Ombudsman may be liberated from the post by the Court of Justice at the request of the European Parliament. The Ombudsman now in charge, Jacob Söderman from Finland, is known for his high integrity and was first appointed in 1995.

¹⁴³ Craig & De Búrca 1998, page 540

A decision by the Ombudsman on 29 April 1999 concerned a construction of a road in Kenya financed by the *European Development Fund* (EDF).¹⁴⁴ The complainant claimed that the Community was liable for having financed a project, which caused extensive damage to human, animal and plant life, destruction of property and environmental degradation of the local communities. The Ombudsman made a thorough investigation of the circumstances and came to the conclusion that no blame could be put on the European Commission.

In a decision dated 26 October 2000, the Ombudsman gave his opinion on a complaint from 20 May 1998 against the Commission.¹⁴⁵ The complaint concerned a national parks project in Southern Ethiopia, funded by the EDF. The complainant claimed that the development of the project had not respected legal obligations derived from EU development policy, the *IV Lomé Convention*, the OECD guidelines on resettlement and international human rights agreements. The European Ombudsman found no signs of mischief in the subject matter but made a number of valuable statements. With reference to the *Francesco Perillo* case¹⁴⁶ he established that the Commission was required to discharge obligations (from the *Lomé Convention*) “in accordance with the requirements of sound administration”. The Ombudsman relied on two other cases when he underlined that EU development cooperation had to be consistent with existing international law obligations.¹⁴⁷

¹⁴⁴ Decision of the European Ombudsman on complaint 983/29.10.96/ABU/KENYA/XD/BB against the European Commission

¹⁴⁵ Decision of the European Ombudsman on complaint 530/98/JMA against the European Commission

¹⁴⁶ Case T-7/96, *Francesco Perillo v Commission* [1997] REC II-1061, par 38

¹⁴⁷ Case C-286/90, *Poulsen and Diva Navigations* [1992] ECR I-6, par 9; Case C-162/96, *A. Racke GmbH & Co. v Hauptzollamt Mainz* [1998] ECR I-3655, par 45.

These are just two of several decisions from recent years regarding development cooperation. Thus, the European Ombudsman appears to be a reliable resource against maladministration by the institutions. Inquiries are not limited to activities within the Union's borders. It would not be impossible to widen the competence even more, enabling affected individuals in the ACP countries to raise objections.¹⁴⁸

4.4 Additional Individual Means

Citizens of the European Union can rouse public opinion and call for inquiry if a human rights abuse has been committed in an ACP Country. If a human being is oppressed by her regime and hindered to do anything about it, she will have to rely on others to act on her behalf. If a person cannot appear before the European Court of Justice or any other court, or if her situation does not attract attention from a human rights commission or an ombudsman, there are different ways to proceed with the issue.

Organisations like Amnesty International have proven that raising objection in media, in letters and at demonstrations can be fruitful. If the European Union is to blame, then why not contact the Commission directly? New electronic information centres and databases appear every day. Never before have we had so many possibilities to get in touch with people in charge and to publish our point of views. People with a Union membership possess the power of free will when they decide which products to buy. A boycott imposed by consumers, given proper attention, will cause debate but can also be detrimental to progress, only affecting victims and dividing people with the same opinion and hope for a change.

¹⁴⁸ Alston 1999, page 619

In its *2001 Annual Report*, the organisation Human Rights Watch expressed concern about the way that the European Union, amongst others, had addressed human rights issues in Africa:

“As in previous years, the European Union (E.U.) and the international donor community in general remained almost exclusively concerned with corruption and economic reform issues at the expense of civil and political rights concerns—and in seeming indifference too to economic, social, and cultural rights. It was still evident that policies were driven by the ‘full belly’ thesis that civil and political rights were luxuries that could be put aside until the economy reached a certain degree of success.”¹⁴⁹

With our short review in mind, this reflection seems a bit unfair. We can rest assured that the signing parties need every encouragement they can get in the human rights field. If encouragement should prove futile, reprimands could be brought to the forefront. The individual has limited resources but the number one restriction lies in her mind and her state of independence.

