



Fédération internationale des ligues des droits de l'Homme

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,
DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

International Federation
for Human Rights

Federación Internacional
de los Derechos Humanos

الفدرالية الدولية لحقوق الانسان

Position Paper

Economic Partnership Agreements (EPA) and Human Rights

June 2007

Historical background on agreements between the European Community (EC) and African - Caribbean - Pacific (ACP) countries.

The history of economic relations between African - Caribbean – Pacific (ACP) countries, most of them former European colonies, and the European Union (EU) is very long. Since decolonization, several cooperation agreements have defined these relations. The first, the Treaty of Yaounde, goes back to 1964 and was followed by the five Lomé agreements. The last of these was replaced with the Cotonou Agreement on February 29, 2000.

The Lomé agreements established a privileged trade relationship between ACP countries and the European Community (EC), with non-reciprocal trade preferences (ACP products benefited from more advantageous customs duties than the products from other regions upon entrance to European territory, while ACP countries were not committed to give the same advantages to European products). At the time, this non-reciprocity was justified by the economic development differential between Europe and ACP countries.

According to the Cotonou Agreement, the new objectives of the relation between these two partners are “*poverty eradication, sustainable development and the gradual integration of the ACP countries into the world economy*”, through the economic, social and cultural development of the ACP countries.

To achieve these goals, five pillars are evoked: an enhanced political dimension, increased participation, a more strategic approach to cooperation focusing on poverty reduction, new economic and trade partnerships and improved financial cooperation.

The trade partnership, is currently based on a waiver to the World Trade Organization (WTO) principles¹. Obtained in 2001 at the WTO ministerial conference to prepare the transition

¹ Exceptions to the WTO fundamental principles, which are:

- Most-favored-nation (MFN) status: treating other nations equally. Countries cannot normally discriminate between their trading partners. Upon granting one nation a special favor (such as a lower customs duty rate for one of their products) the nation granting the favor has to do the same for all other WTO members. (GATT art. 1, GATS art. 2,

from the Lomé system to the new international trade rules, this waiver is to expire on on December 31, 2007. Negotiations are currently in progress to establish a new system: the Economic Partnership Agreements (EPA).

1) Human Rights in European Community and ACP countries agreements

All EU member states and ACP countries through regional and international conventions have human rights obligations in particular regarding economic, social and cultural rights.

The majority of ACP countries are committed to respect both 1966 Covenants on Human rights. Among the 76 ACP States negotiating EPAs with the EC², 52 are parties to the International Covenant on Economic, Social and Cultural rights (ICESCR) and 54 have ratified the International Covenant on Civil and Political rights (ICCPR).

The African States negotiating EPAs are all parties to the African Charter on Human and Peoples' Rights³ (ACHPR). This Charter protects all human rights, be they civil and political or economic, social and cultural, ranging from the right to work (art. 15), the right to health (art. 16) to the right to education (art. 17). Furthermore, in the 2004 Pretoria Declaration, the African Commission on Human and Peoples' Rights urged States to “*ensure that economic, social and cultural rights take primacy in the negotiations of bilateral and multilateral trade and economic agreements*”⁴. African States are also members of the African Union, whose Charter⁵ recognizes in its principles and objectives, the importance of respecting, defending and promoting human rights. Finally, various African Union organs have adopted decisions or instruments relative to human rights such as the African Charter on Democracy, Elections and Governance⁶.

On the other side, all European Union member states are parties to the two 1966 international covenants on human rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for international obligations of States, whether they act individually or in the framework of an international organization. In particular, States have the duty to control non-states actors on which they have an influence and to provide international assistance and cooperation in order to achieve economic, social and cultural rights in third countries. Developed states have a particular responsibility towards developing nations. They have to respect, protect and implement all economic, social and cultural rights. At least, state parties have to refrain from leading action that could directly or indirectly hinder the exercise of these rights in third countries.

European countries are also bound at the regional level by the Convention for the Protection of Human Rights and Fundamental Freedoms and the many different EU treaties. The EU officially composes its external policy in conformity with international human rights norms. According to the

TRIPS Art. 4)

- Reciprocity: Every country has to grant equivalent trade advantages to those given by its trading partner.

- National treatment: Treating foreigners and locals equally. Imported and locally produced goods should be treated equally at least after the foreign goods have entered the market. (GATT art. 3, GATS art. 17, TRIPS Art. 3)

² There are 79 ACP countries but South Africa, Cuba and East Timor are not party to the negotiations. South Africa, even if it is in the Cotonou Agreement, is just an observer of the negotiations. It is already committed to another trade agreement with European Union. Cuba abandoned the Cotonou agreement negotiations in 2000 and East Timor, recently integrated into the ACP group, only takes part in the EPA negotiation as an observer

³ African Charter to Human and Peoples Rights, adopted on June 27, 1981 in Nairobi, Kenya, during the 18th African Unity Organization's Conference. Come into force on October 21, 1986, after the 25th ratification.

