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### Political Dialogue and Human Rights in the Framework of the Cotonou Agreement

Clara PORTELA

Singapore Management University, [claraportela@smu.edu.sg](mailto:claraportela@smu.edu.sg)

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## **Policy Department External Policies**

# **POLITICAL DIALOGUE AND HUMAN RIGHTS IN THE FRAMEWORK OF THE COTONOU AGREEMENT**

**HUMAN RIGHTS**

July 2007

**EN**

This briefing paper was requested by the European Parliament's Subcommittee on Human Rights.

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Author: Clara Portela  
Department of Social and Political Sciences  
European University Institute  
Lydie Mbangou-Kiala,  
European Centre for Development Policy Management

Copies can be obtained through: **Andrea Subhan**  
European Parliament  
Directorate-General for External Policies of the Union  
Policy Department  
rue Wiertz  
B-1047 Brussels  
E-mail: [andrea.subhan@europarl.europa.eu](mailto:andrea.subhan@europarl.europa.eu)

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## Abstract

The present study analyses the use of the political instruments for the protection of Human Rights, democracy and the rule of law under the Partnership Agreement between the European Union (EU) and the African-Caribbean–Pacific (ACP) countries embedded in the Cotonou Agreement: the consultations under article 96, intensified and regular political dialogue. It briefly outlines the legal provisions of the revised treaty, reviews recent practice, and looks into the involvement of civil society and parliamentary bodies in the political dialogue.

## Executive summary

### 1. Availability and use of instruments

- The Cotonou Agreement signed in 2000 sets out four instruments for upholding Human Rights, democracy and the rule of law:
  - a) Regular political dialogue (Article 8);
  - b) Intensified Political Dialogue (Article 8), only introduced in the 2005 revision of the treaty;
  - c) Procedure of Consultations (Article 96);
  - d) “Appropriate measures”, which might entail the suspension of development aid (Article 96).
- Consultations under article 96 have been called with several ACP states since 2000.

### When are consultations called?

- Most consultations cases were justified as reactions to both Human Rights violations and interruptions of the democratic process: *coups d'état* in a majority of cases.
- The EU invokes article 96 whenever it considers that it stands a reasonable chance of influencing the leaderships in breach.
  - It refrains from invoking article 96 with countries in conflict, where the leadership lacks control over the territory and/or when international efforts are already underway;
  - There is a preference to call consultations in the aftermath of a *coup d'état*, because ACP countries and the donor community are likely to be supportive. The leadership is also likely to collaborate with the EU, so as to ensure the continuation of aid and international legitimacy.

### How successful are consultations?

- Thanks to the often co-operative attitude of putschistes, and the help of other ACP countries, consultations are relatively effective in resolving crises, but ill-suited to address situations of long-term political instability.

## **2. Participation of civil society and parliamentary bodies in the political dialogue**

- The Cotonou Agreement foresees the participation of non-state-actors in the political dialogue, but fails to specify the modalities.
- The participation of the Joint Parliamentary Assembly in the dialogue is explicitly foreseen since the 2005 revision. However, the lack of transparency in the conduct of the dialogue hampers parliamentary scrutiny, as well as the potential for participation of civil society actors.

### **Summary of conclusions and recommendations**

The EU's role in promoting Human Rights, democratic governance and the rule of law in ACP countries can be improved through the following measures:

#### **1 Enhanced use of the Intensified Political Dialogue (IPD)**

- The Intensified Political Dialogue (IPD) is designed to exhaust the instrument of dialogue before article 96 is invoked, in the hope that it will make the call for consultations unnecessary. Since its introduction in the 2005 review of the Cotonou treaty, this instrument has not yet been used.
- The IPD can be useful in addressing situations of degeneration of the Human Rights and democratic governance without resorting to consultations, especially in response to breaches of democracy falling short of a *coup d'état*. It is perceived as less confrontational by ACP countries, because it does not entail the possibility of a suspension of development aid.

#### **2 Preference of positive over negative measures**

- The use of positive incentives has proved more effective to promote Human Rights and democracy than negative measures.

#### **3 Increased involvement of the ACP partners**

- In view of the importance of ACP partners in bringing consultations to a positive conclusion, their involvement in the process should be encouraged. This is particularly true for the neighbours of the country in breach. This could be accomplished through:
  - enhanced intra-ACP countries exchange on Human Rights and democracy;
  - the dispatch of ACP monitoring missions to countries of concern;
  - the high-level involvement of ACP countries in consultations.

#### **4 Enhanced role of the EU-ACP Joint Parliamentary Assembly**

- The EU-ACP Joint Parliamentary Assembly should work towards fostering a common understanding on the benchmarks to be employed in the consultation process.

## 5 Wider participation of civil society actors in the political dialogue

- The opportunities for involvement of civil society organisations (CSOs) active in Human Rights should be maximised at the level of regular political dialogue and in the IPD. In particular, the modalities for their participation should be specified.

## 6 Increased transparency on the political dialogue

- Some information on the contents of the political dialogue would make possible to assess their performance, both in terms of parliamentary and public scrutiny.

## Introduction

Human Rights and democracy are at the heart of the relationship between the European Union (EU) and the African-Caribbean-Pacific (ACP) countries. Over the past fifteen years, subsequent revisions of the Partnership Agreement between the EU and the former colonies of some of its Member States have attached increasing importance to these elements. While the principles of Human Rights and Democracy were originally only mentioned in the Preamble of the Lomé Convention, in later revisions of the treaty they were upgraded to “essential elements”. Most importantly, in 1995 a so-called *Human Rights clause* was included for the first time. This provision enables any of the parties to call a procedure of consultations, and even to suspend co-operation, in case of a serious breach of these elements by the other side. The Cotonou Agreement presented good governance as a “fundamental element”, and most recently, the 2005 revision of the treaty introduced an intensified political dialogue procedure. More than ten years after the Human Rights clause was first included in the EU-ACP Partnership Agreement, how effective have these instruments proved in correcting poor Human Rights and democracy records in ACP countries? And how can the efficacy of these instruments be optimised?

A definition of the scope and limits of the present study is in place. While a systematic analysis of the impact of the political dialogue on each ACP country exceeds the scope of the present study, this note looks at the most serious cases of Human Rights violations and the use by the EU of the instruments of consultations and development aid suspension. Equally, the analysis does not consider the relationship between development actions in the Cotonou framework and the evolution of the political dialogue. By contrast, the focus on the analysis is on the use and efficacy of the available instruments. For reasons of space, the study does not examine the contribution of regional organisations such as the African Union, ECOWAS or SADC, often important in the handling of cases such as Guinée-Conakry or Zimbabwe, in order to concentrate in the role played by the EU.

