

The EU's legal and financial structure: implications for basic human rights

The objective of the European Commission's development policy is poverty eradication. Since 1992, respect for democratic principles, human rights and the rule of law have been included as essential elements in all agreements with third countries or regional groupings. At the same time, the global trend towards liberalisation and deregulation, which is also at the centre of the Union's development cooperation, is not evaluated in terms of its impact on poverty eradication. This results in aid to social sectors and basic human rights – such as education, health and women's empowerment – being neglected and underfunded.

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The overarching objective of the European Commission's (EC) development policy is poverty eradication, with an outspoken focus on the Millennium Development Goals (MDGs) and human rights. The definition of human rights can be very broad. Within development cooperation, it involves aspects such as social, political, economic and women's rights as well as governance and local ownership. However, in its broadest sense, it can be seen as the right not to live in poverty: wherever there is poverty, there are multiple violations of the rights and dignity of human beings.

Although the EC agrees with this concept in theory, several analyses point to a lack of consistency between the approach used and the stated objective: with its focus on the promotion of European competitiveness abroad, the European Union (EU) is using aid to support a trend towards liberalisation and deregulation. This may be at the root of negative trends in poverty: recent reports show that despite high economic growth in most of the 49 Least Developed Countries, the number of people living in poverty is increasing.²

The budget, the priorities and the instruments used by the EU for its development assistance all have an impact on the promotion of human rights – directly or indirectly. When assessing the EC's different budget instruments, it becomes apparent that they fail to promote basic human rights in a number of areas.³

Financing structure

The EC currently manages around one fifth of the EU's Official Development Assistance (ODA). For the period 2007 to 2013, the aid to developing countries managed by the EC will total approximately EUR 52 billion.

At present, three main legal instruments provide the basis for the EU's funding of its cooperation with

developing countries: the European Development Fund (EDF), the European Neighbourhood Partnership Instrument (ENPI) and the Development Cooperation Instrument (DCI).

The EDF constitutes the principal funding instrument for the EU's development cooperation with African, Caribbean and Pacific (ACP) countries. It provides the resources for the Cotonou Agreement and covers development cooperation, political dialogue and trade. The EDF is not part of the EU's regular budget and is financed separately by direct payments from the EU's Member States. For the period 2008-2013, the 10th EDF amounts to approximately EUR 22.6 billion.

The ENPI is the financial instrument for countries covered by the European Neighbourhood Policy (ENP). The ENP is responsible for the EU's cooperation with neighbouring countries to the south and east.

The DCI, created in 2006, covers developing countries not included in the other two instruments – principally countries in Asia and Latin America. The DCI also covers the financing of a set of thematic programmes applicable to developing countries in all parts of the world.

One of the key objectives in the establishment of the DCI in 2007 was to implant the EU's development policy as the principal policy framework for the EU's cooperation with all developing countries. The provisions of the Union's Treaties set out the broad objectives for this policy, the principal being the eradication of poverty. Addressing gender inequality is stated to be fundamental to achieving this objective. An emphasis is also given to prioritising investment in the provision of social services as a fundamental basis for development. This was underlined with the inclusion of a requirement for at least 20% of the EC's aid to be used for this purpose. Over the period 2007-2013 approximately EUR 16.9 billion will be disbursed under the DCI.⁴

Programming priorities at the national and regional level

In the context of the EC's external cooperation, programming is an essential decision-making process aimed at defining the EC strategy for countries receiving external assistance. The resulting strategy, which is laid down in country strategy papers (CSPs), regional strategy papers (RSPs) and the-

matic programmes, should reflect the EU's policies and fundamental principles. Moreover, the decision-making process for these strategy papers should involve consultation with both the government and civil society organisations in the partner countries, as well as with EU Member States and other donors. Unfortunately, there is no strategy for the systematic involvement of civil society in such consultation processes, to ensure their involvement in policy-setting and implementation at country level.

The EC's principal instruments for the promotion of human rights in development cooperation are support systems for technical guidance in implementation. For instance, the EC contributes to the promotion of basic social and human rights in its development aid by developing toolkits and programming guidelines on mainstreaming issues such as health, HIV/AIDS and gender equality, and by preparing National (NIPs) and Regional (RIPs) Indicative Programmes as well as Financing Agreements that include strong indicators on social issues.