⁴ Declaration on economic, social and cultural rights in Africa, adopted on September 17, 2004, in Pretoria, (South Africa) by the participants to the seminar on economic, social and cultural rights. Then, the declaration was then adopted by the African Commission on Human and Peoples' Rights, on December 7, 2004, in Dakar

⁵ Constitutive Act of the African Union, signed in Lomé (Togo), July 11, 2000.

⁶ African Charter on Democracy, Elections and Governance, adopted by the 8th Ordinary Session of the African Union (AU) Assembly, held in Addis Ababa on January 30, 2007

EC treaty⁷ article 177 § 2, the EC development cooperation policy « *contribute[s] to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms* ». The European Union Treaty, states as of one of the objectives of the EU foreign and security policy « *to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms* »⁸.

Concerning the EU-ACP countries' relations, the Cotonou Agreement states in its preamble that a « *political environment guaranteeing peace, security and stability, respect for human rights, democratic principles and the rule of law, and good governance is part and parcel of long term development* ». In order to achieve these goals, article 8 creates a « *comprehensive, balanced and deep political dialogue* » between the parties. It encompasses the definition of the development objectives and a « *regular assessment of the developments concerning the respect for human rights, democratic principles, the rule of law and good governance* ». To achieve this dialogue, the parties refer to article 9 of the Agreement, which includes international obligations « *The Parties undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural. In this context, the Parties reaffirm the equality of men and women* »⁹.

Furthermore, the Cotonou Agreement adds to the political dialogue a consultation procedure and a system of sanctions in the case that a “State Party has failed to fulfill an obligation stemming from respect for human rights, democratic principles and the rule of law” (referred to in paragraph 2 of Article 9). In such a situation, article 96.2.a allows for to the holding of « *consultation* ». « *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* » which have to be « *taken in accordance with international law, and proportional to the violation* ».

Adopted for a 20-year period, the Cotonou Agreement is subject to revision every 5 years. The first revision, adopted on June 25, 2005 aimed at to increasing the efficiency and quality of the ACP-EU partnership and at adopting new policy objectives, including counter-terrorism and non-proliferation of weapons of mass destruction and support to the International Criminal Court. In order to avoid serious crises, FIDH encourages states to sincerely engage in political dialogue, using all the terms foreseen in article 9. The sanction system has to be used when this political dialogue is not sufficient to put an end to human rights violations¹⁰.

FIDH welcomes the central importance of human rights in the ACP-EU relation. However, FIDH fears that EPAs might be prejudicial to their realization.

2) Economic Partnership Agreements and Human Rights

The Cotonou Agreement has deeply modified the EU-ACP relations. Concerning trade, three main reasons were raised to justify the negotiations of a new agreement. First, the non-conformity of the Lomé Agreement with WTO rules (discrimination among ACP developing countries, and non-ACP developing countries). Second, Europe wished to redefine the organization of its trade relations with third countries¹¹. Finally, the Lomé Agreement was deemed inefficient to integrate ACP states in the

⁷ Treaty establishing the European Community, signed in Rome, 1957.

⁸ Treaty on European Union, Article 11, signed in Maastricht, in February the 7th, 1992.

⁹ Cotonou Agreement, Article 9-2.

¹⁰ See FIDH, position note, Revision de l'Accord de Cotonou, « *Le « dialogue politique » entre l'UE et les pays ACP ne doit pas remplacer le régime de sanction en cas de graves violations des droits de l'Homme* », February 2005

¹¹ According to the French Ministry for Foreign Affairs, trade preferences given to ACP countries by the Lomé Agreement have been weakened because of the general reduction of custom duties. Moreover, the European Community, by strengthening its trade relations with other regions (MERCOSUR, Mexico, Eastern and oriental

international trade (preference erosion, no diversification of ACP productions and ACP partners, dependency on the EU).

However, a waiver to WTO rules was adopted to facilitate the transition from the Lomé system to the WTO principles. This waiver will expire on December 31, 2007, when the EPAs are supposed to succeed to it.

The European Commission (who has received the mandate Council to negotiate EPAs with ACP countries on behalf of the EU, on June 17^t, 2002¹²) aims at several objectives:

- Stimulate the economic growth of ACP developing countries by making them more competitive
- Support the regional integration process within the ACP Group and encourage their integration into the world economy;
- Establish a trade agreement respectful of WTO rules

Possible Impacts of EPAs on Human Rights

The 76 ACP States, among them 40 Least Developed Countries (LDC), are situated at a much lower level of development than their negotiating partner. The EU, according to the Human Development Index of the United Nation Development Program (UNDP) has a very high level of Human development¹³ and is one of the richest regions in the world¹⁴ in contrast, ACP countries, even within regional unions, still have weak economies. Their part in the world trade is very limited and is in fact decreasing; their exports fell from 3% of the world trade in 1976 to 1,5% in 2003¹⁵. This difference of economic development between EU and ACP states is one of the main reasons why EPAs threaten the ACP countries' development and the human rights of their populations. Indeed, such fragile economies in countries with often weak institutions face potentially disastrous competition from the industrialized countries of the EU. If these economies, already stricken by poverty, collapse and their national and per capita incomes further decrease, it is the human rights of millions which are threatened. Furthermore, in sectors where ACP countries don't have any comparative advantage, protections for workers who are affected by restructuring are clearly insufficient. There is no developed social security system with substitution incomes in case of inactivity.