The study proceeds in the following way: A first part deals with the instruments available to the Union to promote Human Rights, democracy, and good-governance in ACP countries, presenting a brief description of the institutional mechanisms. These include political dialogue, consultations, and the suspension of development co-operation as part of the set of “appropriate measures” that the EU might take following the closure of consultations. Secondly, the actual practice of the EU in addressing situations of grave Human Rights and democracy breaches is assessed. After that, two issues of particular significance in the political dialogue are looked into: the involvement of civil society and the participation of national parliaments and of the EU-ACP Joint Parliamentary Assembly. The paper will conclude with some recommendations.

## **1. Political Dialogue in the framework of the EU-ACP Partnership and the promotion of Human Rights and democracy**

### **Evolution and Instruments under Cotonou**

The Lomé Conventions, a series of treaties embodying the privileged relationship between the EU and the former colonies of some of its member states located in the African, Pacific and Caribbean regions, constituted the legal basis for the granting of development aid and trade preferences to these countries from 1975 to 2000. Originally, the Conventions only contained references to Human Rights in its preamble. The 1995 mid-term review of the Lomé IV Convention identified the respect for Human Rights and democratic principles as “essential elements” of the treaty (article 5), thereby reflecting the increased interest in the promotion of Human Rights that followed the end of the Cold War. This provision was accompanied by a conditionality clause empowering any of the parties to call for a procedure of consultations in case that a breach of any of the essential elements of the treaty by the other party had been observed (article 336a). The consultations procedure consists of a period of intensive contacts whereby the country in question is requested to present a programme towards the re-establishment of the “essential elements”; Human Rights and democratic principles. The conditionality clause also provides for the adoption of so-called “appropriate measures” depending on the outcome of the consultations. These might entail, among others, the suspension of development co-operation with the country in question.

The signing of a new ACP-EU Partnership Agreement in Cotonou (Benin) in June 2000 replacing the Lomé Convention series brought two important novelties into the treaty: the “rule of law” was added to the “essential” elements of the treaty, while “good governance” became a “fundamental” element. The introduction of good governance was accompanied by a new conditionality clause enabling the parties to call for consultations in serious cases of corruption (article 97). The mid-term review of the Cotonou Agreement in 2005 also incorporated important changes: Firstly, a new provision on an “intensified political dialogue”, featuring a middle-ground between regular political dialogues and article 96 consultations. Secondly, the time periods for the beginning and closure of consultations was doubled, in order to allow enough time for preparing and conducting the consultations in a less hasty atmosphere.

### **Treaty Provisions**

In its current configuration, the legal bases for the call for consultations and suspension of co-operation looks as follows:

#### **Definition of Essential and Fundamental Elements – Article 9**

Under the title setting out the Political Dimension of the treaty, Article 9 identifies the respect for human rights, democratic principles and the rule of law as the essential elements, while good governance is referred to as a fundamental element. Good governance is defined in the same article as the “transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development”.

#### **Political Dialogue – Article 8**

Article 8 stipulates that the parties shall “regularly engage in a comprehensive, balanced and deep political dialogue leading to commitments on both sides”. Thematically, the scope of the



dialogue is very broad, as it encompasses any issue “of general significance for the attainment of the objectives of the agreement”, ranging from migration to arms trade. The objectives of the political dialogue are exchanging information, fostering mutual understanding, and agreement on priorities and shared agendas, and facilitating consultations within international fora. Significant room for flexibility has been foreseen for the conduct of the political dialogue:

“It shall be formal or informal according to the need, and conducted within and outside the institutional framework, including the ACP Group, the Joint Parliamentary Assembly, in the appropriate format and at the appropriate level, including regional, sub-regional or national level”.

#### *Intensified Political Dialogue preceding Consultations – Article 8*

The 2005 mid-term review of the Cotonou Agreement inserted a new paragraph providing for an Intensified Political Dialogue to avert the opening of consultations: “in order to prevent situations arising in which one Party might deem it necessary to have recourse to the consultation procedure foreseen in Article 96, dialogue covering the essential elements shall be systematic and formalised”. An annex setting out the modalities of this dialogue explicitly states that consultations envisaged in Article 96 will take place following the Intensified Political Dialogue in Article 8. It “shall be systematic and formal and shall exhaust all possible options prior to consultations under Article 96 of the Agreement”. The Intensified Political Dialogue might only be skipped in cases of special urgency, or of “persistent lack of compliance with commitments taken by one of the Parties during an earlier dialogue, or by a failure to engage in dialogue in good faith”.

#### *Consultations - Article 96*

According to article 96, “if a party considers that the other party has failed to fulfil an obligation stemming from respect for human rights, democratic principles and the rule of law”, it shall supply the other party and the Council of Ministers with the relevant information “with a view to seeking a solution acceptable to the Parties. To this end, it shall invite the other Party to hold consultations that focus on the measures [...] to be taken by the party concerned to remedy the situation”. Article 96 also foresees deadlines: Consultations shall begin no later than 30 days after the invitation and shall not last longer than 120 days.

#### *Appropriate Measures - Article 96*

The adoption of “appropriate measures” is foreseen in cases in which

- a) the consultations do not lead to a solution acceptable to both parties;
- b) consultations are refused or
- c) there is “special urgency”, defined as “exceptional cases of particularly serious and flagrant violation of one of the essential elements [...] that require an immediate reaction”.

Regarding their contents, the treaty provisions merely stipulate that appropriate measures will be taken in accordance with international law, and should be proportional to the violation. When selecting the measures, “priority must be given to those which least disrupt the application of this agreement”. Finally, suspension is referred to as “a measure of last resort”.

### **The Consultation Procedure**

The procedure for consultations is highly institutionalised. Once a serious breach of Human Rights or of democratic principles is observed, the Council of the EU invites the ACP country in question to participate in consultations under article 96. The decision to invoke article 96 is preceded by a discussion in the relevant geographical Council working party under the CFSP. The ACP working party also discusses the political situation whenever it is considered that it might have implications for development co-operation. The decision to start consultations is taken by the Council on a proposal presented by the Commission.

Consultations start with a meeting in Brussels between the EU troika and the ACP country in breach accompanied by a number of ACP countries of its choice, representatives from regional organisations such as the African Union and the ACP Secretariat. The objective of the consultations is to agree on measures to rectify the breach. The EU and the responsible government shall adopt a list of commitments to be fulfilled within a timetable. When consultations are closed, the EU evaluates the progress made by the government in fulfilling the commitments entered into and might then decide on “appropriate measures”. These might entail, but are not synonymous with, the suspension of development cooperation. Appropriate measures can also consist of positive measures, such as the release of new funds, or redirection of aid. Suspension can be total – for which unanimity in the Council is required - or partial – for which a qualified majority suffices. In practice, proposals are adopted unanimously (Hazelzet 2005:6). The European Parliament is informed by the Council of the opening and completion of consultations. Subsequently, the EU conducts regular monitoring, including missions to the country to assess progress in implementation.