¹⁴⁹ Human Rights Watch 2001, Africa Overview page 14

5 Budget Lines

5.1 Introduction

Before we draw any final conclusions, we will have a look at the budget lines for development cooperation, established within the European Union. The allocation in detail is beyond my judgement. A thorough investigation would probably show that the Commission is trying hard to enhance the efficacy and transparency of the budget.

5.2 The European Development Fund

It is vital to keep in mind that the *European Development Fund* does not fit into the general budget for the EU. Out of historical reasons, it is a matter for the Council and the Member States to decide its inflow as well as its outflow. The Commission has to find support for every action it takes when it comes to the ACP Countries. As one could expect, this is hardly more than a question of formality. The European Parliament has no influence over the EDF. For many years it has tried to change the given premises but without success. “This means that Parliament has no real influence on priority-setting and/or resource allocations for this important part of EU development cooperation.”¹⁵⁰ The current EDF is the ninth in order.¹⁵¹ The structure and management of the fund has to be improved, in order to meet modern budget requirements.

¹⁵⁰ Wijkman 2001, page 2

¹⁵¹ http://europa.eu.int/comm/development/cotonou/pdf/fin_en.pdf

5.3 The European Initiative for Democracy and Human Rights

The European Initiative for Democracy and Human Rights is also known as chapter B7-7 in the EU budget and consists of several priorities on macro and micro level. For the ACP Countries, they serve as supplementary money to resources granted by the *European Development Fund*. In 1987, the money suited for *the European Initiative for Democracy and Human Rights* did not amount to more than 200 000 ECUs. In the year of 2001, the sum exceeded 102 million ECUs.¹⁵² The budget lines for the EIDHR 2001 are presented in two handbooks from the European Human Rights Foundation, with written summaries on every granted project.

Chapter B7-7 in the budget is intended to strengthen civil and political rights. Money for economic, social and cultural needs has to be taken elsewhere.¹⁵³ The European Development Fund is said to be a failure when it comes to social development.¹⁵⁴

According to the Commission, three instruments are used to implement the EIDHR. Presented as the basis for development cooperation in a communication from the Commission to the Council and Parliament dated May 8, 2001, they consist of:

“Calls for Proposals, involving publication in the Official Journal and on the Commission’s website.

Microprojects (< 50,000 €over 12 months), managed by Commission delegations and awarded through local Calls for Proposals. These should be extended to more delegations as they acquire greater local management capacity in line with the reform of external assistance.

¹⁵² Wuori 2001, page 30

¹⁵³ This has been criticised by Simma et al in *The EU and Human Rights* as “not particularly favourable to the indivisibility of both sets of rights”. (Alston 1999, page 605)

¹⁵⁴ Alston 1999, page 606

Targeted Projects, carried out in support of policy objectives which cannot be covered under Calls for Proposals or microprojects, selected in line with transparent, published guidelines.”¹⁵⁵

The Commission further promises that it will “pursue more effective evaluation of activities undertaken and their impact”¹⁵⁶. The quote can be seen as an anticipated answer to a call made by the European Parliament later in May, 2001. The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy directed a motion for a resolution to the Commission among others. In its point 5, “rapporteur” Wuori asked for more systematic *ex ante* analysis of implemented EU actions. He continued in point 6 with a call for information on the need of Human Rights and Democracy campaigns, more integrated with the Commission’s Country Strategy Papers.¹⁵⁷ The European Parliament is most unsatisfied with the Commission’s work in this area. Not only is the information unstructured, it is not sufficient enough to make effective evaluation possible.¹⁵⁸

5.4 Administration

Hydén has written an interesting chapter about the relationship between public administration and democratisation in some African countries.¹⁵⁹ He touches upon a bundle of problems related to development cooperation, and most of all the emergence of patrimonial forms of government. In his view, virtually all African countries have to cope with a tendency to treat public policy making as a closed and private affair. Patronage and personal loyalty prevails rather than policies and procedures. If donors want to set aside this “non-policy” ruling, they have to be careful not to create political chaos or anarchy.