As set out in the WTO rules on Special and Differential Treatment¹⁶, EPAs must take into account the respective development levels of the parties. Article 34 of the Cotonou Agreement takes

European countries...) has weakened the privileged trading situation of the ACP States. Finally, the EU considered that it had to defend its first African trading partner position against the United States who started to negotiate Free trade agreements with these countries, thus granting the same advantages to their products. Thus EPAs could be a mean for the EU to protect its trading position in Africa.

French Ministry for Foreign Affairs, De la Convention de Lomé à l'Accord de Cotonou, http://www.diplomatie.gouv.fr/fr/actions-france_830/agriculture_1061/cooperation-dans-secteur-agricole_1066/definition-politiques-agricoles_1435/marche-agricole-commercialisation_1436/les-agriculteurs-du-sud-omc_1437/convention-lome-accord-cotonou_4210.html

¹² Directives for the Negotiations of Economic Partnership Agreements with ACP countries and regions, adopted by the European Union Council, 17th June 2002, www.epawatch.net/documents/doc71_2.doc

¹³ European Union States are all situated among the High HDI States (up to 0,800), while most of the ACP countries, except some Caribbean and Pacific countries are in the low HDI States category (under 0,500)

¹⁴ In 2004, EU's part in world trade in goods was 18,1% and at 26,4% of the world trade in services. (European Commission, *EU trade in the world*, 18th February 2005, DG TRADE-H3 SLG/CG/DS, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122531.pdf)

¹⁵ See: French Ministry for Foreign Affairs, Pays ACP: échanges commerciaux et Accord agricole

¹⁶ Part IV - The General Agreement on Tariffs and Trade

that into consideration (« *Economic and trade cooperation shall be implemented in full conformity with the provisions of the WTO, including special and differential treatment, taking account of the Parties' mutual interests and their respective levels of development.* »); article 35 also deals with a «*special treatment for ACP LDCs* ».

Despite these declarations on special and differential treatment, in many sectors, signing EPAs may have prejudicial consequences for the human rights of a large portion of the population of ACP countries.

The necessary tax regime reforms to compensate loss¹⁷, added to the reduction of customs revenues in the aftermath of market liberalization¹⁸ will lead to an extremely important fall in the ACP countries' budgets¹⁹. Their capacity to finance public policies may decrease dramatically. The competitiveness of local formal sectors might also be harmed as they will certainly support new taxes and will have to face the competition of multinationals who can negotiate favorable conditions to implant their activity threatening not to invest or to relocate their investments. Hence, governments might have to choose between renouncing to funding social policies (education, health...) due to decreasing incomes, and having difficulty to attract foreign investors if fiscal conditions are not as beneficial to investors as those proposed by other countries.

These important changes in the budgetary structures, already precarious in numerous ACP States, may infringe upon the countries' right to economic development, guaranteed by article 22 of the African Charter on Human and Peoples' Rights, and upon other economic, social and cultural rights. Indeed, the very capacity of the states in question to lead public policies, particularly in essential services (health, education...) might be very limited by this lack of income.

According to a study by the GRET (Groupe de recherche et d'échanges technologique), « *the loss of state incomes will prevent governments from effectively intervening on economic growth and on poverty reduction. Studies also identify probable difficulties to pay State employees, social problems, the non replacement of retired person, the reduction of State activities, and thus of all the economic activities; unsatisfactory incomes in public investments and then reduction or cancellation in the road, hospital or road construction* ».²⁰

The European Union has announced aid in order to compensate the loss of national revenues through the European Development Fund (EDF), but this seems to be insufficient²¹. The proposed amount, 22.7 billion euros, is not high enough, as 21,3 billions euros are already needed in the 10th EDF to finance current aids.²²

¹⁷ To compensate loss of customs duties, some ACP States may reform their tax regimes and transfer imports tax revenues on domestic actors (VAT, incomes tax or corporate tax) with important consequences on companies' competitiveness and people's purchasing power.

¹⁸ Groupe de recherche et d'échanges technologiques, *Impacts de l'Accord de partenariat économique UE – Afrique de l'Ouest, Synthèse bibliographique*, December 2005

¹⁹ A study by the Hamburg Institute of International Economics in 2004, on the EPAs' impact on ECOWAS countries estimates that in certain case, the public incomes loss could be of 2,4% for Nigeria (1,12% of GDP) and 22,1% for Gambia (3,58% of GDP). Niger GDP could fall 0,32% while the Cape-Verde's GDPs might fall 4,17% with an import tax decrease of 81,9%. Hamburg Institute of International Economics, *L'impact des accords de partenariat économique ACP – UE sur les pays de la CEDEAO: une analyse empirique des effets commerciaux et budgétaires*, 2004.

