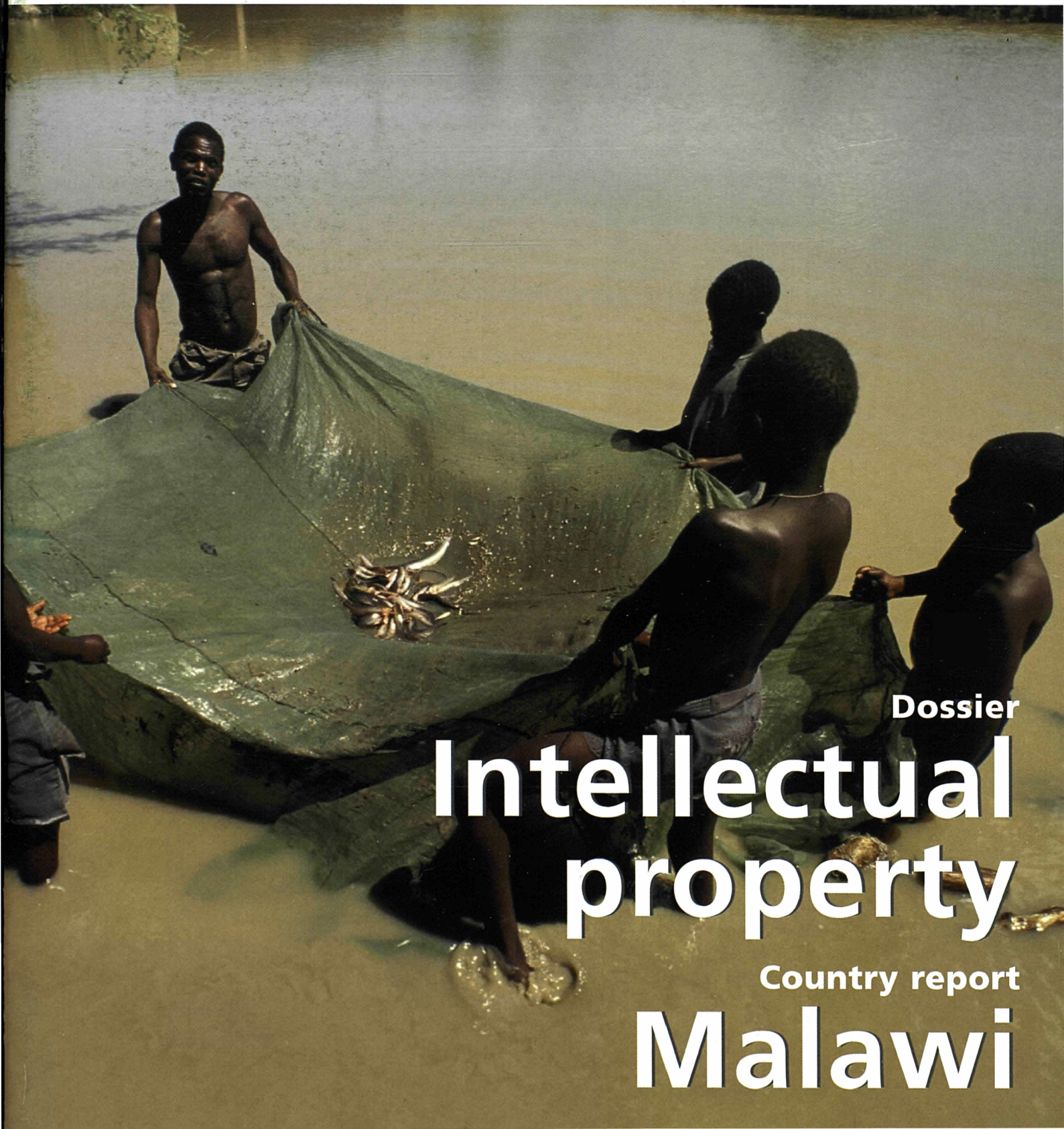


# *the* Courier

the magazine of ACP-EU development cooperation

N° 201 November-December 2003



Dossier

# Intellectual property

Country report

# Malawi

# Contents

## Postal address

The ACP-EU Courier  
European Commission (G12, 5/45)  
B-1049 Brussels

## Address for visitors

12 rue de Genève  
1140 Brussels – Belgium  
[http://europa.eu.int/comm/development/body/publications/publications\\_courier\\_en.htm](http://europa.eu.int/comm/development/body/publications/publications_courier_en.htm)

## ACP General Secretariat

451 avenue Georges Henri  
1200 Brussels  
[info@acp.int](mailto:info@acp.int)  
<http://www.acp.int>

## Publisher

Koos Richelle

## Director (Acting)

Georges Eliopoulos

## Editor

Dorothy Morrissey  
[dorothy.morrissey@cec.eu.int](mailto:dorothy.morrissey@cec.eu.int)  
tel: +32.2.296.83.30

## Contributors

François Lefebvre  
[francois.lefebvre@cec.eu.int](mailto:francois.lefebvre@cec.eu.int)  
tel: +32.2.295.50.33

Maurizio Carbone  
[maurizio.carbone@cec.eu.int](mailto:maurizio.carbone@cec.eu.int)  
tel: +32.2.298.54.11

Kenneth Karl  
[development@cec.eu.int](mailto:development@cec.eu.int)  
tel: +32.2.299.30.09

## Production

Mounia Lakhdar-Hamina  
[mounia.lakhdar-hamina@cec.eu.int](mailto:mounia.lakhdar-hamina@cec.eu.int)  
tel: +32.2.299.48.58

## Subscriptions

[maurizia.belz@cec.eu.int](mailto:maurizia.belz@cec.eu.int)  
fax: +32.2.299.3002

## Documentation

Marie Vardaki  
[marie.vardaki@cec.eu.int](mailto:marie.vardaki@cec.eu.int)  
fax: +32.2.299.2525

Cover: ©Jorgen Schytte/  
Wildlife Pictures

Boys fishing in Malombe Lake,  
Malawi

Published in English and French  
every two months.

Signed articles represent the opinions of their authors and do not necessarily reflect the views of the EU or the ACP Group. The boundaries on maps used in the magazine do not imply official endorsement or acceptance by the EU or the ACP Group. Articles and non-copyrighted photographs may be reprinted, provided the following credit is used "Reprinted from the ACP-EU Courier".

## Meeting point



- 2 Sasara Chasala George, Chair of the ACP Committee of Ambassadors

## News

- 5 ACP-EU Joint Parliamentary Assembly: overcoming differences for a more effective cooperation  
8 The Natali Prize 2003: another African triumphs  
10 "Journalists are like unnoticed stones"

## Focus

- 12 The European Development Fund: moving towards integration into the Community budget?  
14 African governments commit to fighting illegal logging  
16 Moot Court competition, Yaoundé  
18 The Indian Ocean Commission: regional solidarity in the face of globalisation  
21 Economic Partnership Agreement negotiations – state of play

## 22 Intellectual property \_Dossier

- 24 The World Intellectual Property Organization (WIPO) and the developing world  
26 Putting intellectual property at the service of development  
28 Public health: will the WTO deal on compulsory licenses for medicines improve access to treatment for disease stricken populations?  
30 The recent agreement on WTO patent rules and access to medicines: a flawed deal?  
32 Information for all: access to knowledge as a basic right  
34 Branding rights: trademarks in a branded world  
36 Intellectual property and native communities  
37 Traditional knowledge and patents relating to *Lepidium meyenii*: an example not to be followed  
39 Intellectual property and agriculture

## Culture

- 34 Beethova Obas: claws beneath the velvet

## 44 Malawi \_Country report

- 45 From a multiparty system to full democracy: the real challenge for Malawi  
47 "We are still a young democracy"  
49 "We should subsidise production, not consumption"  
51 "Green gold": tobacco as Malawi's lifeline  
53 A strategy for economic growth: improved macro-economic conditions and private sector development  
56 Food security and transport: the priorities of EU-Malawi cooperation  
58 Taking part in public life: democracy and civic education  
59 Civil society: balancing political and economic issues  
60 Profile  
61 Maps



# Editorial

## Good governance: a guiding principle in EU-ACP relations

The issue of governance has very much come to the forefront in thinking and practice in development assistance in the past decade. One of the major difficulties, however, has been finding a consensus on a definition of the concept. Does it apply just to sound administration and management, or does it also refer to the political domain and political leadership? Is it a universal principle or does it vary according to context? This vagueness raises also the risks associated with applying a concept which may not be rooted in the particular socio-cultural and political environment of the country concerned.

The Cotonou Agreement is a good illustration of this growing attention to governance. Article 9.3 clarifies the approach jointly agreed by the ACP signatory states and the EU: "In the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption".

Contrary to the "essential elements" of the Agreement, states experiencing governance problems will not face suspension of aid, with the notable exception of "serious cases of corruption".