### **Development aid suspension: what kind of “sanction”?**

Prior to the introduction of political conditionality with article 336a into the Lomé IV Convention in 1996, development aid to ACP countries had sometimes been suspended due to breaches of Human Rights and democracy (e.g. suspension of aid to Equatorial Guinea in 1992). However, due to the lack of legal bases, suspensions were handled in informal ways (Hazelzet 2005:4).

As in all aspects of its coercive policies, the EU ensures that the population is spared from deprivation. Not even in cases of total suspension is the entire flow of aid interrupted. The suspension only affects one strand of development aid, namely budget support funds. They are administered directly by the state, and their interruption affects mostly infrastructure projects. Moreover, the suspension is only meant for projects that are not yet in place, leaving ongoing programmes unaffected. The suspension often takes the form of the non-notification of the upcoming European Development Fund (EDF) programme. Humanitarian aid, which is funded through a different budget, is expressly exempted from suspension.

Despite the suspension, substantial portions of development aid might remain in place. Aid in direct support of the population is channelled through NGOs; therefore, it is often left in place. This might include health, education and food security programmes, programmes in support of civil society, human rights and democracy, and rural development projects. Cross-border regional projects involving several countries are not interrupted as a result of the suspension of development aid against one of the participants. If there is a fisheries agreement between the EU and the ACP country in question, it remains unaffected by the article 96 suspensions. Fisheries agreements constitute a major source of income for ACP countries, often providing coastline

countries with larger amounts of funds than those granted to them as development aid. Finally, development aid provided by EU Member States is also unaffected by article 96 suspensions.

A tactic often used by the EU in its external relations in order to signalise discontent with the policies of one of the beneficiaries of its aid programme is the redirection of funds towards aims different to those it had been originally allocated to. In line with the spirit of partnership that characterises the EU-ACP relations, the EU needs the explicit approval of the recipient government in order to redirect funds. The EU has taken this approach also in the context of article 96 suspensions – e.g. with Zimbabwe, where funds foreseen for budget support have been redirected towards humanitarian aid and projects in direct support of the population.

From an EU-institutional point of view, the suspension of development co-operation is not properly a “sanction”. In EU terminology, the word “sanction” is reserved for measures decided under CFSP, which typically encompass arms embargoes, visa bans and the freezing of financial assets. Such measures are kept legally separate from appropriate measures under art. 96, and there is no formal linkage between them. Yet, CFSP sanctions have sometimes been imposed on countries with which development cooperation had been partially suspended, such as Zimbabwe or Sudan.

### **Article 96 Consultations: Actual Usage**

The table below features cases of consultations under article 96 of the Cotonou Agreement, indicating the nature of the “appropriate measures” taken. A brief overview of cases follows the table, which serves as basis for the ensuing analysis.

### **Cases of article 96 consultations under Cotonou (\*)**

	Measure	Time Period	Main Motive	Outcome
Central African Republic	Partial suspension	2003-2005	Coup d'état	+
Cote d'Ivoire	Partial suspension	2000-2002	Flawed elections	+
Fiji	Partial suspension	2001-2003	Coup d'état	+
Haiti	(Almost) total suspension	2001	Flawed elections	+
Guinea-Bissau	No suspension		Coup d'état	+
Guinea-Conakry	Partial suspension	2003-ongoing	Coup d'état	(-)
Liberia	Partial suspension	2001	HR violations in Sierra Leone	-
Mauritania	No suspension		Coup d'état	+
Sudan	Total suspension	1990-2005	Coup d'état; civil war	+ for the Souther-Sudan
Togo	(Almost) total suspension Resumption	(1993-94); 1998-2006	Illegal constitutional change	+
Zimbabwe	Partial suspension	2002 - ongoing	Flawed elections; HR violations	-

\* The table only features cases of consultations after the signing of the Cotonou Agreement in 2000, plus Sudan, where aid has been partially resumed in the absence of consultations. Aid had been to a number of ACP countries had been suspended previously: in the late nineties under the Lomé IV Agreement; before 1995 without any formal legal procedure (Hazelzet 2005:4). The table's list of cases of suspension is complete, but list of consultations without suspension is non-exhaustive.

### **Central African Republic**

The Central African Republic has not been favoured by the donor community in spite of its heavy dependence on foreign aid. The EU has a prominent role among donors, especially since the IMF cut budgetary support in 2001 (Laakso et al. 2006). Article 96 was invoked following a coup d'état by General Bozizé in 2003, which overthrew President Patassé. Consultations, starting in June 2003, were not limited to the discussion of democracy and Human Rights, but

addressed also economic governance and corruption, and even respect for the Kimberly process concerning the export of diamonds.

A monitoring mission in October 2003 concluded that, while dialogue on reconciliation had been successful, progress made regarding the freedom of the opposition, the timetable for elections and the reform of the military was unsatisfactory. Therefore, the Council decided a partial suspension of development co-operation encompassing some road projects, macro-economic support, and a progressive reduction of the 9<sup>th</sup> EDF funds by 20% per year. Cooperation was resumed following the flawless presidential and legislative elections in 2005.

### **Ivory Coast**

A comparison of the case of Ivory Coast with that of the Central African Republic shows that former colonies often receive different treatment by the former metropolis. Ivory Coast has strong trade ties with France, partly maintained by a significant French business community. The EU called for consultations following the flawed presidential and legislative elections in 2000, pointing to unfulfilled commitments that had been agreed in previous rounds of consultations under article 366a of the Lomé Convention. Following the closure of consultations in July 2001, the EU decided to take a gradual and conditional approach towards the implementation of new projects in support of the restoration of democracy, rule of law and good governance. Co-operation was fully resumed in January 2002 in view of satisfactory progress by the Ivorian government.

Consultations were again proposed by the Commission in 2004 in view of the Human Rights breaches that followed the intensification of fighting in the north of the country that started in 2002. However, the Council rejected the proposal arguing that the threat of civil war would render article 96 consultations ineffective.

### **Fiji**

Fiji is one of the ACP countries which is less dependent on European aid; indeed, it is barely eligible for aid. Consultations under article 96 were initiated in October 2000, following a coup d'état in May of that year. During the consultations, power shifted from the original putschistes to the military, and eventually to a nominated President.

The EU made the notification of 9<sup>th</sup> EDF allocation and the financing of new programmes under the previous EDF (6<sup>th</sup> to 8<sup>th</sup>) conditional upon the holding of elections and the appointment of a legitimate government. Yet, regional projects, humanitarian aid and trade related preferences were left in place. Once the conditions were fulfilled, the EU decided on a gradual resumption of cooperation in November 2001, consisting of projects in support of the rural population and on Human Rights and democracy. However, an irregularity observed in the allocation of seats in the parliament - a number of elected MPs of the Labour Party had been excluded - left the EU unsatisfied. Full co-operation was only resumed in November 2003 after the nomination of Labour cabinet ministers.