²⁰ Groupe de recherche et d'échanges technologiques, *op.cit.*

²¹ *Idem.*

²² Oxfam International, *Unequal Partners: How EU-ACP Economic Partnership Agreements (EPA) could harm the development prospects of many of the world's poorest countries*, September 2006

Agriculture

In most countries of the Global South (over two thirds of WTO members), agriculture is the most important resource and is also an important cultural and subsistence basis. Agriculture directly influences the lives of millions of workers, thanks to the food they produce or purchase with their incomes derived from their activities. In Uganda, for example, from 1998 to 2000, agriculture represented on average 43.8% of the GDP and 79.5% of employment. During this same period, these figures were respectively of 17.9% and 74% in Senegal²³.

The agricultural sector of ACP countries is mainly subsistence agriculture. Nonetheless, in their exports which rarely represent more than 10% of agricultural production²⁴, ACP countries are highly dependent on the European market; to which they sent 55% of their export production in 2003.

Current system

ACP countries currently benefit from a non-reciprocal preference system with the EU thanks to the Cotonou Agreement and the WTO waiver. The advantages of this agreement are very important: around 97% of ACP exports to EU countries are exempt of any tax or benefit from lower rates, even if many exports are blocked by non-tariff barriers such as sanitary and phyto-sanitary measures which restrict the access to European market for other motives.

What are the WTO rules?

The WTO Agreement on Agriculture (AoA) is framed by articles 13 and 14 of Doha Declaration, which recognizes the necessity for « *developing countries to effectively take account of their development needs, including food security and rural development* »²⁵. However, AoA reinforces market access thanks to conversion of non-tariff barriers (quotas) into customs barriers, reductions of, with a view to phasing out, export subsidies and substantial reductions in trade-distorting domestic support²⁶.

What do EPA negotiations foresee?

EPAs will deeply modify the ACP-EU agricultural trading regime. Indeed, the EU is trying to implant a free trade zone between these two regions. Negotiations are currently focused on several points: the establishment of customs union with the creation of a common external tariff, improvement of access for ACP countries exports to the EU market, and liberalization of European agricultural and food products imported to these countries. According to the EU, this liberalization, to conform to the WTO rules interpretation, will concern 90% of exchanges. This is possibly asymmetric : if the EU wants to liberalize 100% of its imports from ACP countries, ACP countries will concurrently have to liberalize at least 80% of their imports from the EU. As a result, ACP countries are currently trying to establish a sensitive products list on which they could maintain customs duties.

A very important aspect of these negotiations is concerns the integration of safeguard clauses. Such clauses will allow the adoption of measures to limit harmful consequences on sectors of the ACP economies created by a too important European importation flow . The extent of these measures is currently negotiated²⁷.

²³ United Nations Organization for Food and Agriculture, *L'accord sur l'agriculture (OMC), Bilan de sa mise en œuvre, Études de cas sur des pays en développement*, Roma, 2004

²⁴ 3D, *Planting the Rights Seed: A human rights perspective on agriculture trade and the WTO*, THREAD, Mars 2005

²⁵ WTO, Doha ministerial declaration, 14th November 2001, WT/MIN(01)/DEC/1, paragraph 13: www.wto.org/french/thewto_f/minist_f/min01_f/mindecl_f.htm.

²⁶ See report « *understanding Global trade and Human Rights* », FIDH, July 2005

²⁷ Economic partnership agreement between eastern and southern African countries on one part and the European Community and its member states on the other part, 4th Draft EPA/8th RNF/24-8-2006/

Which consequences for Human Rights?

Trade liberalization of agricultural and food products create an important risk for the ACP countries' agriculture. Competition with European agricultural products could be harmful for them for several reasons: the difference of productivity, due to the use of pesticides, industrial fertilizers and better technology, and the existence of important public subsidies – despite their prohibition in principle formulated in the WTO AoA. All these elements reinforce the competitiveness of European products and facilitate their penetration of ACP markets. This is even more true as a majority of products imported from the EU are directly in competition with ACP sectors of production of the food of local populations (cereal, milk, meat, processed products...)²⁸.

The right to work

This threat to ACP agricultural sectors could affect a large portion of the ACP countries' populations. The right to work, enshrined in Article 15 of African Charter on Human and Peoples' Rights and article 6 of the International Covenant on Economic, Social and Cultural rights, includes « *the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right* ». States parties have to take steps « *to achieve the full realization of this right* ». The ICESCR also guarantees workers « *just and favorable conditions of work which ensure (...) a decent living for themselves and their families* »

Yet, states will not have many opportunities to protect employment in the agricultural sector once EPAs enter into force. Indeed, it seems that they will not have any ability to take customs or non-tariff measures to limit European agricultural product import flows on their markets. The example of massive European chicken imports is telling. The massive arrival of imported poultry from Europe, at a very cheap price, had disastrous consequences on the breeding sector, forcing numerous farmers to leave their jobs, no longer lucrative enough, and to flee to the cities where they aggravate urban misery.