Various measures have been taken to put into practice the approach foreseen in Cotonou. Governance and corruption issues have been addressed in country strategy papers by assessing the governance situation; support is foreseen for non-state actors and for capacity building, and indicators of progress have been identified.

In October, the European Commission adopted a communication on governance and development, with the aim of identifying ways to translate its policy approach into practice, on the basis of lessons learned from the EU and other donors' experiences. The document aims to identify practical ways to build capacity for governance, ensure coherence in EU policies and instruments, reinforce partnership on a country or regional basis in order to coordinate donors' and partner countries' agendas, and to contribute to the protection of human rights and the spread of democracy and the rule of law. The document stresses the importance of dialogue with the countries concerned, with parliament and institutions and also with other stakeholders.

Good governance is above all a domestic issue, and inadequate domestic policies in many countries, not just in developing countries, have played a role in widening the gap between rich and poor. Achieving good governance is a process which must come from within, and steps must be taken to support and recognise genuine initiatives to attain it.

*The ACP-EU Courier* is the voice of the ACP-EU partnership in political, economic and social cooperation. This relationship can be traced back 45 years to the Treaty of Rome. The two sides have set up joint institutions and are involved in an ongoing political dialogue. The partnership was last renewed on 23 June 2000 with the signing of the Cotonou Partnership Agreement, covering a 20-year period. As well as the political dimension, this agreement provides for intense cooperation in the trade area as the EU seeks to ensure that the ACP countries do not suffer marginalisation in the current multilateral trade negotiations (Doha Round). The partnership has always focused on development assistance which targets the twin objectives of poverty reduction and sustainable development. Giving voice to men and women from ninety-three EU and ACP countries across the globe facing the future in a spirit of partnership: that is our mission.

# Strengthening the ACP Group's identity

Sasara Chasala George is Chair of the ACP Committee of Ambassadors. During the past five years he has also chaired the group charged with amending the Georgetown Agreement, the charter establishing the African, Caribbean and Pacific group of states (ACP Group), which was signed on 6 June 1975. This involved adapting the ACP secretariat, so that it became more proactive in positioning the Group on the international stage and in identifying the interests of its members. He started by explaining the role and functioning of the Committee of Ambassadors.

Dorothy Morrissey

The ACP Committee of Ambassadors assists the Council of Ministers in performing its functions and carries out any mandate the Council entrusts to it. In particular it monitors the implementation of the Cotonou Partnership Agreement. It has six specialised sub-committees; Sustainable Development; Political, Humanitarian, Social and Cultural Affairs; Investment and Private sector; Financing and Development (which deals with the EDF); Establishment and Finance, and, finally, the Trade and Commodity Protocols committee which is nowadays very important for us. Cotonou stresses political dialogue and we felt that if we are going to have a genuine political dialogue, the ACPs must organise it also within the ACP Group itself. In the context of political dialogue we have started to have peer discussions, to call others to the political committee to understand their difficulties so that we can advise each other. We send missions, at the level of Committee of Ambassadors, to other ACP countries; for instance, we recently sent a mission to the Central African Republic.

A new role for the Committee of Ambassadors is the promotion and visibility of the ACP Group. We try to meet with other groups outside the usual ACP relations, like the WTO, UNCTAD, the African Union and others.

***Do you think the ACP Group has a strong identity as a Group, apart from its relationship with the EU? How has it evolved since Georgetown?***

You could say the ACP Group is the child of the ACP-EU partnership. The Group continues to be closely linked to its principle partner, the EU, but this does not necessarily translate into the only reason for its existence. Since its inception in 1975, the membership of the Group has



S.C. George, Chair of the Committee of Ambassadors and Ambassador of Botswana to the EU.

grown from 40 to 79. The ACP Group is the only organised group of developing countries outside the Non-Aligned Movement. Take the example of Cuba, a member of the ACP Group but not a signatory of the Cotonou Agreement; under the Lomé system, you had to be a member of the Partnership Agreement in order to be a member of the ACP Group. But now, under the new arrangement, we can accept new members, even though they are not signatories of the Partnership Agreement.

Five years ago we started working on amending the Georgetown Agreement. All the amendments were accepted at the ACP Council meeting at the end of November, and the decision was taken to implement them. The amended Georgetown Agreement clearly sets out 15 broad objectives, and one of those is to "establish contacts and relations with other States and groups of States". Furthermore, at the 3rd Summit of ACP Heads of State and Government, held in Nadi, Fiji in July 2002, the ACP Heads called for the Group's enhanced visibility and improved efficiency on the international scene, to enable it to defend the interests of all the ACP members in solidarity and unity. The wish was also expressed by ACP leaders to organise regular consultations between the ACP States and other States or regional and international organisations on issues of key interest to the Group whenever there is a major international meeting, be it Commonwealth, the UN; we meet to identify our interests, so we can speak with one voice. The Group is positioning itself as a player on the international scene, as we have seen in Doha and in Cancún, where we were able to forge relationships with other groups, such as the LDCs, the African Union. At the World Summit on Sustainable Development (WSSD) in Johannesburg, we issued an ACP Declaration on sustainable development.

In Havana, at the 6th Session of the Conference of the Parties, we issued a joint ACP-EU Statement on Combating Drought and Desertification. We plan to do the same at the World Summit on the Information Society (WSIS) in Geneva. Furthermore, we agree as a Group to cede EDF resources to global projects such as the Global Health Fund, the HIPC Initiative.

Furthermore, the ACP Group is a founding member of the World Bank managed International Task Force for Commodity Risk Management for Developing Countries. The ACP General Secretariat maintains relations with numerous international organisations, and has concluded Memorandums of Understanding (MoUs) with, inter alia, the WHO, WTO, Commonwealth Secretariat and the International Organization of the Francophonie.

*For the first time in the ACP-EU relationship, a mid-term review will take place in 2004. What are the main strengths and weaknesses of the Cotonou Agreement? What lessons have been learned in the past three years?*

The Cotonou arrangement contains some new and daring instruments and the mid-term review will provide an opportunity to look at whether they are working or not. However, as it took almost three years to ratify it, it may be surprising to some that we are having a mid-term review even before we go into implementation. Actually, in some countries implementation has not taken place, but a mid-term review is required by the national and regional indicative programmes and therefore we have no choice.

The core of Cotonou is to eliminate poverty, but it also underscores the important notion of partnership, whose interpretation and implementation is in my view the overarching benchmark for strengths and weaknesses. The notion of partnership is indeed a noble one, but illusive in its implementation: EC unilateralism is a real problem. Also, the decision-making process relating to EDF resources needs to be simpler and more easily understood. To give an example, we got rid of two instruments, Sysmin and Stabex, and replaced them with another mechanism. But no country has yet been able to use this mechanism; it's difficult and complicated to reach the requirements. There are countries that could benefit from it, like for instance the cotton-producing countries. In this sense, in the mid-term review we can point out to our partners that some of the mechanisms we got rid

At the 3rd Summit of ACP Heads of State and Government, in Nadi, Fiji in July 2002, the ACP Heads called for the Group's enhanced visibility and improved efficiency on the international scene, to enable it to defend the interests of all the ACP members in solidarity and unity.

Caines Photofast Services, Fiji



of were important for development. I can give another example, where we could make further improvements: countries were told to choose two core sectors in their national indicative programme. HIV/AIDS is a serious concern for many ACP countries. But sometimes as they have only two sectors to choose they feel education is more important because it cuts across sectors; even in the health sector, HIV/AIDS is not necessarily the priority as there are other challenges to face. In the mid-term review, we could ask that at least three sectors be addressed.

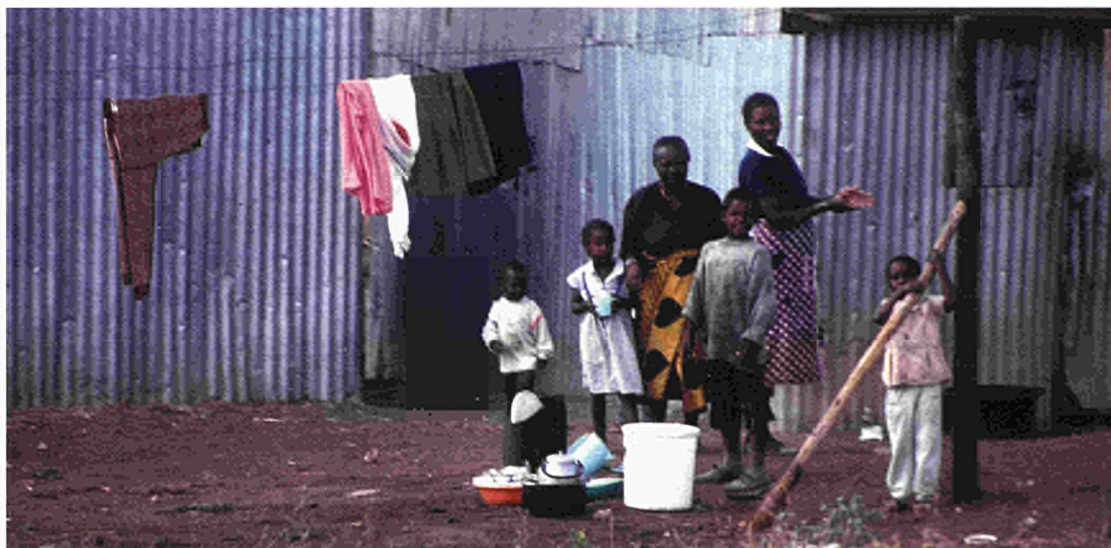
However, the Cotonou Agreement covers a period of 20 years, and it would be unfair to make, at this early stage, just three years since signature and less than one year after ratification, a qualitative and quantitative assessment on the strengths and weaknesses of the Agreement. Both sides will soon engage in a process of reviewing the provisions of Cotonou with a view to making relevant amendments to the Agreement both in the main text as well as the annexes.