¹⁵⁵ *Communication from the Commission to the Council and the European Parliament* 2001, page 14

¹⁵⁶ *Communication from the Commission to the Council and the European Parliament* 2001, page 14

¹⁵⁷ Wuori 2001, page 9. Approved Country Strategy Papers can be found at <http://europa.eu.int/scadplus/leg/en/lvb/r12000.htm>

¹⁵⁸ Wijkman 2001, page 2

¹⁵⁹ Hadenius 1997, pages 242-259

According to Hydén “the social forces [in Africa] so inclined and the donors must act in unison to overhaul the system”¹⁶⁰. He suggests the development of intermediate funding structures, jointly controlled by the donors and idealistic representatives of the recipient countries. “Instead of giving funds directly to governments or NGOs, donors would channel their support for development activities in the social and economic development sectors via these funds, where an independent board of trustees would make the allocation.”¹⁶¹

Today, the European Commission always makes sure that conditions for financing are met by keeping close contact with National Authorising Officers¹⁶². Conditions find their expression in different ways of conduct. The Commission is represented by the Chief Authorising Officer¹⁶³ and a Head of delegation¹⁶⁴ in each ACP state or regional grouping. It is up to the Head of delegation and the National Authorising Officer collectively to prepare, submit and appraise projects and programmes. It is up to the Chief Authorising Officer alone to commit, clear and authorise expenditure. In this way, the EU has developed its own system for the allocation of the *European Development Fund*. Private initiatives can be encouraged and individuals can compete with each other in both Europe and the ACP Countries. The recipient countries have been cut off from the final decision, authorising expenditure.

What Hydén advertises for is a readiness on the donor’s part to give up direct control of the money that it hands out. The recipient countries must be given a true chance to prove their own ability to govern themselves.

¹⁶⁰ Hadenius 1997, page 254

¹⁶¹ Hadenius 1997, page 254

¹⁶² Article 35 in Annex IV to the *Cotonou agreement* – Implementation and Management Procedures

¹⁶³ Article 34 in Annex IV to the *Cotonou agreement* – Implementation and Management Procedures

¹⁶⁴ Article 36 in Annex IV to the *Cotonou agreement* – Implementation and Management Procedures

However unlikely to occur in the near future, a system with fund trustees could make it easier for the EU to control development money indirectly. If the Commission had the possibility of moving money from one fund to another, instead of between different projects, it would also create a competitive climate in which trustees would have to prove their professional and managerial competence.¹⁶⁵ To this date, the EU has been too obsessed with its own development policy. Jointly controlled funds would open up for cooperation where individual development and results count more than donor agreed notions of development.

¹⁶⁵ Hadenius 1997, page 256

6 Concluding remarks

6.1 Conclusions

There is a place for the individual in the *Cotonou agreement* but it is not as plaintiff. The individual has no *locus standi* and the agreement is not fit for direct effect. Cooperation was directed towards development centred on man in Article 5 of the *Lomé Convention (IV-bis)*. The words have been revised in Article 9 of the *Cotonou agreement*. Sustainable development is now the goal and it should be centred on the human person. This entails respect for and promotion of all human rights. The Preamble of the *Cotonou agreement* refers to every major covenant and convention in the field of human rights law. Paragraph 2 of Article 9 emphasises the notions of democratisation and the rule of law. Support for other aspects of human rights can be found in various provisions. The individual can only benefit from the consultation procedures described in Article 96 (or Article 97) if they are used in a sensible manner.

It is not a coincidence that the *Cotonou agreement* protects the role of NGOs and civil society. Decentralised cooperation is the one approach that can last. Positive conditionality respects the individual and promotes human rights development.

Negative measures have proved to be non-appropriate in a number of cases. They are neither effective nor proportional in their impact on donee populations. Much faith has been pinned on a new arsenal of targeted or smart sanctions. It would be unwise to relate to any sort of negative measures, before their consequences are made clear.