### **Haiti**

As the poorest country in the Western hemisphere, Haiti is heavily dependent on foreign aid. However, the importance of the EU as a trading partner is low due to the overwhelming commercial weight of the US. Article 96 was invoked as a consequence of the electoral fraud

observed in the May 2000 legislative elections. As a result of the consultations held in September 2000, the Haitian government promised to arrange new elections for senators.

Following the Haitian failure to abide by its commitment, the EU decided the suspension of budget aid and food security and of the second instalment of the 8<sup>th</sup> EDF, redirection of the remaining funds to projects in direct support of the population, civil society and private sector and the non-notification of the 9<sup>th</sup> EDF. Only humanitarian aid was left in place. In the following years, the EU modified its measures several times as a result of its participation in the Consultative Group of Haiti, whose members encouraged the EU to lift the suspension. Development aid was resumed in October 2005 as a result of the Haitian commitment to hold elections, which eventually took place in February 2006.

### **Guinea-Bissau**

In Guinea-Bissau, it was the ousting of President Yala by General Sedra in September 2003 that provoked the call for consultations by the EU. Yala, the country's first president after the country's emergence from its civil war, had previously caused some concern in the EU due to its 2002 dismissal of the Parliament and his repeated postponement of elections. During the consultations that were opened in January 2004, the authorities undertook to organise elections, improve public finances, and re-establish the independence of the judiciary and the civil control of the armed forces. Contrary to usual practice, the EU refrained from suspending co-operation with the country. An observer mission noted in February 2004 that progress was satisfactory regarding all commitments except in the judicial field. Co-operation resumed following Guinea-Bissau's fulfilment of its commitments to hold elections within the agreed time frame.

### **Guinea-Conakry**

Similarly to the case of Guinea-Bissau, the democratic standards in the Republic of Guinea had been deteriorating for some time before the flawed presidential elections of December 2003 gave rise to consultations with the EU. These opened in July 2004 and concentrated on improvements in the electoral process, such as freedom of the media and non-harassment of the opposition. In April 2005, the EU decided to redirect the unexpended balances of previous EDF towards decentralisation, liberalisation of the media and economic governance, while 9<sup>th</sup> EDF funds continued for programmes in direct support of the population. Slight progress by the Guinean authorities, e.g. with respect to the operation of independent radio senders was reciprocated with a partial lifting of measures. However, as the current administration and the opposition have not yet agreed a programme for electoral reform, cooperation has not been fully resumed.

### **Liberia**

Liberia constitutes a special case since this country was under UNSC sanctions due to Human Rights violations in neighbouring Sierra Leone when consultations with the EU set in. The EU opened consultations both under article 96 and 97 in 2001. The EU approached reformist elements within the Liberian administration who were willing to co-operate, but who encountered resistance from President Taylor and thus were not able to follow through. As a result, the EU considered progress unsatisfactory when consultations were concluded in March 2002. Part of the funding under the 8<sup>th</sup> EDF was linked to progress in the fields of democratic standards and public finances, while the other part, and the notification of the 9<sup>th</sup> EDF was made dependent on the holding of elections in 2003. Liberia remains the only case in which the EU has invoked article 96 due one country's alleged involvement in human rights violations in a

neighbouring country – the same breach which provoked UNSC sanctions. It is also the only example so far in which consultations have been held under article 97.

### **Mauritania**

Consultations with Mauritania were called following the coup by Colonel Vall in August 2005. Soon after the coup, he made a series of public undertakings which included a roadmap for a transition to democracy within set deadlines for legislative and presidential elections and reform of the judiciary. While this was the first coup that took place after the mid-term review of the Cotonou agreement which provided for Intensified Political Dialogue prior to invoking article 96, this was not applied as the EU alleged that it was a case of “special urgency”. In the course of the consultations which started in November 2005, the Mauritanian leadership confirmed its commitments, while the EU gave assurances that cooperation aid would not be suspended during the consultation period. Progress has been mostly satisfactory so far. While development cooperation was never suspended, the EU refrained from notifying the 10<sup>th</sup> EDF until the holding of presidential elections in March 2007, which followed local and legislative elections in November 2006.

### **Togo**

The EU suspended part of its aid to Togo already in 1993 as a consequence of an illegal change to the Constitution made by President Eyadema. Cooperation was resumed after the Constitution was restored in 1994, but the flawed presidential elections of 1998 provoked a new interruption. The EU supported financially the establishment of an independent national electoral commission for the 2003 election; however, Eyadema dissolved it and elections were again reported to be flawed. Togo did not receive any EU funds under the 8<sup>th</sup> and 9<sup>th</sup> EDF; it was only a recipient of humanitarian aid.

The consultations that took place in 2004 are atypical in that they were called at the request of its government, encouraged by other ACP countries. Consultations started in March 2004 and closed in November with an agreement by the Togolese authorities to implement a list of commitments, mainly related to the re-establishment of democratic rule. The resumption of full co-operation was made conditional on the holding of free elections. A number of problems surfaced at the implementation phase, so that the monitoring mission in June reported that no conclusive evaluation was possible despite the good will shown by the government. However, the EU decided to release funds to support the preparation of elections, human rights programmes and justice reforms. Following the signing of the Global Political Agreement by government and opposition and the announcement of elections in the following year, the EU fully resumed aid in 2006.

### **Zimbabwe**

The case of Zimbabwe is exceptional in a number of respects: It is the only example in which a suspension of aid under article 96 has been complemented by CFSP sanctions. Previous cases of development aid suspension combined with visa bans or arms embargoes (Nigeria 1993 or Sudan 1990) were handled outside the EU-ACP framework, given the unavailability of the consultations procedure before 1995. Zimbabwe has also been described as a deviant case in studies of governance, human rights and democracy in ACP countries. It has been singled out as the only case in which, according to the relevant indicators, freedom of participation had improved in the year previous to consultations under article 96 (Laakso et al. 2006).

Consultations were called following the refusal by the Zimbabwean authorities to allow the entry into the country of EU electoral observers on the eve of the 2002 elections, and their harassment of the opposition. A central déclencheur of the crisis was President Mugabe's policy of illegal occupation of large farms and eviction of their white owners. The EU moved very quickly from the political dialogue under article 8 of the Cotonou Agreement to article 96 consultations, and these were apparently exceptionally short (interview: 2007). The suspension of co-operation that ensued left not only humanitarian aid in place, but also health and food security programmes. Equally, programmes under the European Initiative for Democracy and Human Rights (EIDHR) continued – over the past few years, more than seventeen projects have been conducted. Immediately after the suspension, the EU imposed CFSP sanctions: an arms embargo along with a visa ban and a freezing of assets against one of the longest blacklists of the EU. This order was strictly respected: the EU only proceeded to impose CFSP sanctions once the consultations had been closed. At the time of writing, no progress has been made. Zimbabwe's neighbours continue to offer their political support to Mugabe. On the contrary, the deep economic crisis has compelled the EU to increase the amount of humanitarian aid provided.