*There has been a recent EU communication on incorporating the EDF into the EU general budget, or "budgetisation". What is the ACP Group's view?*

The ACP Group is aware of the European Commission's proposal to integrate the European Development Fund (EDF) into the normal EU budget. The ACP Group has yet to reach a definite position. But whatever decision is taken, it should not be taken without the agreement of the ACP Group, and in conformity with the spirit of our partnership.

The central question is what will be the end result of EDF budgetisation. If it leads to speedy and effective disbursement of funds, it would be welcome. If it reduces the bureaucratic maze that we see at the moment, that would also be welcomed by us. But, we are worried because we don't know the purpose of budgetisation. We wonder what will become of the partnership in terms of decision-making. Now, the element of partnership is there, funds are discussed in the joint Council, and decisions are passed. But if the ACP members of parliament have no say in the European Parliament, where is the notion of partnership in the administration of funds? Who will set the priorities? Theoretically at the moment it is us and the Commission. But is it not going to be the

Stephen Williams © 2002



The core of Cotonou is to address poverty, and the mid-term review will be an opportunity to look at whether that is happening.

European Parliament when the budget is there? What is also worrying is the frequency with which the ACP countries are being discussed in the European Parliament – which in itself is not a bad thing. But it takes place without the ACP countries being involved; we don't have the opportunity. Will it not be the norm, if they control the budget, that they make decisions about what can be done and in what countries, according to their priorities? If we give more power to allocate the budget, set priorities, and we don't have any say in this Parliament, where is the partnership aspect?

We also wonder what will happen to resources, when there are ten new member states, some of whom have no direct experience of the ACP. When they debate this issue, will they agree to any increase or even to the status quo? We are used to five-year cycles in the EDF; how will this be adapted to a one-year budget cycle? These issues need to be clarified.

Most importantly, however, is whether budgetisation will contribute to the achievement of the objective of the Cotonou Agreement – that is, poverty eradication.

I sincerely hope that in future we will have the opportunity to address this issue in a pragmatic, cooperative manner and within the spirit of the Cotonou Agreement. This will ensure that whatever decision is ultimately agreed to will be in the best interest of all parties involved.

***A recent EU-commissioned study on the implications of enlargement says the ACP countries will not lose out, as they are protected by the Partnership Agreement. In your view, what are the implications for the ACP Group of next year's enlargement of the EU?***

We try to be positive because this is a point in the evolution of Europe. This is not the first enlargement and the ACP Group views it from a positive perspective. The ACP Group has also commissioned a study on EU enlargement, with specific reference to the potential opportunities and threats to the Group. Based on the outcome of this study, we need to position ourselves in such a way as to maximize the advantages of enlargement, and minimize its potential disadvantages. However, I have no

doubt in my mind that the special ACP-EU relationship will continue, and even be strengthened in future.

***What does the failure at Cancún mean for the EPA process, given that the WTO is a reference point in these negotiations?***

Cancún has been a very great disappointment, more so to us as the ACP Group. Cancún to us represents a lost opportunity, because our EPA process was based on a development agenda. We have argued that the WTO rules are not favourable to developing countries, especially the ACP countries. We were trying to argue for more development-oriented, flexible rules that take into account the interests of developing countries. So, if we negotiate an EPA now, when there is still a stalemate, we may find ourselves concluding one under rules which are unfavourable to ourselves, on issues where we wanted to get some direction from the multilateral, WTO level. So it is a great lost opportunity. Cancún was not a useful meeting; positions were polarised and dogmatic. We are seeing more flexibility now; people have learned lessons from Cancún. But we sometimes wonder what flexibility is required of us; we have nothing really much to sell; it is our lives which are at stake. We are not behind subsidies and we have missed deadlines on matters of interest to us. So, flexibility has to come from the other side, the developed countries. We cannot bank on bilateral arrangements; as small countries we are up against the might of more powerful countries. On 15 December, there is an important WTO meeting in Geneva, to look at how the process can be carried forward. We have given instructions to our senior officials who are going there to be as flexible as possible, not to have the dogmatic positions we had in Cancún.

The ACP Group and the EU have a convergence of views that EPAs must be compatible with WTO rules. The negotiation of EPAs is a process, and some ACP regions have already commenced with the second phase of regional negotiations. The conclusions of these negotiations are foreseen for 2007, and we are optimistic that the multilateral trading system will be in a position to make world trade fair by then. ■

## ACP-EU Joint Parliamentary Assembly: Overcoming differences for a more effective cooperation

The ACP-EU Joint Parliamentary Assembly met for the sixth time in Rome from 11 to 16 October. The session marked a qualitative leap forward in the dialogue on cooperation and showed a willingness to overcome differences to make that cooperation more effective.

François Misser

The Rome session launched new working methods within the Joint Parliamentary Assembly (JPA). Keen to rationalise and improve the quality and follow-up of their work, members limited the number of resolutions to five, instead of the large number of motions up to then. Their discussions focused on relations between the three new committees (Economic Development, Finance and Trade; Social and Environmental Affairs; and Political Affairs). The proceedings also centred on two emergency debates: on the future of trade relations after the setback at the WTO meeting in Cancún; and on the situation in West Africa.

Rome was the first meeting held in Europe since the session scheduled for Brussels in November 2002. That meeting had been cancelled due to disagreement on attendance by Zimbabwean delegates. A lesson learned at Rome was that different approaches to the crisis in Zimbabwe no longer jeopardise the progress of JPA business. A fairly widespread wish to find specific solutions to this crisis emerged. In response to a request from the ACP countries, JPA Co-President Adrien Houngbedji, from Benin, had led an exploratory mission to Harare in September, with the aim of preparing for a possible joint ACP-EU mission. A consensus emerged within the JPA in favour of this initiative. The mission's terms of reference have yet to be finalised – a sensitive task which has been referred to the JPA Bureau. As Member of the European Parliament (MEP) Bashir Khanbhai put it, the mission had to find out whether Zimbabwean justice was “genuinely independent”. Indeed, MEP Colette Flesch thought that the mission to Zimbabwe could only take place if members secured “a guarantee that they could meet both the opposition and the government”. Echoing South Africa's Ntshadi Martha Tsheole, ACP members felt that “the JPA's role must be to open dialogue and negotiations” between the EU and Zimbabwe. However, Kumbirai



Kangai, representing Zimbabwe's ruling ZANU-PF, cast some doubt on whether such a mission would in principle be acceptable to the Harare government. He argued that some people within the JPA were “totally unable to envisage the possibility of an improvement of the Zimbabwe situation”. Koos Richelle, Director-General of the EU's Development directorate, disputed claims by several ACP parliamentarians that ordinary people would be hardest hit by EU sanctions. He pointed out that the EU was providing humanitarian aid to Zimbabwe, adding that only a few prominent figures were subject to sanctions. Richelle reminded delegates that the decisions affecting these people had been taken as part of the consultations opened under Article 96 of the Cotonou Agreement, and would stand until February 2004. “If progress is made between now and then, relations between the EU and Zimbabwe might be normalised”, he added.

Willingness to compromise also emerged in the debate on West Africa. The resolution passed at the end of the session welcomed the EU grant of €50 million to finance the peace process in Liberia, but urged the EU and its humanitarian office ECHO to scale up their response to the serious humanitarian situation in that country. It called upon Ivorian President Laurent Gbagbo and the other signatories of the Marcoussis peace accord to start work without delay on the reunification of Côte d'Ivoire and the strengthening of its democracy, with a view to the elections in 2005. The resolution condemned the coup in Guinea Bissau and the attempted coup in Mauritania. Finally, it expressed the hope that the forthcoming elections to the senate and town councils in Togo would be transparent and open to the whole range of the opposition. It urged the EU to boost its humanitarian aid programmes, in the expectation that the political dialogue envisaged in the Cotonou Agreement could lead to a resumption of cooperation.