However, little real progress has been made in systematically implementing these guidelines. Indicators in the Indicative Programmes and Financing Agreements, which set out the financial contribution to each partner country, often fail to include gender equality, poverty and hunger comprehensively.

Unfortunately, this is too often the result of the priorities set out in the strategy programmes not being agreed with the comprehensive involvement of the partner governments. There is a lack of involvement of national parliaments, as well as a lack of consultation of civil society in partner countries. A comparison of the nationally produced Poverty Reduction Strategy Papers (PRSPs) with the EU CSPs shows that the priorities often differ substantially.⁵ There is evidence that social sector departments of ACP governments are often not included in the process of preparation of the CSPs, while other departments, such as on trade and transport, are consulted regularly and extensively. Such evidence would suggest that in reality only parts of governments of developing countries decide the priority sectors. In that sense, the principle of ownership, agreed in the Paris Declaration, to which the EC pays ample lip service, is largely ignored in practice. This results in

1 The authors are grateful to Ann-Charlotte Sallmann for her collaboration.

2 UNCTAD, "Growth, Poverty and the Terms of Development Partnership", Least Developed Countries Report 2008, New York and Geneva 2008.

3 Eurostep, "Europe's global responsibility", Briefing paper, Brussels, February 2008.

4 *Ibid.*

5 Alliance2015, "The EC's response to HIV/AIDS: Lost between ownership, division of labour and mainstreaming", editor: EEPA, Brussels, October 2007.

aid to social sectors and basic human rights – such as education, health and women empowerment – being neglected and underfunded.

In the implementation of the latest financing period 2007-2013, priority has been given to areas such as transport, infrastructure and trade. While the country programmes for Asia and Latin America reflect an attempt to comply with the stated objective of contributing to basic social rights, this is not the case for the ACP countries. Despite international studies concluding that Africa is furthest away from achieving the MDGs, provisional information on 70 draft ACP-EU CSPs shows that health has been included as a priority for just eight countries, and education for nine.⁶

When it comes to governance, the criteria used for deciding on additional incentive financing relate as much to issues rooted in the EU's own interests – such as migration, counterterrorism, and trade liberalisation – as to the universally agreed core concepts of democratic governance, public finance management and the promotion of human rights.⁷ Equally, while the liberalisation of procurement is often specifically agreed as a condition in financing agreements for General Budget Support programmes, funding to, for instance, the strengthening of democratic institutions remains largely underfunded.

In the current RSPs, priority is given to support for trade at the expense of other regional programmes, despite assurances that aid for trade measures would come as additional funding to compensate for estimated losses under the EU's trade arrangements with partner countries. In the regional programmes with groups of ACP countries, there appears to be very little place for the inclusion of focal sectors other than activities related to the Economic Partnership Agreements (EPAs) currently negotiated between the EC and the ACP. This not only undermines the continuation of cooperation activities undertaken under previous EDFs, it also diverts resources away from other development objectives. The promise that support to trade for the necessary adjustment to the EPAs be financed separately from, and in addition to the current 10th EDF, has not been fulfilled as yet.

Budget support

The EC has committed itself to the ambitious target of channelling 50% of government-to-government assistance through country systems, i.e. offering General and Sector Budget Support. NGOs have different views on the benefits of budget support, but generally approve the idea of guaranteeing long-term predictable financing for recurrent costs such as salaries for teachers and health workers. However, using budget support requires carefully selected indicators.

In November 2005, the European Commissioner for Development and Humanitarian Aid, Louis Michel, assured representatives of the Alliance2015 Stop Child Labour campaign that the

EC would never provide budget support to partner countries that are not committed to tackling child labour. However, none of the financing agreements analysed for this study included any indicators on child labour.⁸

Similarly, despite the EC's stated commitment to the promotion of gender equality and sexual and reproductive health and rights, research conducted in autumn 2007 showed that indicators on these issues are almost entirely absent from the EC's financing agreements with its partner countries.⁹

The budget support programmes are inconsistent regarding conditionalities. Although the EC has made moves towards outcome-based conditionality, as a response to the failure of past policy conditionalities, it still requires the recipient country to have an agreement with the International Monetary Fund (IMF), and thus to be bound by IMF policy conditions. A second problem is the inconsistency between the stated aim of European Community development cooperation, which is 'poverty reduction and eradication', and the impact of IMF programmes that often include policy prescriptions which undermine poverty reduction strategies. For example, by imposing stringent targets for inflation and reserve levels the budgetary space for government spending on social sectors is reduced.¹⁰

Economic Partnership Agreements (EPAs)

EPAs are trade arrangements being negotiated between the EU as a whole and groups of ACP countries. The EC, mandated by the Member States to handle the negotiations, views aid and trade as being closely linked.