The presence of CFSP sanctions does not seem to have made any noticeable impact on the situation (interviews 2007). If anything, the presence of CFSP measures might have a negative effect on the behaviour of the leadership: Zimbabwe is the only case of consultations under article 96 Cotonou where no progress has been observed over a considerable period of time (five years).

### **An atypical case: Sudan**

The case of Sudan deviates substantially from those analysed so far in the present study in terms of its domestic situation: the country presents an unusually complex internal picture, including a peace process designed to end its protracted civil war, the presence of a number of rebel groups in areas outside the government's control, one of the gravest humanitarian crisis in recent years (Darfur), and the use of one-sided violence by the central government. The re-establishment of the once suspended dialogue and aid has taken place in a delicate context of a peace process in which the EU has only played a minor role (Gibert 2006). Currently, the support offered to the negotiation process in Darfur and to the African Union's Mission in Sudan (AMIS) is contributing to enhance the EU's profile in the region (ICG 2005).

Sudan has experienced decades of protracted civil war over the divisions between the north and the south. Despite the strong military rule, its fundamentalist government only controls part of the country's territory, northern Sudan, while the south is divided among several rebel groups. Until in the late 1980s, when a coup d'état brought President Al Bashir to power, Sudan enjoyed significant official development assistance. The situation in the country under Al Bashir's rule, in particular human rights violations, bombings of civilians in the south, slavery and support for international terrorism, provoked a radical shift in the support provided by the international community, which redirected more than 80% of donor resources directed towards humanitarian objectives. The EU unilaterally suspended co-operation under the Lomé Convention in 1990 due to breaches in human rights and democracy; from then on, Sudan remained only a recipient of humanitarian assistance. However, the suspension took place outside of the ACP framework, since no specific procedure existed at the time. In addition to the aid cut-off, in the aftermath of the government-led bombings on civilians in the south, the Council imposed an arms embargo on Sudan in March 1994 (Common Position 94/165/CFSP). The arms embargo is generally held to have remained without effect – arms were supplied to the country by other actors (interview 2007). For its part, the UNSC imposed limited diplomatic sanctions between 1996 and 2001 in response to Sudan's failure to extradite three suspects of terrorism (UNSC Res. 1054 (1996)).

However, UN sanctions did not encompass an arms embargo. Only in 2004 was the EU arms embargo partly superseded by a UNSC arms embargo on the southern region of Darfur inspired by the crisis in the summer of 2004 (UNSC Res. 1554 (2004)).

The Sudan episode has been described as illustrative of the fact that the EU is ill-suited to deal with complex situations in fragile states (Lehtinen 2001). Over time, the EU increasingly recognised that short-term humanitarian aid not only failed to allow for capacity building of local authors, but also that it had perverse effects. It is widely documented that the war economy has profited from humanitarian aid, especially in the south: “the provision of humanitarian assistance over the long term creates economic and political dependence, fuels the war economy and conflicts through spin-off effects and undermines local capacities” (Lehtinen 2001). This recognition prompted an evolution towards the development-oriented co-operation that enables local communities to become self-reliant.

In November 1999, the EU resumed political dialogue with Sudan. In this context, the EU made the resumption of development co-operation conditional on the Sudanese government’s progress in respect to human rights, democratisation and its efforts to find a peaceful solution to the war. In a background note on Sudan published in 2000, the Commission claimed that the resumption of dialogue was taken “on the basis of tangible, though still insufficient improvements in the performance of the Sudanese government in the areas that had been particularly criticised in the past, i.e. respect for human rights, democracy and freedom of the press and religion”. The same note asserts that “the continuation of the EU-Sudan dialogue is the only way through which influence can be exercised over Sudan, especially in the areas of human rights and democratisation” (quoted in Lehtinen 2001). Parallel discussions were held in 2002 and 2003 with the SPLM, the south’s main rebel group.

The EU has used the political dialogue to address the peace process, democracy, the rule of law, human rights and terrorism. Following the signing of the Comprehensive Peace Agreement (CPA) between the central government and South Sudan in January 2005, political dialogue has centred on its implementation. The implementation of the CPA, the crisis in Darfur and the Human Rights situation constitute the foci of the political dialogue until today (interview 2007).

One year after the re-establishment of the dialogue, the EU agreed the ‘Humanitarian Plus’ programme, which provides a grant for some 15 Million Euros from the balance of uncommitted funds from the 6<sup>th</sup> EDF. The programme aims at “improving the living conditions of distressed civilian population by establishing a minimum capacity for self-reliance in the sectors of food security basic water and health” (Commission 2000). The implementation of the programme was linked to progress in the political dialogue, and the decision was only taken after a troika mission dispatched to Sudan in November 2000 expressed a positive assessment. The set up of this special programme instead of the partial resumption of co-operation under the ACP partnership was due to some Member States’ resistance to use EDF funds for Sudan because they were afraid to send “the wrong political signal to the Sudanese government” (Lehtinen 2001).

For some time, the Commission considered the opening of consultations under current article 96 of the Cotonou Agreement, given that the decision to suspend co-operation under Lomé was taken before the non-execution clause was put in place, with a view to legalise the situation ‘ex-post facto’, to re-examine the suspension, and to eventually resume aid (Lehtinen 2001). However, the approach eventually adopted consists in a gradual resumption conditional on progress in the political domain: the Commission consistently indicated that the resumption of co-operation with Sudan is linked to the evolution of the situation in Darfur (Commission 2005) and to progress in the implementation of the CPA. Political dialogue is still ongoing; however, it



is conducted irregularly, and no high-level troika meeting has taken place since 2005 (interview 2007).

### **When does the EU invoke article 96? Analysing patterns**

Most consultation cases were officially justified as reactions to both Human Rights violations and the interruption of democratic processes. However, there is a clear predominance of the democracy element: article 96 was invoked whenever democratic governance was obstructed – such as in cases of flawed elections – even if no Human Rights breaches took place. By contrast, no cases can be found where Human Rights violations constituted the only motive for holding consultations. A glance at the cases of article 96 consultations reveals that the majority of cases are triggered by *coups d'état* (Bradley 2005).