### Conflict in Africa: the Peace Facility

The emphasis of the debates on the crises in Africa was on prevention, resolution and mitigation of their consequences. This sentiment was influenced by the Political Committee's report on the rights of children and on child soldiers, written by Uganda's Ephraim Kamuntu and Italy's Vitaliano Gemelli. They called on the EU and ACP countries to promote children's rights and act against the use of child soldiers, as "a priority of their policy" (according to the UN special representative for children and armed conflicts, Olara Otunnu, there are 120,000 child soldiers in Africa). The JPA rallied in support of the rapporteurs' motion to adopt targeted sanctions against warlords who enlist children. Such sanctions would include restrictions on the movements of these warlords, and exclusion from any amnesty and from holding government office. The JPA also declared its support for sanctions against individuals and companies whose activities exacerbated armed conflict and abuse of children. The delegate of one of the countries most affected, deputy speaker of the National Assembly of the Democratic Republic of Congo, Adolphe Onusumba, deplored that promises made by the supporters of the demobilisation of child soldiers had remained "a dead letter". He added that vocational training centres had been very late in taking responsibility for them, and their return to their families had been long delayed. Onusumba himself is an ex-leader of one of the former rebel RDC factions. A working document drafted by MEP General Philippe Morillon referred to the need to take responsibility for ex-combatants and called on the European Commission to give priority to their economic and social rehabilitation, especially by offering child soldiers access to education. Reflecting the JPA's determination to ensure follow-up of the subjects of its debates, there will be a specific report on the subject, to be presented at the next session in Addis Ababa. As for conflict resolution, the JPA welcomed the announcement by European Commissioner Poul Nielson, that a "peace facility" was to be set up to finance peacekeeping operations in Africa, in line with the commitment made at the African Union summit in Maputo. Philippe Morillon explained that the facility was compatible with the principle of responsibility by Africans themselves for this task. It reflected the priorities of African leaders, who were proposing to form an African intervention force within two years. Nielson explained that the facility respects the principles of solidarity and development. In the wake of a resolution passed at the fifth session in Brazzaville, several members of the JPA, Rob Davies (South Africa), Louis Straker (St Vincent) and European MEPs Hans Meyer, Harlem Desir, Maj Britt Theorin and Miguel Angel Martinez, condemned the American pressure on many countries to sign bilateral agreements that US citizens would not appear before the International Criminal Court. The parliamentarians were particularly concerned at threats to withdraw US financial aid, and called upon the EU to replace this support with Community funding.



### Environmental issues not sufficiently taken into account

Implementation of cooperation and the future of trade relations dominated the rest of the proceedings. The Assembly was shocked by the report of the Social and Environmental Affairs Committee on sustainable management and conservation of natural resources in the ACP countries under the 9th European Development Fund (EDF) for the period 2003-2007. The report was dubbed "excellent but terrible" by MEP Marie-Anne Isler Béguin. Nigerian rapporteur Gado Boureima and his Portuguese colleague Joaquim Miranda expressed regret that the cooperation priorities paid little or no attention to environmental aspects. ACP countries, which were free to set their own priorities, shared the blame for this, the Nigerian co-rapporteur added. The rapporteurs noted that, unless environmental issues were at the heart of policies intending to integrate the ACP countries into the world economy, there was a risk of adding pressure on the natural resources of the ACP countries which were mainly suppliers of raw materials. Gado Boureima reported the fear of small fishermen who were seeing stocks dwindling. He was also worried at over-exploitation of the forests. Speaking for the European Commission, Poul Nielson shared Gado Boureima's concerns on desert encroachment in the Sahel. He pledged his willingness to move ahead with his plan to allocate €1 billion of EDF funds to finance a "water facility", as promised at the World Summit on Sustainable Development in Johannesburg in 2002.

### Budgetisation of the EDF: a warm welcome, by and large

The use of EDF funds formed the subject of a third report by the Economic, Finance and Trade Committee. It echoed the European Commission's own view of the need for change in the current system, marred by excessively slow disbursements and large unspent balances. MEP Thierry Cornillet, a co-rapporteur, supported the Commission's idea of "budgetising" the EDF after 2007 with a view to efficiency and democratic accountability. This would mean merging it with the EU general budget, but Cornillet insisted on the need to retain the advantages of the present formula. He suggested that the funds earmarked for the ACP countries should be "safeguarded": in other words those countries would still benefit from predictability and the assurance that they would receive a steady flow of development aid. Cornillet said he did understand the fears of ACP





countries that EDF funds “might be watered down” by this budgetisation process, in the global context of Community development aid. Assembly Co-President Glenys Kinnock felt that the ACP countries had to be cautious on the budget question, as no formal decision had yet been made. Chairman of the ACP Council of Ministers, Lieutenant-General Mompoti S. Merafhe, took the view that no decision could be taken without the agreement of the ACP countries. Kinnock accepted this view but, in her opinion, the status quo was not acceptable, as the EU member states, who controlled the EDF, did not always have identical interests. Finally, she thought that the ACP should ask for powers of control if the EDF were merged with the EU budget. Thus the debate on this matter was well and truly open. It will be the subject of the Economic Committee’s next report.

The other co-rapporteur, Zambia’s David Matongo, referring to the mid-term review of the 9th EDF, said he hoped that the exercise would not result in “penalisation” of the countries which performed less well in aid deployment. He asked the European Commission, following its decision to devolve financial decisions to the delegations in order to expedite decision-making and disbursement procedures, to assign more staff.

### Cancún

Predictably, the session was dismayed by the setback at the ministerial conference of the WTO in Cancún a month earlier. In Rome, ACP and European delegates were unable to reach agreement on a compromise motion on the subject. During the debates, it was clear that the aftermath of Cancún was still being felt, and positions remained far apart on many points. Before the vote, a motion by Glenys Kinnock and Richard Howitt called upon the European Commission and the EU member states “to cut back all forms of export subsidy”. Their motion expressed a viewpoint close to that of the ACP countries which feel that increasing direct aid to European rice growers might severely hit ACP rice exporters. On the other hand, MEP Astrid Lulling felt that “our ACP partners must understand that we cannot agree to remove all subsidies to our farmers, because that would mean running the risk of no longer being able to continue agriculture in Europe”. Abolishing subsidies “is not the magic panacea for all the world’s ills” and “all subsidies do not distort trade”, she added. In turn, the Green Group stressed that some developing countries had moved forward

to free trade and access to the market by using unsustainable production practices which were not in the interests of the majority of small farmers and the rural poor of the developing countries. The Economic Partnership Agreements (EPAs) being negotiated between the EU and the ACP countries were also at the heart of the debate. In this regard, the Chairman of the ACP Council of Ministers pointed out that “EPAs must be instruments of development, not an end in themselves”. His view was close to that of Glenys Kinnock, whose opening address had expressed doubt that trade liberalisation would automatically generate growth and human development. Commissioner Poul Nielson noted the asymmetric nature of the EPAs, but said he was optimistic about the future. He reminded delegates that, despite the recent setback at Cancún, negotiations had opened between the EU and the regions of Central and West Africa. In the corridors after the meeting, several parliamentarians were looking on the bright side, maintaining that the trade debates had at least had the merit of “clarifying positions”. ACP Co-President Adrien Houngbedji was likewise optimistic, concluding “it was just a lost round”. ■

### Parliamentary Women’s Forum: a plus for the JPA

With a view to improving their participation in the work of the ACP-EU Joint Parliamentary Assembly, the women members have set up a new initiative: the Women’s Forum. It was instigated by Karin Junker, Member of the European Parliament, with the aim of creating a space for dialogue and discussion among the women members of the JPA.

The first meeting of the forum was in Brazzaville (Republic of Congo) on the occasion of the 5th session of the JPA in March 2003. They decided to make this meeting a regular event before each session of the JPA. Although initiated by women, the forum is open to participation from all sectors of the public, irrespective of gender. The objective is to gather as many views as possible on questions related to development cooperation and to make recommendations to the members of the JPA.

The second meeting of the Women’s Forum took place in the margins of the 6th JPA session. Subjects discussed were immigration and the situation of migrant women in the European Union. The women parliamentarians discussed immigration issues in general but gave priority to the situation of migrant women in Italy, a country which has been particularly affected by this problem for some years. The stream of migrants to the Italian coast, the traffic in women and their exploitation by prostitution rings, child beggars, illegal work, the situation of migrant women legally resident in Italy etc. were issues that fuelled the discussions at this forum. The women parliamentarians insisted that the JPA should produce a detailed report on immigration and requested better support for associations working in the field.

*Kenneth Karl*

# The Natali Prize 2003: another African triumphs

For the second consecutive year, an African journalist has been awarded the Natali Prize Gold Medal for journalism on human rights, democracy and development. Kenyan Ken Opala was chosen from the five regional winners (Africa; the Arab World, Iran and Israel; Asia and the Pacific; Europe; Latin America and the Caribbean) out of 320 entries from 80 countries. Each regional winner takes home a prize of €10,000 and the accolades of their peers that their stories, often the fruit of difficult and dangerous investigations, deserve this recognition of excellence.