The right to adequate food

The loss of incomes of agricultural workers seriously compromises the right to an adequate standard of living, including adequate food, clothing and housing guaranteed by article 11 of the Covenant. The right to adequate food is defined by the Committee on ESCR as the capacity to have « *physical and economic access at all times to adequate food or means for its procurement* »²⁹. Paradoxically, prices of agricultural products are going to decrease for ACP countries consumers, yet the price drop will not contribute to the fulfilment of this right since the reduction of prices will harm the large proportion of the population which depends on agriculture.

The liberalization of agriculture, in conformity with structural adjustment programs and WTO agreements, has already had negative impacts on food security and on the right to adequate food of the developing countries' most vulnerable populations. Jean Ziegler, the UN Special Rapporteur on the Right to Food, estimated in 2006, that « *up to 15 million Mexican farmers and their families, many from indigenous communities, may lose their livelihoods as a result of the North American Free Trade Agreement and competition with subsidized United States maize* »³⁰.

²⁸ See Oxfam-France campaign, « *Exportations de poulets : La France plume l'Afrique* », October 2004

²⁹ Committee on Economic, Social and Cultural Rights, General comment n°12, *The right to adequate food*, 12th May 2005

³⁰ Jean Ziegler, Report of the Special Rapporteur on the right to food, March 2006, E/CN.4/2006/44
See: FIDH, Mexico, *The North American Free Trade Agreement (NAFTA): Effects on Human Rights, Violations of Labour Rights*, Fact-Finding Mission, n°448/2, April 2006

Services

The EU economy is dependent on trade in services, as 70% of its GDP comes from this sector and it ranked first among all service exporters in the world in 2005 with 27% of total services exports. At the opposite, in ACP countries, most of them developing countries or LDCs, even if services represent on average 50% of GDP³¹, this number is highly variable since it represents 75% of GDP in some Caribbean countries (thanks to tourism) but less than 5% in some African countries³². The service sector includes transport, insurance, banking and communications as well as essential services such as health and education.

WTO rules

The General Agreement on Trade in Services (GATS), adopted in 1994 during the Uruguay Round (1986-1994), has subjected the Trade in Services to the WTO logic of « progressive liberalization ». Today, although developing countries' specific needs are recognized in the Doha Declaration (paragraph 15), GATS flexibilities are not always respected. In principle, each country chooses the sectors it wants to liberalize and the liberalization level³³ it wants to achieve, through negotiated commitments (« *positive list* »): here is no obligation to give access to the local market or national treatment in a particular field to foreign investors. Moreover, GATS article 4 outlines specific measures to facilitate the growing participation of developing countries in the world trade. The development of bilateral and regional trade agreements has led, however, to an inversion of the regime, referred to as GATS-plus, which consists of commitments through *negative lists* (the principle is full liberalization, with some services excluded, contrary to liberalization in the service-by-service manner provided for by the *positive list* approach), which accelerates the liberalization movement.

Under pressure, the poorest states are rarely free to choose the sectors to liberalize and/or the speed of services liberalization³⁴. Moreover, liberalization, reducing state control and increasing the market forces role, leads to privatization States, which have to keep focused solely on their law-and-order missions, cease their other activities, leaving to private corporations the task to satisfy the needs of the population.

What do EPAs demand?

EU-ACP negotiations show the ACP countries' vulnerability to European pressure in the services sector. The Cotonou Agreement recalls the commitments under the General Agreement on Trade in Services (GATS), and underlines the need for special and differential treatment (article 41-2), but the European Commission negotiation mandate is actually more aggressive than WTO rules. The « negative list » method is the rule and it is stated that negotiations on services should « begin in all sectors by 2006 at the latest »³⁵. Negotiations are currently in progress, at different level in each of the ACP sub-regions. They concern as diverse sectors as tourism, bank services or water supply. The EU objective is to achieve the highest possible level of liberalization « necessary to integrate ACP countries in global trade ». It means that services suppliers will be able to enter ACP states'

³¹ UNCTAD, *Le commerce des services et ses incidences sur le développement*, UNCTAD Secretariat's document, February 2, 2007

³² Willem te Velde, Dirk, *Le traitement spécial et différencié dans les négociations sur les services de l'après-Cotonou*, *Eclairage*, May 2004 – International Centre for Trade and Sustainable Development.

³³ Trade in services is divided into 4 modes. « Supply of a service: from the territory of one Member into the territory of any other Member; in the territory of one Member to the service consumer of any other Member; by a service supplier of one Member, through commercial presence in the territory of any other Member; by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member. » Article I GATS

³⁴ See report « *understanding Global trade and Human Rights* », FIDH, July 2005, *op.cit.*

³⁵ Oxfam, *Unequal Partners: How EU-ACP Economic Partnership Agreements (EPA) could harm the development prospects of many of the world's poorest*, September 2006.

national territories and that these countries remove all discriminatory measures between local and foreign suppliers.

What consequences for Human Rights?