The most frequent criticism against the EU's decisions to suspend development aid is its alleged lack of coherence. Some authors have found that decisions to start consultations are significantly associated with the deterioration of the Human Rights, governance and democracy situation in a given country, rather than with their absolute levels (Laaski et al. 2006:12). The motives that compel the EU to invoke article 96 is the predominance of breaches of the democratic process. While Human Rights violations are omnipresent, these are invariably linked to democratic flaws: the deterioration of the Human Rights situation alone has never triggered article 96 consultations. Also, the Human Rights breaches to which the EU reacts concern civil and political rights closely linked to the democracy: freedom of speech, of association and of peaceful demonstration. Some of the breaches – such as the harassment of the press or the opposition - are defined in terms of their disruptive capacity to the holding of free and fair elections. Interestingly, the commitments to which ACP leaderships are encouraged to subscribe under article 96 consultations often encompass also governance issues such as anti-corruption measures, theoretically covered by a different provision of the Cotonou Agreement, article 97. This article has only been invoked in the Liberian case, simultaneously with article 96.

A possible explanation for the abundance of coups d'état as déclencheurs of consultations is that clear-cut coups d'état seem to garner more support for invoking article 96 both among EU Member States than other forms of democratic flaws. In the absence of the agreement of all Member States, consultations cannot be called and no 'appropriate measures' may be adopted. The only possible measure left at the disposal of the Commission if the Council does not call for consultations is the postponement of the implementation of programmes, as exemplified in the case of Eritrea. Also, the opening of consultations following the holding of fraudulent elections tends to encounter more resistance from ACP countries.

However, a further explanation is the fact that putschistes are often more amenable to EU influence than democratically legitimised rulers who breach the constitutional order. This finding might look counterintuitive at first sight. However, coups d'état often unseat leaders with flawed democratic records, whose reluctance to abide by democratic standards is explained by their desire to retain power at all costs. By contrast, transitional authorities often perceive the benefits of being *en rapport* with an interlocutor like the EU, in terms of legitimacy, both internationally and vis-à-vis their own public. This is especially the case since the successful conclusion of consultations guarantees the continued flow of development aid. Politically, it is also relevant for the leadership since the EU indicated that it would not deal with perpetrators of grave Human Rights abuses. Finally, the case of the Central African Republic shows that the eventual holding of democratic elections can legitimise the putschistes' permanence in power.

The fact that the government in question maintains effective control over most of the territory of the country seems to be a pre-condition for the opening of consultations. Hazelzet notes that the EU refrains from invoking article 96 in situations of violent conflict, such as “during a civil war, or when a country was on the verge of a peace agreement” (Hazelzet 2005:12). The involvement of other organisations, notably the UN, in many of the countries in conflict makes article 96 consultations redundant. The EU has become involved by participating in broader political processes, as with the Democratic Republic of Congo (García-Pérez 2007:4). This official justification given by the Council to reject the Commission’s proposal to open consultations with Cote d’Ivoire in 2004 confirms this criterion. In addition to multilateral efforts, the EU has typically imposed arms embargoes and interrupted military co-operation with African countries in conflict, such as Sudan in 1996 and Ethiopia/Eritrea in 1999.

In sum, the EU invokes article 96 whenever it considers that it stands a reasonable chance of influencing the concerned leaderships: in the immediate aftermath of a *coup d’état*, the EU call for consultations is certain to be supported by both the ACP group and the donor community, while the new leadership is likely to be interested in the political and financial benefits it can derive from collaboration with the EU. At the same time, when countries suffer from large-scale violent conflict which prevents their leadership from exercising control over its territory, the EU prefers to address the situation in the framework of broader multilateral efforts rather than through the mechanism of consultations.

### **Consultations and development aid suspensions: how effective?**

The high rate of successes stands in sharp contrast with the record of CFSP sanctions, which are mostly unsuccessful, as visible in the cases of Belarus, Burma or the Transnistrian Republic in Moldova. Only the case of Zimbabwe and Liberia were total failures, while in Guinea-Conakry results are still suboptimal - despite certain progress - and aid has not been totally resumed. Zimbabwe, one of the few article 96 failures is simultaneously a case of CFSP sanctions and article 96 suspensions. A central factor contributing to the success of consultations is the support of neighbouring countries to EU actions. The connection between the supportive attitude of the neighbours and the success of EU strategy seems evident: neighbouring countries which disagree with EU measures provide political support to the concerned leadership. They might even be in a position to supply the country in breach with some essentials, which reduces the importance of the EU as a donor and trading partner. Zimbabwe is a case in point. Failure to condemn Mugabe’s regime, and the support provided to the country in terms of energy supply, constitute a central obstacle to the efficacy of EU action.

However, the apparently positive record has to be qualified by some considerations. To start with, the EU tends to call consultations with countries on which it expects to have some leverage. Article 96 is not invoked in every case of violation of Human Rights and democracy. This selective approach partly accounts for the high success rate. Secondly, an eventually positive outcome fails to reflect that in some cases the path leading to the resumption of co-operation was more tortuous than in others. The uncooperative Haitian authorities, as opposed to the amenable putschistes of the Central African Republic, are a case in point. A number of failed consultations under Lomé IV – which fall outside the scope of the present study - evidence that the collaboration of ACP countries is not always forthcoming: Cote d’Ivoire and Togo had undergone consultations prior to 2000 with poor results. Thirdly, the fact that conditions were met to an extent that the EU considered sufficient to fully resume co-operation in 2002 could not prevent a recurrence of violence and grave human rights breaches in Cote d’Ivoire. Moreover, EU officials resent the fact that leaderships that proved highly co-operative during the consultations are far more reluctant to implement reforms after their closure (Interview 2007).

The central determinant for the success of EU development aid cut-offs remains the attitude of the concerned leadership. In a number of cases, the *coups d'état* were conducted to unseat leaders with poor democratic records with the unequivocal intention of restoring civilian democratic rule. These circumstances provided a 'favourable terrain' for consultations. In these cases, the EU found itself in the role of "accompanying" to a democratic transition some putschistes who were ready to co-operate from the start. This is the case of the Central African Republic, and also of Mauritania and Guinea-Bissau, whose forthcoming attitude prevented the EU from interrupting aid.

One of the central benefits that the leadership obtains from participating in the consultations is legitimacy. This is facilitated by the transparency of the process: the commitments made by the putschistes during the consultations are public. They thereby constitute undertakings not only towards the EU, but also vis-à-vis the population. The public nature of the consultations process has the effect of making the transitional authorities accountable not only internationally, but also to their domestic public. At the same time, the fact that the EU treats them as interlocutors provides them with some legitimacy.

By contrast, Guinea-Conakry has not been amenable to EU leverage, despite its dependence on EU aid. Zimbabwe appears to be a veritable deviant case on various accounts. It is wealthier than most of the other examples, at least measured by pre-crisis indicators. The fact that the decisions to hold consultations and subsequently to suspend cooperation seem to have taken place in a rush points to the need to allow enough time for discussion. In the case of Zimbabwe, the time period stipulated for consultations was not exhausted, which might have been a factor contributing to their failure. In addition, the almost simultaneous imposition of CFSP sanctions reflects an explicitly confrontational stance. As noted above, the motive for suspension was irregularities in the 2002 elections, which generally garner less support from ACP neighbours than military coups. Support from its neighbours is central to Zimbabwe's resistance, both from an economic and symbolic perspective. The situation appears highly atypical also from the point of view of sender-target relations. The unsound economic policies of the Mugabe administration have triggered a humanitarian crisis that compelled the EU to increase the amount of aid (interview 2007).