Maria Laura Franciosi

“It was very difficult to choose the overall winner,” recalls the 2003 Natali Prize Jury Chairman David Thomas. “In many cases all the finalists seemed to deserve a prize”. He suggests that in future the prize-money might be distributed among the three finalists. As for the recognition to yet another African journalist – last year the winner was a Ghanaian, Raymond Archer – Thomas believes that “in Africa we are now witnessing the golden age of journalism”, and suggests that journalists and media should capitalize on this. “Journalists from the developed world should learn a lot from these colleagues”.

What tipped the balance in favour of Opala’s article was its subject; the desperate plight of thousands in Kenyan prisons condemned to live for many years on “death row” awaiting eventual execution. After the then head of state Jomo Kenyatta’s house was burgled (a car was stolen but nobody was hurt) Kenyatta asked the judges to hand down the maximum sentence, the death penalty, on the culprits. Although the judges were not keen to hang people for simple robbery, they complied and since then all robbers are sent to the gallows, at least on paper. Opala highlighted how the prisoners’ plight has been exacerbated by the subhuman prison conditions, to the extent that many demand to be executed to end their misery.

“I have followed prison stories for seven years,” says Opala who writes for the Daily Nation. “But it was impossible for journalists to gain access to prisons.” He had to pretend he was a relative, in order to establish the facts from the prisoners themselves. He believes that 80 per cent of those who are now languishing in prison are even innocent. The article he wrote earned him national recognition and prisons became accessible to journalists. Since last year he has been working freelance for the same paper which has given him one page to devote to human rights stories. A clear sign, he says, that the present government of Mwai Kibaki who replaced Daniel Arap Moi wants to change the political climate of the country. “Last year I wanted a change. I left my newspaper and created a news agency, the “Africa Investigative News Service” promoting investigative journalism. Then my newspaper offered me this weekly collaboration. It was on this page that the articles on death row were published”.

He would like to invest the prize-money (substantial for Africa, he says) in his news agency. “Journalists should abandon spoon feeding by the politicians and swim alone. The money could be used also to create training workshops for African journalists and to promote exchanges with colleagues of other countries”. After his article was published, he says with pride, over sixty prisoners were released from death row, and the conditions inside were drastically improved, with inmates given mattresses and even access to radio.

## Regional winners

The conditions of those who fight for human rights in Colombia could be improved by the winner of the Latin American section, José Fernando Hoyos Estrada, who in his weekly magazine *Semana* highlighted the merits of the “enterprise philanthropy” movement to solve the crisis that afflicts Colombia. Donating money to resolve underdevelopment is insufficient. Real change, he says, can be obtained only with the personal involvement of people who donate their time to help educate poor children or run canteens. He is harsh on *narcotraficantes* (drug traffickers) but also on their customers. “The drug trade exists because there is a market and the state is weak”. Journalists need to be better trained and his prize-money may be used, he says, to create a training foundation.

Walid Batrawi, the Palestinian journalist who won the prize for the Middle East region, wants better exchanges between journalists. He praises the courage of some Israeli colleagues who still try to provide impartial information. His article, published on-line, exposes the plight of the Palestinian media under the rule of both the Palestinian Authority and the Israelis who control the borders. “My press card has to be renewed by the Israelis. When I showed it to a young Israeli soldier he laughed, teasing, “I didn’t know that there were intellectuals in Palestine!”. Since 2001, Israel has stopped renewing press cards, though even previously they were valid for only two weeks. Batrawi has not been harassed so far but he points out that it was his informant who was harassed and that he fears, “next time it could be me”.



DG DEV/European Commission

Ken Opala from Kenya, who won the overall prize in the 2003 Natali Prize. He also won the regional prize for Africa.

The prize-money is going to help him rebuild his house in Ramallah. But he might also make a donation to an organisation involved in the safety of journalists. "I can't afford a flak jacket and being able to use one might change my life".

The prize winner for Asia was Massoud Ansari, writing for the magazine *Newslines* in Pakistan. In his article, "The Great Repatriation Scam", which led senior UN

officials to resign, he exposed corruption and malpractices, including sexual harassment, inside the UN High Commission for Refugees in a repatriation scheme for Afghans. But he wouldn't mind, he says, a job with UNHCR. "They appreciated what I wrote" he quips. Two women who had been harassed by UNHCR officials had approached him. "They were terrified and did not want to give me their names," recalls Ansari. "Then I started an investigation and found that there was not only female harassment but also massive corruption". He has written widely on human rights, has visited Afghanistan frequently and would like to write a book. He is now looking for a publisher to finance the project.

Another journalist from Asia, Sergei Duvanov of Kazakhstan, one of the two runner-ups, appeared at the ceremony only on a poster showing target circles superimposed on his face, held aloft by a colleague, Taukina Rozlana, president of the "Fund for Journalists in Danger". Duvanov wasn't present because he has been in prison for over a year and has two more years to serve of his sentence for raping a minor. Rozlana declares that the charge was manifestly fabricated. "The constitution is regularly violated in our country where the president Nursultan Nazarbayev and his family own 85 per cent of the national media". In his article, Duvanov exposed the story of alleged money-laundering of funds by Nazarbayev in Switzerland while most of his country is kept in silence. Rozlana herself cannot work or has to use pseudonyms and write for media outside Kazakhstan.

Several of the entries dealt with gender issues. The prize for Europe went to a young journalist from Portugal, Sofia Branco, from *Publico*, who described the horrendous practice of genital mutilation still performed illegally by the Guinea Bissau immigrants in Portugal. She tries however to be dispassionate and presents also



DG DEV/European Commission

the views of those who consider it a cultural experience. Although only 26, she has been a journalist for four years and has already won three prizes in Portugal. She wants to use her prize-money to travel in order to highlight other harsh realities.

The jury of the Natali Prize 2003 gave special mention not only to the two runner-ups for each section but also to a good number of other journalists who were not selected but whose work was highly commended.

In presenting the awards, the vice president of the European Commission, Neil Kinnock, praised the acquisition of the freedom of expression, by now well-established in Europe, although, he pointed out, "even in the midst of our democracies, terrorists, criminals and thugs have tried to silence journalists using intimidation and murder". To extend liberty, he added, we must

assure freedom of the press everywhere, although more than a third of the world's population lives in countries where there is no press freedom.

"This is why I invite everyone to celebrate with me just one of the many examples of the irrepressibility of those who struggle to sustain press freedom," he concluded. "Last month the Daily News was closed in Zimbabwe. Within days another newspaper called Friends of the Daily News went on line".

The prizegiving ceremony was preceded by a discussion on "Human rights and Globalisation" moderated by Aidan White, the general secretary of the International Federation of Journalists (IFJ), which manages the Natali Prize on behalf of the European Commission. ■

## "Journalists are like unnoticed stones"

### The meaning of the "Natali Prize for journalism: excellence in reporting human rights, democracy and development"

An intense debate over the ethics of journalism prizes took place among some journalists who participated in the 2002 Natali Prize for human rights reporting. It is an important debate which might make media workers reflect on situations in which one risks not only one's career but also one's life reporting on human rights.

Maria Laura Franciosi

One of the winners of the 2002 prize, the Brazilian Mauri Konig, says that he was almost "garrotted", hit with over 100 blows and left for dead after being attacked by three men from the National Police of Paraguay. An inquest was opened but nobody was sent to prison. Mauri, 36, a journalist for O Estado do Parana, had conducted for over five months a vast enquiry into the kidnapping of children in the poor frontier area between Paraguay and Brazil to be used in Paraguayan barracks to beef up the numbers of the military and work as slaves, for sex or other purposes. Many had died.

Another journalist, the young Ghanaian Raymond Archer, was forced to relocate as the police pursued him after he had exposed the activities (including torture) of an illegal unit of the police. In the end, his interviews with the victims were widely publicised and the police had to change their tactics. Archer, 26, who won the prize for Africa and the overall Natali Prize gold medal in 2002 for a series of articles on a scandal surrounding the deportation of immigrants from Sweden to Ghana, decided to use the prize-money to set up the Ghana Centre for Public Integrity (GCPI)<sup>1</sup>. Recently, he has won an award as the best investigative journalist from the Ghana Journalist Association (GJA) and has become

the youngest news editor in Ghana and perhaps in the whole of Africa. A similar thing happened with the winner of the Asia section of the 2002 Natali prize, Asha Krishankumar, an Indian journalist who described the desperate plight of Indian weavers. She devoted her prize



Raymond Archer, the 2002 overall winner.

DG DEV/European Commission

to the creation of a trust to provide for the education of poor weavers and has now been selected for an Award in International Journalism by the Columbia School of Journalism and Reuters. This could set a trend.