Article 177 in TEC states that Community policy in the area of development cooperation shall contribute to democracy and the rule of law. It shall respect human rights and fundamental freedoms. *“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.”* (Article 177 (3) TEC) Citizens of the ACP and EU States have the right to question any policy or activity that does not follow this statement. They have the possibility to file their complaints to the European Court of Justice or to the European Ombudsman. The individual can rely on the *Cotonou agreement* if she finds reason to criticise a government, institution, or state. Respect for human rights and fundamental freedoms demands that individuals look after individuals. The power of public opinion should not be underestimated.

6.2 Recommendations for the future

The European Union must make sure that the programmes for development are established firmly at local level. A decentralised approach to development cooperation has to be approved and integrated into every agreement between the ACP Countries and the European Union.

The European Commission should enhance its efforts to keep in close contact with representatives at local level. NGOs and civil society should enhance their efforts to keep in close contact with the European Commission.

The European Union should stop its use of negative conditionality as a measure of general pressure. The European Union should recognise human rights in their own right and only apply sanctions when they have a clear target.

The Signing Parties should make it possible for individuals to exert their influence on every procedure related to the *Cotonou Agreement*. The ACP Countries should open up for individuals to defend their human rights in regional and national courts.

The administration of the *European Development Fund* has to be improved. The evaluation of development programmes has to be improved. Development cooperation could be administered, inspected, and evaluated by self-governed bodies. (The European Parliament is a control organ of the European Union. This does not mean that it has to be trusted with total control over development funds. Funds under the direct influence of the European Parliament could lead to an increased number of negative measures.)

The next development cooperation agreement between the ACP Countries and the European Union should be given direct effect for individuals. The next development cooperation agreement between the ACP Countries and the European Union should describe consultation procedures for individuals who have been affected by it.

Annex 1 – Overview of the ACP-EU development cooperation¹⁶⁶

Convention/Agreement	Number of countries		EDF Amount including OCTs ¹⁶⁷
	ACP	EU	
Association System (1957)			569,4
Yaoundé I Convention (1963)	18	6	730,4
Yaoundé II Convention (1969)	18	6	887,3
Lomé I Convention (1975)	46	9	3 053,30
Lomé II Convention (1980)	58	9	4 207
Lomé III Convention (1985)	65	10	7 882,60
Lomé IV Convention (1990)	68	12	11 583
Lomé IV-bis Convention (1995) ¹⁶⁸	70	15	13 151,10
Cotonou Agreement	77	15	14 300

¹⁶⁶ Data from David 2000, page 12

¹⁶⁷ In million ECUs

¹⁶⁸ The revised edition of Lomé IV

Annex 2 – The ACP Countries 2000-2001¹⁶⁹

Africa	Freedom House Rating	Political Rights	Civil Liberties
Angola	Not Free	6	6
Benin	Free	2	2
Botswana	Free	2	2
Burkina Faso	Partly Free	4	4
Burundi	Not Free	6	6
Cameroon	Not Free	7	6
Cape Verde	Free	1	2
Central African Rep.	Partly Free	3	4
Chad	Not Free	6	5
Comoros	Partly Free	6	4
Côte d'Ivoire	Partly Free	6	5
DR of Congo	Not Free	7	6
Djibouti	Not Free	4	5
Equatorial Guinea	Not Free	7	7
Eritrea	Not Free	7	5
Ethiopia	Partly Free	5	5
Gabon	Partly Free	5	4
Gambia	Not Free	7	5
Ghana	Free	2	3
Guinea	Not Free	6	5
Guinea Bissau	Partly Free	4	5
Kenya	Not Free	6	5
Lesotho	Partly Free	4	4
Liberia	Partly Free	5	6
Madagascar	Partly Free	2	4
Malawi	Partly Free	3	3
Mali	Free	2	3
Mauritania	Not Free	6	5
Mauritius	Free	1	2
Mozambique	Partly Free	3	4
Namibia	Free	2	3
Niger	Partly Free	4	4

¹⁶⁹ Information on the ACP Group from ECDPM 2001, Chapter 5, Some Basic Facts. The rating is made by the organisation Freedom House in the US. "Since 1972, Freedom House has published an annual assessment of state state of freedom, assigning each country and territory the status of 'Free', 'Partly Free', or 'Not Free', by averaging their political rights and civil liberties ratings. Those whose ratings average 1-2,5 are generally considered 'Free', 3-5,5 'Partly Free', and 5,5-7 'Not Free'." Previous country scores can be found at <http://www.freedomhouse.org/ratings/index.htm>