The impacts of the integration of services in EPA negotiations on economic development and human rights are still widely unknown, but ACP countries have firmly urged that « *due respect must be given to the right of members of the ACP Group to regulate trade in services and liberalize according to their national policy objectives* »³⁶. This services liberalization will reduce the ability of governments to govern these fields, and restrict their capacity to choose the most adapted service suppliers to satisfy the needs of their populations. Consequences on Human Rights are potentially very important, particularly if it concerns « essential services », such as water supply, education or health.

Liberalization of water supply and the right to water

Liberalization of water supply, which is very lucrative for transnational corporations, can have very important consequences on developing countries: indeed, privatization and liberalization often lead to an increase of the water tariffs and to partial water distribution on the national territory. The UN Special Rapporteur on the right to food observes that privatization « *very often means higher prices which the poorest cannot afford* »³⁷. In numerous ACP countries, the situation is already alarming and is worsened by privatization and the water supply monopoly of transnational corporations which, in the absence of national rules, provide services only to the richest and in the areas where it is financially profitable. The Bolivian example is striking. When the management of the Cochabamba city water and sewage system was given in a concession to a single-bidder consortium of international water corporations in 1999/2000, water prices increased immediately from admittedly negligible rates to approximately 20 per cent of monthly family incomes³⁸.

However, the right to water, guaranteed by the International Covenant on Economic, Social and Cultural rights, means that everyone has the right, without discrimination, to sufficient, safe, acceptable, physically accessible and affordable water in the best condition for personal and domestic uses³⁹.

The Committee on economic, social and cultural rights reasserts that this right also creates international obligation for States: to respect, protect and fulfil the right to water in third countries. The obligation to protect implies ensuring that non-States actors which fall under their jurisdiction, notably corporations, does not infringe this right in other countries. Thus, the European Union countries should make sure corporations are not responsible for violation of this right in the countries where they operate.

Cooperation efforts in this field have recently started: African ministers committed to carry out water supply management in conformity with human rights⁴⁰, and the European Union Council decided in March the 22nd, 2004, that part of the European Development Fund will be used to develop access to water in ACP countries.

³⁶ ACP declaration on the fifth Ministerial Conference of the WTO, Brussels, August 1, 2003

³⁷ Jean Ziegler, Report of the Special Rapporteur on the right to food, *op.cit*

³⁸ Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari, March 1, 2002, E/CN.4/2002/59

³⁹ Committee on Economic, social and Cultural Rights, General Comment n°15, November 2002 « The right to water », and Article 16 of the African Charter on human and Peoples' Rights

⁴⁰ See : The Pan-African Implementation and Partnership Conference on Water Addis Ababa, 8-12 December 2003

Liberalization of health services and the right to health

Liberalization of water supply not only has consequences on the right to water, it also may affect the right to health enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights and defined as the right of everyone to « *the enjoyment of the highest attainable standard of health* ». This right implies the duty of states to take all necessary measures to ensure the access to health facilities and the highest attainable standards of physical and mental health to their populations. Article 16 of the African Charter on Human and Peoples' Rights also provides that state parties « *shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick* ».

The liberalization sought by the EU could have disastrous consequences on health facilities and, as a consequence, on the right to health of the ACP countries' populations. Indeed, if the increase of trade may increase available resources and improve the health situation in certain countries, it could also easily lead to its decline. The UN Special Rapporteur on the right to health has reminded that according to his experience a higher degree of privatization tends to be negative for the access to health of the most vulnerable populations, who usually suffer from discriminations⁴¹.

Privatization in this sector, added to the decrease of state incomes mentioned above, risks damaging the state's capacity to achieve its obligations with regard to the right to health. If these consequences are, currently, only conjecture, the Committee on ESCR reminds that states have to “*to ensure that privatization of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services*”⁴².

“*The fact that State does not pay attention to its judicial obligations concerning the right to health when they conclude bilateral or multilateral agreements with other States, with international organizations or any other entities such as transnational corporations*” constitutes an infringement to their obligations to respect the right to health⁴³.

The Right to education

The right to education is also threatened by service liberalization foreseen by EPAs. Here too, privatization and the decrease of public resources risks preventing states from respecting the right to education of each person, as set out in article 26 of Universal Declaration on Human Rights where « *education shall be free, at least in the elementary and fundamental stages* » and in article 13 of the ICESCR or article 17-1 of African Charter on Human and Peoples' Rights. The UN Committee on ESCR in its General Comment on the right to education states that « *in relation to the negotiation and ratification of international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to education* »⁴⁴.

The UN Special Rapporteur on the right to education has expressed concern about the consequences of the growing perception of education as a paid service and denounced situations where only those who can afford it have access to quality education systems⁴⁵.

⁴¹ Hunt Paul, WTO Mission report, UN Special Rapporteur on the Right to health, E/CN.4/2004/49/Add. 1st March 2004.