Finally, the low proportion of non-African cases in the sample might obscure the role played by the geographic location of the target. Placed in the Caribbean, Haiti belongs to the sphere of influence of the US, which contrasts with the prevalence of the EU in the sub-Saharan world. While the result of the consultations was eventually positive, the Haitian leadership proved less forthcoming than many of the other cases. The heavy involvement of the OAS in the resolution of the Haitian democratic crisis seems to have strongly influenced the behaviour of the EU – the decision to resume aid as been described as being motivated by the desire to appear as a "credible partner" in the Consultative Group on Haiti (Laakso 2006:37). Involvement with other interlocutors seems to have reduced the EU's room of manoeuvre in this particular case.

Some authors, and especially EU officials, credit the success of the consultation procedure to its highly institutionalised framework. "Appropriate measures" have to be preceded by consultations invoked under article 96. Consultations provide a framework in which the country in question has an opportunity to present its plan to remedy the breach of democracy and Human Rights, by entering into specific commitments and drafting a timetable jointly with the EU. The suspension of development cooperation is a measure of last resort: only in case that the consultations fail to produce satisfactory results does the EU consider it. Transitional authorities have come to realise the benefits they can obtain from article 96 consultations, both in political

and financial terms. Finally, consultations can also offer an opportunity for leaderships to address politically sensitive issues that would otherwise be difficult to raise, such as the question of slavery in Mauritania (Pérez-García 2007:8).

In conclusion, while consultations and development aid suspensions have proved relatively effective as political tools to address breaches of democratic rule in ACP countries, its usefulness needs to be put in perspective. The instrument of consultations remains an emergency procedure to address situations of sudden and grave crises. The action taken by the leaderships to return to the status-quo-ante is limited – the EU will be satisfied if steps are taken to ensure a transition to democracy and some basic requirements on rule of law and good governance are met. Yet, the consultation procedure is inadequate to bring about a lasting solution to the structural instability presented by the ACP partners concerned: some of them have been recurrent subjects of consultations (Fiji, Guinea-Bissau, Togo) or international sanctions (Haiti, Sudan), and none of them has emerged from the past crisis as a viable democracy. The use of other instruments capable of compelling deep and long-lasting political reforms that guarantee the establishment of rule of law and respect for democracy and human rights, such as the political dialogue, should thus be strengthened.

## **2. The Involvement of Civil Society and Parliamentary Bodies in the Political Dialogue**

In the context of the EU's external relations, the history of EU-ACP political dialogue is "uniquely long" (Arts 2005). The first instances of ACP-EU political dialogue were scattered, and reserved for most serious cases of human rights and democracy conditions. The emphasis on the political dimension of development processes acquired a new impetus during the 1990s, when the practice of political dialogue became increasingly regular and structured. The gradual perfection of the political dialogue has been facilitated by the elaboration of relevant provisions in the conventions, and its development has been closely linked to the protection of human rights, democratic principles, the rule of law and good governance. A substantial expansion of the Political Dialogue is one of the most remarkable features of the Cotonou Agreement.

### ***The Involvement of Civil Society***

The Cotonou Agreement has created wide-ranging opportunities for involvement of 'non-state actors' in the ACP partnership. Its opening up to civil society actors has been described as a "breakthrough" (Arts 2005). The treaty defines 'non-state actors' as including both the private sector, economic and social partners, and civil society (art.6). The notion of civil society organisations (CSOs) refers to organisations that, enjoying autonomy from the state, deliver services and seek to have a significant influence on public policy making (Carbone 2005). Co-operation between the EU and civil society in the field of development is not new: Through its budget in B7-6000 (Co-financing with NGOs) the Commission has been co-financing development activities proposed by European NGOs since 1976.

What is new in the Cotonou Agreement is the involvement of NGOs in ACP countries, a development largely resulting from donors' enthusiasm for local NGOs as agents of economic and political development. An ACP Civil Society Forum was created in 1997 with the objectives of facilitating dialogue between ACP civil society and ACP and EU institutions, and supporting civil society participation in ACP-EU development co-operation. Despite some initial resistance from ACP leaders, who stressed the primary role of national authorities in development, the Cotonou Agreement foresees the strengthening of civil society and provides wide-ranging opportunities for their participation: article 1 stipulates that "building the capacity of the actors in development and improving the institutional framework for...the emergence of an active and

organised civil society shall be integral to the approach". Participation is defined as one of the four fundamental principles of co-operation: "apart from central governments as the main partner, the partnership shall be open to different kinds of other actors in order to encourage the integration of all sections of society, including the private sector and civil society organisation, into the mainstream of political, economic and social life" (art. 2).

Article 8 (7) reads: "Regional and subregional organisations as well as representatives of civil society organisations shall be associated with this dialogue". The forms of participation are established in art. 4, which provides that non-state actors must be informed and involved in consultations on co-operation policies and on the political dialogue. However, the Agreement does not detail the modalities for associating civil society in the political dialogue. It merely mentions that the institutions of the partnership, such as the Council of Ministers and the Joint Parliamentary Assembly, should "consult civil society". Failure to define what exactly the role of CSOs should be in the political dialogue has been assessed negatively: "while as such civil society involvement could...be...useful, simply writing the option into the agreement without any further specification is not helpful. To the contrary, it raises many queries and potentially complicating factors" (Arts 2005). In a resolution on political dialogue adopted in 2005, the EU-ACP Joint Parliamentary Assembly called for a specification of "which organisations and individuals come under the category of non-state actors", emphasising the need for a "clear definition with precisely specified criteria" (JPA 2005).

### ***The Role of Parliamentary Bodies in the Political Dialogue***

The role of the different parliamentary bodies in the EU-ACP framework presents a complex picture. An interparliamentary body, the ACP-EU Joint Parliamentary Assembly (JPA), brings together the elected representatives from the ACP countries and Members of the European Parliament. The JPA meets for one week twice a year. However, co-operation between MPs from ACP countries remains limited. On 15 April 2005 in Mali, ACP countries signed a Charter creating an ACP Assembly. This assembly meets 4 times a year, before the JPA meetings. But the secretarial support to this assembly should still be further developed.