#### On-line debate on the ethics of journalism prizes

The on-line debate over the meaning of a journalism prize for human rights was initiated by a questionnaire sent to the IFJ by some final year students in journalism at Rhodes University in South Africa.

The answers were numerous. Ann-Christina Hansen, coordinator on behalf of the IFJ for the Natali Prize, opened the debate by emphasising that this is among the most prestigious journalism awards, especially in the developing world. "Apart from rewarding and hopefully promoting journalistic excellence, the prize-money can have very positive effects not only for the individual winners but also for other journalists". Another advantage of awarding a prestigious prize to a controversial journalist is that it "can raise awareness of specific human rights abuses and send a strong political signal to those who commit them". In this respect, she quotes the decision of the 2002 jury to award the Natali Prize for the Middle East to Maher Chmaytelli for a series of articles on Syria's cultural policy. His reports led to the closing down of the Agence France Presse (AFP) office in Damascus and the stripping of all press accreditation from Chmaytelli who was then asked to leave the country.

"The moral value of the award exceeds by far the financial prize", observes Chmaytelli. The prize "can be a springboard to continue in the struggle for democracy and human rights".

The debate on whether the prize should be only in cash, as it is now, or transformed into payment for skills training, workshops, fellowships and travel bursaries is open. The prize-money could also be used to help journalists in developing countries who struggle with limited resources. One of the projects coming out of Raymond Archer's undertaking is a network to help locate unused or obsolescent but still working PCs in the developed world that could be transferred to Africa to be used by media workers lacking resources.

This is how Raymond Archer summarizes what the prize has meant for him: "a recognition of hard work and an inspiration to do better". He goes to particular lengths to explain that the monetary award raises no ethical questions whether it comes in cash, training or some other form. "I cannot see how this kind of award could compromise the integrity of any journalist. I rather think that this is an inspiration for me as a young journalist to climb to higher heights". Archer clarifies what is a "gift". In law, he explains, an offer without conditions can be considered a gift. And so if a company or an institution sponsors (in this case the European Commission) an award with no strings attached to it, "this is a gift that cannot become a compromise".

#### Those unnoticed stones

This is why, concludes Ann-Christina Hansen, "prizes like the Natali one have been created: to become a showcase of excellence, dedication and commitment to the

values we all cherish". No doubt the difficult conditions under which journalists have to work in many parts of the world contribute to the corruption and corruptibility of the media. But prizes are only prizes and should not supplant the duty of unions to struggle for things such as better conditions and remuneration. The main object of the prize, insists Hansen, is "to give a political signal". The prize must be given for a job well done.

Above all, says IFJ secretary general Aidan White, speaking at the 2002 award ceremony, "the Natali prize represents a great opportunity for renewing journalism in the world" and to give a clear indication of the role of the media in human rights reporting. Chris Warren, president of the British National Union of Journalists (NUJ), remarks that, to create a climate suitable for the defence of the rights of the journalists who report on human rights abuses, one should give technical assistance to independent media and encourage dialogue and tolerance in order to unearth, as the entries to the Natali Prize do, "those unnoticed stones". Journalists, he explained, "are like stones that you don't notice when you walk but that can make you trip when you think you are walking on a safe road".

#### About the Natali Prize

The annual Natali Prize for Journalism was launched in 1992 by the Development directorate of the European Commission to reward "articles addressing democracy or human rights as vital aspects of development". It was awarded in 1992, 1993 and 1994, then relaunched in 1998 in cooperation with the IFJ which is now responsible for its management. Until 2001, two prizes of €10.000 were awarded each year: to a journalist from a developing country and to one from the European Union.

In 2002, the European Commission expanded the programme to award five Natali Prizes: for Europe (including the enlargement countries); Africa; Asia and the Pacific; Latin America and the Caribbean; North Africa and the Middle East. In addition, a gold medal was awarded to the overall winner.

The prize takes its name from a former vice president of the European Commission, the Italian Lorenzo Natali, who from 1976 to 1989 worked for the European Commission in different capacities, lastly under president Jacques Delors, as vice president responsible for development cooperation. Among the 243 entries for the 2002 prize from 80 countries many dealt with abuses against children, but many (especially from Africa) also dealt with fraud; in Asia and the Pacific attention was focused on the appalling conditions of workers, on poverty and on prostitution whilst the articles from the Arab world dealt above all with press freedom. The articles from Europe generally dealt with abuses of human rights happening somewhere else. The main link between Europe and the developing countries over human rights abuses reporting is immigration, which gives journalists the opportunity to delve into the conditions in the migrants' countries of origin. ■

<http://gcpi.virtualactivism.net>

## The European Development Fund: towards integration in the Community budget?

The main financial instrument of cooperation between the European Union and the African, Caribbean and Pacific (ACP) group of states, as well as with the overseas countries and territories (OCTs), the European Development Fund (EDF), is at the moment the subject of discussion concerning its integration into the general budget of the EU. If such a decision is taken, this "legendary" instrument of the ACP-EU partnership will be allocated and managed under different conditions. Why such a change? What are the real advantages of budgetisation in terms of operational efficiency for a cooperation focused on poverty alleviation? What are the possible disadvantages?

Kenneth Karl

Set up in 1958, the EDF constitutes the principal source of funding for EU cooperation with the ACP countries and the OCTs. Its particular nature lies in the fact that it has evolved independently of the EU's general budget, and is managed by the European Commission with the European Parliament granting the discharge. The EDF is also different in that it has operated all these years under a separate financial regulation and its own implementation arrangements, distinct from mechanisms used for external aid financed from the general budget. In particular, the EDF funds originate from ad hoc contributions by the EU member states every five years, with a different cost-sharing formula from that applying to the general budget. It is implemented jointly with the beneficiary countries via specific co-management mechanisms. Although it has financed many development programmes and projects in ACP countries, the EDF has come under fire on a number of occasions, with the harshest criticism directed at the sums involved, the slowness of procedures and disbursements and the build-up of unused balances. Supporters of budgetisation believe that the advantages of having a fund separate from the general budget have constantly been eroded with each successive convention, making it increasingly less able to meet the ever-changing needs and objectives of cooperation and development. Although there is more talk of budgetisation on the part of Europe than the ACP countries, this is primarily because such a measure is closely related to the institutional operation of the EU and the political changes currently underway within the EU.

### Why the EU wants to budgetise the EDF

A recurring theme for several years, the idea of budgetising the EDF has been the subject of frequent discussion within the EU. Several member states and a very high majority of members of the European Parliament (MEPs) have persistently argued in favour of integrating this financial instrument into the Community budget. In recent years, positions have gradually converged within the EU on this issue. In the light of recent developments, and of the European Commission's position, it would seem that we are very probably heading in that direction. Indeed, the Commission has just reaffirmed its wish to

take such a step in its Communication to the Council and the European Parliament of 8 October 2003 entitled "Towards the full integration of co-operation with ACP countries in the EU budget". This document contains several political and institutional reasons in support of this change, backed by technical considerations to the effect that it would improve efficiency.

The EU is currently in the process of institutional reform and of adapting the treaty to establish a constitution for Europe so as to pave the way for enlargement with the 10 new member states due to join in 2004. The European Convention – charged with proposing ways of adapting and renovating Europe's institutional and political framework – recommended the budgetisation of EU-ACP cooperation. This concerns, above all, harmonising procedures, simplifying the work of Commission staff and ensuring better budgetary discipline. However, the EU also wished to update and consolidate its relations with the ACP countries by integrating them in the general framework of its external relations. This would constitute, in the view of the Commission, a move towards standardisation and bring this partnership into line with the requirements of the common external and security policy. According to the Commission, by integrating the resources allocated to the ACP countries into the EU's annual budget, the advantages granted to them by the EU would in no way be undermined, but actually enhanced. Maintaining cooperation with so many countries outside of the increasingly unified European constitutional and political framework carries the risk of increased marginalisation. The document maintains that budgetisation will bring this cooperation more to the frontline and enhance its legitimacy through greater involvement of the European Parliament and through the role that would be played by the ACP-EU Joint Parliamentary Assembly. A budget which evolves outside all parliamentary control is more and more viewed as an anomaly in a democratic system. ACP development aid could therefore follow a coherent political co-decision procedure involving the Council, European Parliament and the Commission and would allow decision-makers to make transparent decisions in terms of cooperation management and strategy. This is an advantage not offered by the current system, which is complex and fragmented.



le Courrier

The European Development Fund (EDF) is the main instrument for Community aid for development cooperation in the ACP countries and the OCTs. Articles 131 and 136 of the 1957 Treaty of Rome provided for its creation with a view to granting technical and financial assistance to African countries with which certain EU member states had historical links. The EDF does not come under the general Community budget.