⁴² General Comment n°14, Committee on Economic, Social and Cultural Rights, 22nd session, Geneva, 25th April - 12th May 2000

⁴³ See : FIDH, Mission Internationale d'Enquête, El Salvador, Violations flagrantes du droit à la santé, La Santé entre service public et privatisation : un privilège aujourd'hui, un luxe demain ?, N°373, March 2004

⁴⁴ General Comment n°13, Committee on Economic, Social and Cultural Rights, 21st session , 15th November – 3rd December 1999

⁴⁵ Katarina Tomasevski , special Rapporteur's report on the right to education, at the Commission on Human Rights, 15th January 2004, .E/CN.4/2004/45

Other services sectors are also on the negotiation table to achieve liberalization. Corporations in ACP countries in the tourism sector and/or bank and insurance for example may be too weak to support competition from multinational corporations, with all the possible consequences on employment in these countries.

Intellectual Property

Intellectual property should balance different interests: the need to support and finance research and creation on the one side, and on the other the necessity to give access to innovation and culture to all. Article 15 of the International Covenant on Economic, Social and Cultural Rights guarantees the right of everyone to enjoy the benefits of scientific progress and its application.

What are WTO rules?

Intellectual property rules have been defined by the WTO, since 1994, by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). According to this agreement, a minimum level of protection to intellectual property must be guaranteed, as set out in the main World Intellectual Property Organization's conventions.

On December 6, 2005, an endorsement was adopted to incorporate in the agreement on TRIPS a waiver obtained in 2003 which allowed manufacturing and exports under compulsory licence of generic medicines to developing countries without any production capacities in the pharmaceutical sector. Compulsory licence enables the production of medicines in the absence of agreement of the patent-holder.

What do EPA negotiations foresee?

The Cotonou Agreement, in its article 46, recognizes « *the need to ensure an adequate and effective level of protection of intellectual, industrial and commercial property rights, and other rights covered by TRIPS* » and « *underline the importance, in this context, of adherence to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to the WTO Agreement and the Convention on Biological Diversity* »

Which consequences for Human Rights?

Experience shows that the Agreement on TRIPS is an important obstacle for the respect of the right to health, especially as regards access to medicine in poor countries. Even if the Doha Declaration introduced important flexibilities⁴⁶ pressures, world trade policies and several bilateral trade agreements, restricting these flexibilities, actually reduced the capacities of the poorest countries to respect the right to health. So far, it has been difficult to know what EPAs will rule in this aspect. Intellectual property rules, if they are too restrictive and go beyond the protections enshrined in the ICESCR⁴⁷, could have negative impacts on several economic, social and cultural rights. Patents on living, especially on plant seeds, could also be very harmful in societies where agriculture is of great importance. The General Comment of the Committee on ESCR dealing with intellectual property states that « *The right of authors to benefit from the protection of the moral and material interests resulting from their scientific, literary and artistic productions cannot be isolated from the other rights recognized in the Covenant. (...) The private interests of authors should not be unduly favoured and the public interest in enjoying broad access to their productions should be given due*

⁴⁶ « *We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. (...), we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all* ». Declaration on the TRIPS agreement and public health, Adopted on 14 November 2001

⁴⁷ Article 15, ICESCR, The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author

consideration ». Furthermore, the Committee clearly expresses the states' obligation to « *to prevent unreasonably high costs for access to essential medicines, plant seeds or other means of food production, or for schoolbooks and learning materials, from undermining the rights of large segments of the population to health, food and education* »⁴⁸.

Investments – Singapore issues

What are WTO rules?

Discussions on investment at the WTO are included in the Singapore issues⁴⁹ (investment, competition policy, transparency in government procurement and trade facilitation). Since the Ministerial Conference in Cancun, only trade facilitation is still subject to negotiation. On the three other issues, negotiations were suspended on demand of developing countries. However, investment issues are still brought up in other WTO agreements such as GATS which deals with foreign investments in the field of services, one of the four modes of service supply.

What do EPAs negotiations demand ?

Investment is a sensitive issue in the current negotiations. The European Commission firmly insists that investment rules be introduced in the agreements (there will be no agreement without rules on investments and total reciprocity⁵⁰). This ultimatum is an answer to the African Union ministers' declaration of April 2006 in which they stated that obligations which go beyond WTO rules should be kept « outside the ambit of EPA negotiations »⁵¹. The EU demands this sector be liberalized in order for minimum restrictions to be applied to foreign investors, which is deemed necessary to encourage the Foreign Direct Investments (FDI) flows to ACP countries and stimulate their economic growth.

Which consequences for Human Rights?

Nonetheless, the consequences of an agreement on investment are not that clear. The World Bank recognizes that « *countries that have investment agreements are no more likely to receive additional investment flows than countries without such a pact* »⁵². Indeed, primary disincentives for investors are concerns about political stability, security, unreliable electricity supply etc., rather than a lack of a investment agreement. A 2003 report of the United Nations Development Program, *Making Global Trade Work for People* (2003), found that there is « *no clear correlation between the volume of foreign direct investment and development success* »⁵³. But whereas these agreements do not

⁴⁸ Committee on Economic, Social and Cultural rights, General Comment No. 17 (2005): The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant) 12/01/2006, E/C.12/GC/17

⁴⁹ On entend par « thèmes de Singapour » : l'investissement, la politique de concurrence, les marchés publics, et la facilitation des échanges. Ces questions ont été introduites dans les négociations à l'OMC lors de la conférence interministérielle de Singapour du 9 au 13 décembre 1996.