For the ACP countries, the scope for negotiating EPAs was embodied in the Cotonou Agreement. The trade negotiations have been subject to great controversy and heated debate. Many consider the EPAs to pose a threat, not only to government revenue, local producers and industries, food sovereignty, essential public services, and the regional integration of African countries, but also to the right and capacity of African countries to develop their economies according to the needs of their people and their own national, regional and continental priorities.

The pressure for ACP countries to drop their tariffs under the EPAs will remove the only protection that African governments can offer their own farmers, as they cannot subsidise due to conditionalities on loans and aid. The rules concerning market access, tariffs and subsidies severely limit the government's ability to protect domestic agricultural production, where women are predominant. Within the context of current gender relations in Africa and past experiences in trade liberalisation, it is clear that

women end up paying the costs of social welfare issues for their families and communities.¹¹

Due to substantial criticism during the negotiations, the EU promised to provide aid for trade to support the adjustment costs of the EPAs, once they are in place. Although the importance of such compensation is beyond question, it is still to be seen how this will be provided.¹²

In 2007, the EC indicated that it would increase its funding of EPA-related support activities by reallocating funds under various RIPs in support of those activities. There is concern that this will reduce the amount of funding under the RIPs for other activities, notably support for social sectors, and that, given its link to the EPA negotiations, it will only be available to those ACP countries which sign trade agreements with the EU.

The Treaty of Lisbon: the way forward

When, as part of the preparations for the current financial perspectives, the legal instruments governing the use of the EU's funding were revised, significant moves were made towards ensuring that the EU's development cooperation was implemented as part of a global development policy.

NGOs that have followed the initiatives to amend the EU Treaties since the Council's 2002 launch of the process that ended up in the Lisbon Treaty have consistently argued that the EU's development policy and its objectives should define the framework for the EU's relations with all developing countries (as defined by the OECD/DAC), without any regional discrimination.

The EU's development policy has become central to the regulations covering the use of EU development funds in Asia and Latin America in particular, and to a lesser extent in countries of the southern Mediterranean, southern Caucasus and Eastern Europe covered by the European Neighbourhood Policy. As a result, there has been an increased consistency in the implementation of EU development policy towards all parts of the developing world.¹³

To advance on the provisions in the new Treaty – which still needs to be ratified – it is seen as vital that the EDF should also be brought within the framework of the EU's overall budget. This will allow for proper democratic scrutiny, and will ensure a policy focused on poverty eradication without regional discrimination. In its role as one of the co-legislators for establishing the revised legal instruments, the EP ensures that the funds provided through the DCI must finance legitimate development activities. The EP's powers should be extended to cover the ACP regions, to ensure full democratic scrutiny and the identification of any gaps in the EU's promotion of the right not to live in poverty. ■

6 Eurostep, "Democratic scrutiny of EU aid: Benchmarks for scrutiny of the joint EU programme to ACP countries", Briefing paper, Brussels, September 2007.

7 EEPA, "Administering aid differently: A review of the European Commission's general budget support", EEPA occasional report, Brussels, March 2008.

8 Alliance2015, "The European Commission's commitment to education and the elimination of child labour", p. 37, editor: EEPA, Brussels 2007.

9 EEPA "Gender and Sexual and Reproductive Health indicators in the EU Development Aid", briefing paper 8, Brussels, December 2007. Eurostep, International Women's Day: "Time to indicate progress towards gender justice Gender Equality Indicators in EU Development Cooperation Strategy", position paper, Brussels, March 2008.

10 See footnote 7.

11 ACORD, (2006) "EPAs, an assault on Africa's food sovereignty: - Why a gender and women's rights analysis is important for Africa", January 2007.

12 EEPA, "The development cooperation aspects of EU trade negotiations with developing countries", briefing paper, Brussels, October 2007.

13 See footnote 3.