From a practical viewpoint, the Commission also believes that budgetisation will put an end to the system of successive EDFs which cannot be implemented until after an onerous, lengthy ratification procedure (lasting about two years). At the same time it will avoid the "ad hoc" negotiations to determine the value of the financial envelope, especially with the perspective of an EU enlarged to 25 member states. As far as the EU is concerned, funds will be available more rapidly and will be more quickly committed and disbursed. Unlike the EDF, the EU budget is annual. In the Commission's view, this should in no way affect the predictability of actions, more or less guaranteed under the EDF's financial protocols, which are fixed for five years. The annuality rule includes a multi-annual dimension ensuring that aid is planned more efficiently. In the Commission's view, the fact that funds are assessed and approved by the relevant authorities on a yearly basis will further contribute to efficiency, in particular due to the regularity of commitments. In its Communication, the Commission also puts forward other potential gains in efficiency that could result from budgetisation, in terms of synergy and consistency between geographical and thematic programmes as well as between beneficiary regions.

### Fear of change

However, it seems that not everyone has faith in the proposed budgetisation of cooperation with ACP countries. A few member states have expressed reservations and asked for clarification in a number of areas. There is most concern among ACP countries. Some of them find the move towards a new system of financing and managing the aid granted to them very worrying indeed. According to some, it could undermine the EU's political commitment to them; the fact of having benefited from a special partnership and a series of preferential advantages for over forty years reassured them that they are a priority for the EU. Diluting this cooperation by incorporating it into the overall EU development policy could make them think otherwise.

Some have expressed fears that the EU's financial commitment could be affected, resulting in a considerable reduction in the overall value of its aid. For other ACP countries, the best thing about EU cooperation has been that it allows balances to accumulate. It remains to be seen how such a situation would be managed in a system in which expenditure is authorised for one-year periods only and unspent funds expire at the end of the financial year. In particular, how would the case of "crisis" countries be managed and how would the funds be reallocated? Furthermore, the Cotonou Agreement reaffirmed and indeed reinforced the idea of ownership of aid by the beneficiary countries through co-management mechanisms. What will become of this concept once the EDF is integrated into the general budget, which is implemented according to the EU's institutional system and on its own legal bases determined jointly by the Council and the European Parliament? Will the procedures applicable to the general budget truly be less onerous and more easily assimilated by the ACP countries that will, at the end of the day, have to comply with them? The general budget is, however, not totally unknown to ACP countries, as they have benefited from certain budget lines like food security. The reform of the EU's external aid, and the devolution of management to the delegations on the ground, which includes support to the national authorising officers, should facilitate this transition. The ACP Secretariat has sponsored a study on this subject, in order to look into the issues involved.

In terms of timetable, there is every indication that there will be no 10th EDF negotiated between 25 member states. The current EDF expires at the end of 2007 and the Commission is proposing that the 2007/2008 budgets should be the start of budgetised ACP financing. The integration of cooperation with ACP states in the EU's general budget will necessitate political, legal and technical reconciliation of the Cotonou Agreement, signed for 20 years, with the EU's vision. Can this be achieved without undermining such an important agreement? ■

# African governments commit to fighting illegal logging

At a recent conference in Yaoundé, Cameroon, ministers and high officials from over 30 African countries, the European Union and the United States agreed to work together to improve governance for forest resources in Africa, marking an important step forward in the fight against illegal logging.

Neil Scotland\*

The ministers, who were in Cameroon to launch the Africa Ministerial Process for Forest Law Enforcement and Governance (AFLEG)<sup>1</sup>, adopted a declaration underscoring the urgent need for action to eradicate illegal logging and the associated trade in forest products.

The importance of this issue cannot be underestimated. Illegal logging causes enormous damage to the environment, and impoverishes local communities who depend on forest products for a living. It also robs governments of an estimated €10-15 billion in revenues every year.

Much of these losses are concentrated in developing countries. An analysis prepared for the World Bank suggests that (at a very conservative estimate) Cameroon is losing €4.5m annually because of weak regulation of timber production: losses in the Central African Republic are estimated at €2.6m, the Democratic Republic of Congo €3.6m, Gabon €8.5m and Ghana €32m.

Gabon aside, all these countries qualify as Highly Indebted Poor Countries (HIPC), and are amongst the world's poorest nations. They can little afford to lose precious millions annually to illegal loggers.

## A dismal pattern

Illegal logging is also closely associated with corruption. The lucrative profits shared by illegal operators and complicit officials fuel the cycle of bribery and graft which does so much to curtail growth and prosperity in the developing world. In turn, this corruption undermines the rule of law and principles of good governance, and threatens prospects for sustainable economic development in badly affected countries.

Paul Collier of the World Bank warns that misuse of natural resources forms part of a vicious cycle of corruption and profiteering which destabilises governments, exacerbates poverty, and provokes conflict and civil war.

Liberia and the Democratic Republic of

Congo are two countries where this practice has taken hold in an extreme form. But it also occurs in a more insidious, though no less corrosive, form in all countries where revenues from natural resources are not managed in a transparent and accountable manner.

Even in relatively peaceful and stable countries, powerful groups – such as a political elite or the armed forces – very often control these revenues, so that the country's national endowments of natural wealth come to be managed solely for their private gain. The private source of wealth this gives in turn renders them less accountable to the formal institutions of the state.

## Cause for hope

A number of promising initiatives are working to address such failings of governance, particularly for diamonds, oil and mineral deposits. The AFLEG initiative offers an important chance to build similar commitment to tackle these issues in the forest sector.

According to Henri Djombo, minister of forest economics and environment in the Republic of Congo, and president of the Conference of the Ministers of Central African Forests (COMIFAC), "AFLEG represents an opportunity for our countries to exchange best practice on national and sub-regional levels to combat illegal logging and illegal trade in the forest sector, and to discuss concrete ways of working together on this issue".

The conference highlighted some of the many ground-breaking initiatives now under way in Africa, which in different ways are working to break the alliance of corruption and illegal behaviour behind illegal logging.

Forward-looking sector reform programmes in Uganda, Ghana and South Africa have succeeded in laying strong foundations for change and improved management of forest resources. Cameroon is piloting the ground-breaking use of an independent civil society monitor of logging operations (see box), greatly enhancing transparency and accountability in the sector. Across Africa, community-based forestry is making rapid advances, giving local people a greater say in managing and protecting forest resources.

Addressing the conference, Koos Richelle, European Commission Director-General for Development, said: "facing down the vested interests which benefit from illegal logging will not be easy, but it is a worthwhile challenge to take on. In doing this, we must learn from the many examples of good practice on the African continent, and take inspiration from these beacons as we implement the AFLEG initiative".

DLH Nordisk, Cameroon







The Courier

The European Commission is working to address this shortcoming through an Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT). The Action Plan sets out a new approach to tackling illegal logging, which seeks to link the push for good governance in developing countries, with the legal instruments and leverage offered by the EU's own internal market.

The plan proposes support for reforms to governance in wood-producing countries, and a scheme to eliminate imports of illegal timber to the EU market, to be implemented through voluntary (but binding) partnerships with wood-producing countries and regions.

"It is my sincere hope that this conference will mark the start of a process to build partnerships between the EU and Africa to make this a reality", said Mr Richelle.

### Partnerships for change

And it is not just in Africa where change is needed. The AFLEG declaration points to the need for consumers and producers of wood to work in partnership to end the trade in illegal timber.

Europe and other parts of the rich world provide a market for the illicit and destructive harvest of illegal timber in Africa. It follows that these countries must shoulder some of the responsibility for bringing this damaging practice to an end.

To set this in context, exports of timber products from Africa to Europe were worth over €3 billion in 2001, behind only petroleum and diamonds in importance. In central Africa, wood products account for 20 per cent of total trade with the EU. The greater part of this trade is legal, but large volumes of illegal timber are mixed in with the legitimate trade. If allowed to continue unchecked, this trade will undermine the process of reform agreed to in Yaoundé. But, at the moment, the EU is powerless to prevent the entry of illegal timber to European markets.

### A firm step forward

But reinforcing demand-side measures in Africa, with supply-side side measures in Africa's major markets, will only help to tip the balance against the strong vested interests which profit from illegal logging where firm political will exists in wood-producing countries.

The AFLEG ministerial process is designed to galvanise this will, and its successful launch in Yaoundé marks an important step forward. Not least because it succeeded in harnessing the collective skills and energy of over 150 participants from 39 nations, African civil society, international NGOs and the private sector into a concerted and coordinated movement. This powerful demonstration of intent must now be translated into a successful and meaningful programme of work. ■

\* European Commission, Directorate General for Development, Environment and Rural Development unit.

1. The World Bank organised the AFLEG ministerial conference, with financial support from the European Commission, France, the UK, Switzerland and the United States.

## Independent monitoring of logging operations in Cameroon

The Yaoundé declaration contains a commitment by governments to encourage independent monitoring of logging operations, a key measure to improve governance and transparency in the sector.