Africa	Freedom House Rating	Political Rights	Civil Liberties
Nigeria	Partly Free	4	4
Rwanda	Not Free	7	6
Sao Tomé & Príncipe	Free	1	2
Senegal	Partly Free	3	4
Seychelles	Partly Free	3	3
Sierra Leone	Partly Free	4	5
Somalia	Not Free	6	7
South Africa ¹⁷⁰	Free	1	2
Sudan	Not Free	7	7
Swaziland	Not Free	6	5
Tanzania	Partly Free	4	4
Togo	Partly Free	5	5
Uganda	Partly Free	6	5
Zambia	Partly Free	5	4
Zimbabwe	Partly Free	6	5
Caribbean	Freedom House Rating	Political Rights	Civil Liberties
Antigua & Barbuda	Partly Free	4	2
Bahamas	Free	1	1
Barbados	Free	1	1
Belize	Free	1	1
Cuba ¹⁷¹	Not Free	7	7
Dominica	Free	1	1
Dominican Republic	Free	2	2
Grenada	Free	1	2
Guyana	Free	2	2
Haiti	Not Free	6	5
Jamaica	Free	2	2
St Christopher/Nevis	Free	1	2
St Lucia	Free	1	2
St Vincent & the Grenadines	Free	2	1
Surinam	Free	1	2
Trinidad and Tobago	Free	2	2

¹⁷⁰ South Africa formally joined the ACP Group in April 1998. It has concluded a separate cooperation agreement with the EU.

¹⁷¹ Cuba is member of the ACP Group but not part of the Cotonou agreement.

Pacific	Freedom House Rating	Political Rights	Civil Liberties
Cook Islands	¹⁷²	¹⁷²	¹⁷²
Fiji	Partly Free	6	3
Kiribati	Free	1	1
Marshall Islands	Free	1	1
FS of Micronesia	Free	1	2
Nauru	Free	1	3
Niue	¹⁷²	¹⁷²	¹⁷²
Palau	Free	1	2
Papua New Guinea	Free	2	3
Samoa	Free	2	2
Solomon Islands	Partly Free	4	4
Tonga	Partly Free	5	3
Tuvalu	Free	1	1
Vanuatu	Free	1	3

¹⁷² Information missing

Annex 3 – Ratification status of selected international human rights treaties 2000¹⁷³

EU	International Covenant on Civil and Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights	European CHR
Austria	Ratified	Ratified	Ratified
Belgium	Ratified	Ratified	Ratified
Denmark	Ratified	Ratified	Ratified
Finland	Ratified	Ratified	Ratified
France	Ratified	Ratified	Ratified
Germany	Ratified	Ratified	Ratified
Greece	Ratified	Ratified	Ratified
Ireland	Ratified	Ratified	Ratified
Italy	Ratified	Ratified	Ratified
Luxembourg	Ratified	Ratified	Ratified
The Netherlands	Ratified	Ratified	Ratified
Portugal	Ratified	Ratified	Ratified
Spain	Ratified	Ratified	Ratified
Sweden	Ratified	Ratified	Ratified
United Kingdom	Ratified	Ratified	Ratified
Africa	International Covenant on Civil and Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights	African Charter on Human and Peoples' Rights
Angola	Ratified	Ratified	Ratified
Benin	Ratified	Ratified	Ratified
Botswana	Ratified		Ratified
Burkina Faso	Ratified	Ratified	Ratified
Burundi	Ratified	Ratified	Ratified
Cameroon	Ratified	Ratified	Ratified
Cape Verde	Ratified	Ratified	Ratified
Central African Rep.	Ratified	Ratified	Ratified
Chad	Ratified	Ratified	Ratified
Comorros			Ratified
Côte d'Ivoire	Ratified	Ratified	Ratified