Parliamentary scrutiny is further complicated by the fact that direct budget support is provided to ACP countries from the European Development Fund (EDF), which is financed by the Member States and subject to its own financial rules. Given that the fund does not yet come under the Community's general budget, the European Parliament does not have any budgetary powers with regard to the Partnership Agreement. Only a heading has been reserved for the Community budget since 1993 at the request of the EP. As noted by a JPA report, "as long as there is no budgetisation, EDF contributions would continue to come from national budgets, which should permit the national parliaments the exercise of parliamentary control of their governments" (JPA 2005). The ensuing resolution calls on MPs of national parliaments to concern themselves with the EU-ACP partnership, encouraging them to "visit not just bilateral projects, but also measures funded from the EDF" when they travel to ACP countries (JPA Res 2005). A progress is to be noted in this context: the new Council regulation on the implementation of the 10<sup>th</sup> EDF under the ACP-EC Partnership Agreement provides the following in Article 4, para. 5 regarding Country Strategy Papers (CSPs) and the Regional Strategy Papers (RSPs) for the ACP countries: "At the same time as the strategy papers are transmitted to the Member States in the EDF Committee, the Commission shall also transmit them to the Joint Parliamentary Assembly for information."

At the request of the JPA, the revised Cotonou Agreement provides explicitly that representatives of the ACP Group and of the Joint Parliamentary Assembly may take part in the

political dialogue: In the 2005 revision, Article 8(6) was amended to incorporate the provision that “dialogue shall be conducted within and outside the institutional framework, including the ACP Group, the Joint Parliamentary Assembly”. Previously, the JPA had seen its involvement in the dialogue covered by the provision on participation of non-state-actors (JPA 2004). ACP participation takes the form of the troika of the ACP Committee of Ambassadors and the Chairperson of the ACP sub-committee on political, social, humanitarian and cultural affairs, and, for the Assembly, the co-presidents or their designated nominees. Nevertheless, there is still a need of clarification on how the JPA will be involved and at which formal level of the dialogue.

Finally, the lack of transparency in the conduct of the Political Dialogue under article 8 hampers the scrutiny of the process. It appears as a contradictory situation that the commitments entered into by the parties in the context of article 96 consultations are made public, while the contents of the regular political dialogue are not. In the absence of information on the political dialogue, it is almost impossible for parliamentary bodies (JPA, EP, ACP and EU national parliaments) to scrutinise and monitor the process. Equally, civil society and the general public in ACP countries in Europe alike are unable to follow the development of this dialogue. Access to information on the conduct of the political dialogue would allow the JPA and other parliamentary bodies to exercise their scrutiny functions and increase the public accountability of this practice.

### **3. Recommendations**

The potential for the advancement of Human Rights through political dialogue in the ACP context remains underexploited. The current emphasis of article 96 consultations is unsatisfactory, as it remains an *a posteriori* means to react to breaches rather than preventing them. Furthermore, it is only usefully activated to address specific situations (undemocratic changes of leadership), while it commonly fails to prevent the recurrence of political turmoil in the affected countries.

The EU’s performance in the advancement of Human Rights, democratic principles and the rule of law in the ACP framework could be improved through a number of measures listed below:

#### **1/ Promoting a ‘shift’ from article 96 consultations to the Intensified Political Dialogue (IPD) under article 8**

The EU only invokes article 96 in cases of grave and flagrant violations of Human Rights and democratic principles, normally *coups d’état*. Deteriorations in the rule of law and in the democratic governance of certain countries provoked concern in the EU, but they have rarely led to consultations. The reasons for this reticence are pragmatic: the call for consultations is more difficult to justify in the absence of a clear-cut violation such as a *coup d’état*. Both the country in breach and the fellow ACP countries tend to contest the claim that essential principles are violated. In situations of violent armed conflicts, consultations are rarely invoked and normally fail.

However, the fact that article 96 is only invoked in reaction to violations of democracy and Human Rights prevent it from displaying any preventive effect. By contrast, the IPD can be used to address circumstances of declining democratic and Human Rights standards, in order to prevent them from degenerating into a major crisis. The crises in Guinea-Bissau and Guinea-Conakry could have been avoided if rule of law deficits had been redressed before.

## **2/ Preference of positive over negative means**

The use of development aid cut-offs does not correlate to the success of consultations. Rather, the positive attitude of the leadership is the key. The IPD is perceived as non-confrontational by ACP countries as it can attract additional funds from the EU and help them to rectify situations of internal instability without fear of an aid suspension. ACP countries might also choose to have recourse to the Intensified Political Dialogue in order to avert looming article 96 consultations. Through the recourse to the IPD, the EU can be perceived as a friendly partner rather than as a donor resorting to punitive measures. In cases where aid has remained suspended for years, the resumption of aid can be used as an incentive to promote reforms, as is being attempted in Sudan.

## **3/ Increased participation of other ACP countries, especially neighbours**

The success of consultations can be enhanced by the supportive attitude of ACP countries, in particular of the neighbours of the country in question. The current procedure already allows the country under scrutiny to be accompanied along the consultations by some friendly ACP partners of its choice. The agency of fellow ACP countries has proven essential in the successful consultations with Guinea-Bissau and Togo. It is difficult to see the EU exerting this kind of leverage without the support of other ACP countries. Conversely, the lack of support of neighbouring countries prevents the attainment of EU objectives, as seen with Zimbabwe.

The ACP group should strengthen its ability to act by developing intra-ACP dialogue. Therefore, the institutionalisation of the high level involvement of the group should be considered, on the model of Guinea-Bissau. The ACP group should consider autonomous initiatives. The entire ACP group can get involved in the article 96 process, e.g. by sending ACP fact-finding missions to the country in breach whenever signs of concern become visible in a given ACP partner, and in the post-consultations follow-up phase.

## **4/ Enhanced role of the EU-ACP Parliamentary Assembly**

Divergences of view on the issues to be addressed can render difficult the agreement on commitments during the consultations. Such agreement has sometimes been facilitated by the existence of a common understanding on the reforms to be introduced and the benchmarking by which they should be measured. The EU-ACP Parliamentary Assembly can play a central role in fostering a common understanding on standards to be met and the benchmarks to be employed in the monitoring phase. The emergence of such consensus will prepare the ground for future consultations, thereby minimising problems of interpretation.

## **5/ Wider participation of civil society actors in the political dialogue**

The Cotonou Agreement has opened the door to the participation of civil society actors. Their participation in the political dialogue enhances the local ownership of the reforms agreed. However, the potential of civil society input remains underexploited. These actors are excluded from the article 96 procedure, which is thematically restricted to severe crises in democracy and human rights. Opportunities for involvement of the entire range of civil society actors active in Human Rights should be maximised at the remaining levels of dialogue, i.e. in regular political dialogue and in the IPD.

## **6/ Increased transparency in the political dialogue**

Access to information on the contents of the political dialogue conducted in the context of the EU-ACP Partnership should be granted. It would make possible for the relevant parliamentary bodies, civil society and the general public to assess the performance of this practice.



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