⁵⁰ Karl Falkenberg, Karl Falkenberg, Deputy Director-General of Trade at the European Commission, Accra, Ghana, 29 June 2006. See: *Oxfam International, Unequal Partners: How EU-ACP Economic Partnership Agreements (EPA) could harm the development prospects of many of the world's poorest countries, op.cit*

⁵¹ Nairobi declaration on Economic Partnership Agreements, African Union Conference of ministers of Trade 4TH Ordinary Session 12-14 April 2006 Nairobi, Republic of Kenya

⁵² Banque mondiale, *Global Economic Prospects And Developing Countries 2003: Investing to Unlock Global Opportunities*, Washington DC, 2003. See: *Oxfam International, Unequal Partners: How EU-ACP Economic Partnership Agreements (EPA) could harm the development prospects of many of the world's poorest countries, op.cit*

See also: UNCTAD, *Economic development in Africa. Rethinking the Role of Foreign Direct Investment*, 13th September 2005

⁵³ Friends of the earth, *Privatization*, N°107, January 2005

guarantee FDI flows, and do not constitute a necessary or sufficient condition for development, they restrict the states' capacities to control and select foreign investors (mainly in primary sectors and especially in the extractive activities fields). States may lose their capacity to effectively protect the human rights of every person under their jurisdiction. Without any possible discrimination between foreign and domestic investors, ACP countries will not be able to encourage national industry or even a foreign company which would propose a more productive plan for their development and the achievement of their populations' human rights. Finally, foreign investors may be able to repatriate all profits realized in the country where they operate to their home state, without any obligation of local reinvestment.

States which are under the obligation to protect rights enshrined in the International Covenant on Economic, Social and Cultural Rights have the duty to protect, that is to say to control all the non-state actors under their jurisdiction. Thus, ACP countries have to control corporations operating on their territory and EU members States have to ensure that European companies respect human rights wherever they work.

FIDH demands that:

- Any trade agreement (EPAs or other) which will be concluded between the EU and ACP countries, and which will constitute the trade aspect of the Cotonou Agreement do not contravene its « *essentials elements* » including « *respect for and promotion of all human rights* » as set out in article 9 of this Agreement, and international commitments of both parties concerning Human Rights;
- The right to participate be fully respected by the introduction in the negotiations of parliamentary debates and consultation of other stakeholders such as trade unions, NGOs and other ACP and EU countries actors, and that the negotiations take into consideration the European Parliament's resolution adopted on May 23, 2007 and in particular the concerns and recommendations which are also expressed in this document⁵⁴
- Negotiations take into account the impact assessments undertaken by different civil society organizations as well as independent experts which reflect the potentially negative impacts of EPAs on human rights;
- The EU do not use the need to achieve a WTO-compatible trading regime to impose reciprocity in the relation between such asymmetric economies with such unequal development levels, whereas WTO principles recognize the principle of special and differential treatment for developing countries. Full reciprocity would constitute an important threat to fragile ACP economies and to millions of these countries' inhabitants;
- Safeguard mechanisms be included in order to enable ACP States to protect their different production sectors, above all sensitive ones, against massive imports flows;
- Essential services be excluded from the negotiations to ensure States will not lose their capacity to regulate the fields that may affect the enjoyment of human rights (health, education, water supply, culture...);
- Singapore issues (investment, competition policy, transparency in government procurement and trade facilitation), which had been rejected of the Doha Round by developing countries, and in

⁵⁴ European Parliament Resolution, May 23, 2007 (2005/2246(INI))

particular the issue of investment are not reintroduced through EPAs, without any previous independent human rights impact assessments;

- Rules on intellectual properties which would constitute obstacles to the access to essential medicines be excluded from EPAs; and that EPAs be used to improve the ACP countries capacity to use all the flexibilities provided for by the 2001 Doha Declaration on Trade Related Aspects of Intellectual Property Rights (TRIPS) and Public Health, through which the EU committed to give the priority to public health over its commercial interests; that other Intellectual Property Rules duly take into account the right of everyone to enjoy the benefits of scientific progress and its applications;
- The EU exert control on European corporations and investors to make sure they respect human rights and corporate social responsibility standards in the communities and societies where they operate;
- All alternatives to EPAs be examined in accordance with Article 37(6) of the Cotonou Agreement, for non-least developed ACP countries which would not be in a position to conclude EPAs;
- The EU abstain from pressuring ACP countries (e.g. threats to diminish all sorts of foreign aid) in order to conclude negotiations by the end of 2007 that may endanger human rights;
- ACP countries continue benefiting from the current preference system if on January 1, 2008 no agreement was reached.