¹⁷³ Amnesty International Report 2001

Africa	International Covenant on Civil and Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights	African Charter on Human and Peoples' Rights
DR of Congo	Ratified	Ratified	Ratified
Djibouti			Ratified
Equatorial Guinea	Ratified	Ratified	Ratified
Eritrea			Ratified
Ethiopia	Ratified	Ratified	Ratified
Gabon	Ratified	Ratified	Ratified
Gambia	Ratified	Ratified	Ratified
Ghana	Ratified	Ratified	Ratified
Guinea	Ratified	Ratified	Ratified
Guinea Bissau	Signed	Ratified	Ratified
Kenya	Ratified	Ratified	Ratified
Lesotho	Ratified	Ratified	Ratified
Liberia	Signed	Signed	Ratified
Madagascar	Ratified	Ratified	Ratified
Malawi	Ratified	Ratified	Ratified
Mali	Ratified	Ratified	Ratified
Mauritania			Ratified
Mauritius	Ratified	Ratified	Ratified
Mozambique	Ratified		Ratified
Namibia	Ratified	Ratified	Ratified
Niger	Ratified	Ratified	Ratified
Nigeria	Ratified	Ratified	Ratified
Rwanda	Ratified	Ratified	Ratified
Sao Tomé & Príncipe	Signed	Signed	Ratified
Senegal	Ratified	Ratified	Ratified
Seychelles	Ratified	Ratified	Ratified
Sierra Leone	Ratified	Ratified	Ratified
Somalia	Ratified	Ratified	Ratified
Sudan	Ratified	Ratified	Ratified
Swaziland			Ratified
Tanzania	Ratified	Ratified	Ratified
Togo	Ratified	Ratified	Ratified
Uganda	Ratified	Ratified	Ratified
Zambia	Ratified	Ratified	Ratified
Zimbabwe	Ratified	Ratified	Ratified

Caribbean	International Covenant on Civil and Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights	American Convention on Human Rights
Antigua & Barbuda			
Bahamas			
Barbados	Ratified	Ratified	Ratified
Belize	Ratified	Signed	
Dominica	Ratified	Ratified	Ratified
Dominican Republic	Ratified	Ratified	Ratified ¹⁷⁴
Grenada	Ratified	Ratified	Ratified
Guyana	Ratified	Ratified	
Haiti	Ratified		Ratified ¹⁷⁴
Jamaica	Ratified	Ratified	Ratified
St Christopher/Nevis			
St Lucia			
St Vincent & the Grenadines	Ratified	Ratified	
Surinam	Ratified	Ratified	Ratified ¹⁷⁴
Trinidad & Tobago	Ratified	Ratified	
Pacific	International Covenant on Civil and Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights	
Cook Islands	¹⁷⁵	¹⁷⁵	
Fiji			
Kiribati			
Marshall Islands			
FS of Micronesia			
Nauru			
Niue	¹⁷⁵	¹⁷⁵	
Palau			
Papua New Guinea			
Samoa			
Solomon Islands		Ratified	
Tonga			
Tuvalu			
Vanuatu			

¹⁷⁴ Countries that recognise as binding the jurisdiction of the Inter-American Court of Human Rights, as expressed in Article 62

¹⁷⁵ Information missing

EU	Convention on the Elimination of All Forms of Discrimination against Women	International Convention on the Elimination of All Forms of Racial Discrimination	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Austria	Ratified	Ratified	Ratified
Belgium	Ratified	Ratified	Ratified
Denmark	Ratified	Ratified	Ratified
Finland	Ratified	Ratified	Ratified
France	Ratified	Ratified	Ratified
Germany	Ratified	Ratified	Ratified
Greece	Ratified	Ratified	Ratified
Ireland	Ratified	Ratified	Signed
Italy	Ratified	Ratified	Ratified
Luxembourg	Ratified	Ratified	Ratified
The Netherlands	Ratified	Ratified	Ratified
Portugal	Ratified	Ratified	Ratified
Spain	Ratified	Ratified	Ratified
Sweden	Ratified	Ratified	Ratified
United Kingdom	Ratified	Ratified	Ratified
Africa	Convention on the Elimination of All Forms of Discrimination against Women	International Convention on the Elimination of All Forms of Racial Discrimination	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Angola	Ratified		
Benin	Ratified	Signed	Ratified
Botswana	Ratified	Ratified	Ratified
Burkina Faso	Ratified	Ratified	Ratified
Burundi	Ratified	Ratified	Ratified
Cameroon	Ratified	Ratified	Ratified
Cape Verde	Ratified	Ratified	Ratified
Central African Rep.	Ratified	Ratified	
Chad	Ratified	Ratified	Ratified
Comoros	Ratified	Signed	Signed
Côte d'Ivoire	Ratified	Ratified	Ratified
DR of Congo	Ratified	Ratified	Ratified
Djibouti	Ratified		
Equatorial Guinea	Ratified	Ratified	
Eritrea	Ratified		
Ethiopia	Ratified	Ratified	Ratified
Gabon	Ratified	Ratified	Ratified
Gambia	Ratified	Ratified	Signed
Ghana	Ratified	Ratified	Ratified

Africa	Convention on the Elimination of All Forms of Discrimination against Women	International Convention on the Elimination of All Forms of Racial Discrimination	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Guinea Bissau	Ratified	Signed	Signed
Kenya	Ratified		Ratified
Lesotho	Ratified	Ratified	
Liberia	Ratified	Ratified	
Madagascar	Ratified	Ratified	
Malawi	Ratified	Ratified	Ratified
Mali	Ratified	Ratified	Ratified
Mauritania		Ratified	
Mauritius	Ratified	Ratified	Ratified
Mozambique	Ratified	Ratified	Ratified
Namibia	Ratified	Ratified	Ratified
Niger	Ratified	Ratified	Ratified
Nigeria	Ratified	Ratified	Signed
Rwanda	Ratified	Ratified	
Sao Tomé & Príncipe	Ratified	Signed	Signed
Senegal	Ratified	Ratified	Ratified
Seychelles	Ratified	Ratified	Ratified
Sierra Leone	Ratified	Signed	Signed
Somalia		Ratified	Ratified
Sudan		Ratified	Signed
Swaziland		Ratified	
Tanzania	Ratified	Ratified	
Togo	Ratified	Ratified	Ratified
Uganda	Ratified	Ratified	Ratified
Zambia	Ratified	Ratified	Ratified
Zimbabwe	Ratified	Ratified	

Caribbean	Convention on the Elimination of All Forms of Discrimination against Women	International Convention on the Elimination of All Forms of Racial Discrimination	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Antigua & Barbuda	Ratified	Ratified	Ratified
Bahamas	Ratified	Ratified	
Barbados	Ratified	Ratified	
Belize	Ratified	Signed	Ratified
Dominica	Ratified		
Dominican Republic	Ratified	Ratified	Signed
Grenada	Ratified	Signed	
Guyana	Ratified	Ratified	Ratified
Haiti	Ratified	Ratified	
Jamaica	Ratified	Ratified	
St Christopher/Nevis	Ratified		
St Lucia	Ratified	Ratified	
St Vincent & The Grenadines	Ratified	Ratified	
Surinam	Ratified	Ratified	
Trinidad & Tobago	Ratified	Ratified	
Pacific	Convention on the Elimination of All Forms of Discrimination against Women	International Convention on the Elimination of All Forms of Racial Discrimination	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Cook Islands	¹⁷⁶	¹⁷⁶	¹⁷⁶
Fiji	Ratified	Ratified	
Kiribati			
Marshall Islands			
FS of Micronesia			
Nauru			
Niue	¹⁷⁶	¹⁷⁶	¹⁷⁶
Palau			
Papua New Guinea	Ratified	Ratified	
Samoa	Ratified		
Solomon Islands		Ratified	
Tonga		Ratified	
Tuvalu	Ratified		
Vanuatu	Ratified		

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Decision of the European Ombudsman on complaint 983/29.10.96/ABU/KENYA/XD/BB against the European Commission. Available at <http://www.euro-ombudsman.eu.int/decision/en/dev.htm>

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