Cameroon is piloting one such initiative with Global Witness, a UK-based non-governmental organisation, acting as an independent watchdog under the auspices of the project for Independent Observation in Support of Forest Law Enforcement. The project was established in May 2001 at the request of the Cameroon government for an initial three-year pilot phase.

Although the relationship between the monitor and the monitored has not always been easy, the experience has demonstrated the sterling value of independent eyes in the field. In the short time the project has been operational, access to information has improved and a number of major violations of forest laws have been documented and reported to the authorities.

Providing information is only half the battle, however. Of 40 field checks where infractions were detected, only in 17 cases has an official statement of offence been issued by the Cameroon government. Major violators, who wield strong power and influence, have so far avoided facing due legal process in the courts.

Building the political will required to push gross offences of the well-connected through the courts is the next difficult step to be taken. The AFLEG process will help to reinforce this objective.

# Moot Court competition, Yaoundé

A Moot Court is a simulated hearing or trial, in which law students hear a case and negotiate it as in "real life". They play the roles of prosecuting attorneys, lawyers and judges, depending on the case. Since 1992 the yearly African Human Rights Moot Court competition has been training and inspiring students and legal professionals from Africa, helping to foster a human rights culture on the continent. In 2003 it was held in Yaoundé, Cameroon.

Dorrit van Dalen

"What?" One of the judges interrupts the lawyer for the defence. "Are you saying that the state has enough money to transport ballot boxes by helicopter in the middle of the rainy season, but that it cannot provide for proper healthcare in the north of the country?"

"Your Excellency, in the field of healthcare the state has done what it can as a developing country." A wave of gentle head shaking passes through the audience.

In August the African Court on Human and Peoples' Rights met in Yaoundé to consider a series of charges which an NGO was levelling against the state of Tiya. Neither Tiya nor the NGO exists, however. The case was put before a moot court as part of a competition for law students from all over Africa.

The European Union sponsors the competition, both directly and through the Foundation for Human Rights in Pretoria (for 10 to 20 per cent of the costs in many years).

The real African Court on Human and Peoples' Rights will come into existence as soon as 15 African governments have signed its protocol. So far, 12 have signed. Copying the pre-1998 European system, the African Court will supplement the existing African Commission on Human and People's Rights based in Banjul, Gambia. The Commission does not issue binding verdicts, but mediates and reports to the political organs of the African Union (AU). In the future it will also refer cases to the African Court, which will issue binding verdicts.

## Enhancing human rights law

Paving the way for the African Court has been one of the purposes of the moot court, says Christof Heyns, director of the Centre for Human Rights of the University of Pretoria, and initiator of the competition. "Every year the event brings together not only students and teachers from all over Africa – 140 students from 70 universities in 30 countries this year – but also representatives of the international justice community. The judges in the final round include representatives from the International Courts, the UN and the AU. The whole event enhances the image of human rights law." It also helps to establish a network of human rights lawyers in Africa. Former participants have stayed in touch with each other and with the Centre in Pretoria.

This time the fictitious case raises the issues of unfair elections, discrimination against women, and the intimidation of Pygmies living in a forest where logging companies (together with the government) also have interests. Some of the circumstances resemble those of Cameroon.

"That is another purpose the moot court serves", says Professor Boukongou, director of the human rights centre of the University of Central Africa (UCAC), and this year's host. He was the most important author of this year's case and explains that it is customary to stay close to the reality of the host country. "The court gives us the opportunity to discuss real problems."

The participants plead in teams of two students each for the plaintiff and the defendant. They win not on legal grounds, but on the basis of their performance. These are deadly serious, and accompanied by dark suits, ties and straight skirts.

Tawa Jihijela from South Africa is happy to have a chat as a way to calm his nerves. In ten minutes he has to present the arguments for the plaintiff. "I thought that would be the easiest position, because the faults made by Tiya are easy to prove. But it seems that this court," he says, pointing to classroom A, "is very hard on the plaintiff. The problem is the admissibility of the case. According to the African Charter, every attempt must have been made to deal with the matter at a lower level before referring it to the African Court. For a number of reasons that has not been done in this case."

## From the fictitious to the real

While the sessions often resemble exercises to test the effectiveness of the future African Court, the discussions in between also move quickly from the fictitious to the real. A pessimistic student, who prefers to remain anonymous, believes it is easier to plead for the defendant. "All he needs to

The campus of the University of Central Africa is on a quiet hill on the edge of Yaoundé. Students from different teams discuss their tactics during a break.



do is to show that the case is inadmissible. In human rights cases against states, the person bringing charges is always the weaker party, because the states make the laws. They use human rights only as excuses when other interests are involved. Look at the arguments the US used to invade Iraq.”

“No,” says the veiled Aya El Hilaly from Egypt, “the plaintiff can win this case. But the problem with the real African Court is that it will not have any means of enforcing its decisions. In Europe, states that want to be members of the EU have to sign the European Convention on Human Rights. The AU does not have the same obligation. That should be arranged in the future.”

Wolfgang Strasser agrees. He is deputy to the registrar of the European Court of Human Rights in Strasbourg, and one of the lecturers and judges. He explains: “The African Charter includes more rights than the European Convention, in particular social, economic and collective rights. It can also be invoked more easily – not only by the victim himself, but by an NGO on behalf of a victim as well. But this generosity in recognising rights is counterbalanced by a much less effective implementation mechanism”.

### Different backgrounds

Back to the competition. In principle, all the competitors are winners of first rounds that took place within their own universities. But their preparation has been very different. Some spent several hours a week for four months getting ready for the moot court, together with their teachers. Others come from universities which barely function, or could not provide the texts of the African Charter and other relevant documents.

During the first days of court sessions, the English-speaking and French-speaking teams do not meet at the bench, but plead in parallel sessions. The differences in style are striking. The French speakers are good at rhetoric, theory and some theatre. The English speakers keep more to facts, and are articulate and correct. Professor Boukongou, who is taking part for the fourth time, is aware of the differences. “The French teaching systems are not used to working with case studies. I want to use this moot court also to show that we should adapt our teaching methods.”

After two days of pleading, two French- and two English-speaking teams have survived to the final round. A draw determines that the students from the University of Natal (South Africa) and the University of Cocody (Côte d'Ivoire) will form a bilingual team for



After his lecture, students have a thousand questions for Professor Boukongou.

the plaintiff, and the students from the University of Nairobi (Kenya) and the University of Dschang (Cameroon) for the defendant. While the others spend a day on the beach, these eight prepare for the final session with the help of two interpreters. The final round (facilitated by headphones for translations) is attended by virtually all the participants and students from UCAC.

The plaintiff begins, with four lawyers presenting the various grievances. Dohoty Coulibaly from Cocody accuses the state of excluding rural voters by holding the election in a period when heavy rain is likely to make dirt roads impassable. But before this court of professionals, the strongest defense lies in the inadmissibility of the case. The defence lawyers come up with a long list of charters and documents supporting this argument.

Then the lawyers for the plaintiff are given some final minutes to summarise the case. Andreas Coutoudis (Natal University) is not only a fine lawyer who anticipated the arguments of his adversary, he is also a gifted performer who has saved his best one-liners for this moment. “Human rights are absolute. You cannot reduce them by holding up a series of documents and papers.” That simple? A gasp of surprise runs through the audience. “One of America’s founding fathers said ‘it’s useless to examine old documents and dusty files. Human rights are sacred.’” The tension of three days is released. Gone is the decorum. A hundred and forty students applaud and shout their approval. We have a winner. ■

## EU support for the Moot Court competition

The European Commission has directly supported the Moot Court since 2000, as part of the grant for the Master’s Programme in Human Rights and Democratisation in Africa, run by the Centre for Human Rights in the University of Pretoria. This LL.M course is taught in partnership with many of the universities that participate in the Moot Court. Each year 30 top students from African Universities receive a scholarship to study human rights and democratisation for six months in Pretoria and the second six-month semester in one of the partner universities. In addition, students are offered internships at major international human rights institutions, as well as the chance to shine at the Moot Court competition. Successful students have developed careers as lawyers, judges, civil servants and law lecturers, as well as in human rights NGOs. In this way, the EU is helping to equip Africa with a skills bank in human rights and democratisation from which its people can build a sound future.

\* Peter Ashman, EuropeAid Cooperation Office, Democracy, human rights and thematic support unit.

# The Indian Ocean Commission: regional solidarity in the face of globalisation

The Indian Ocean Commission (IOC) is a regional organisation regrouping four ACP states (Comoros, Madagascar, Mauritius, Seychelles) plus one ultra-peripheral region of the EU (Reunion, an overseas department of France). Set up in 1984, the IOC is one of the first formal experiences of regional cooperation in this part of the vast region constituted by the Indian Ocean. The approach, essentially political in nature, was at the time part of the drive to reinforce cooperation within the Southern hemisphere. Now the organisation has reached the point where it must be redefined if it is to survive internal and external changes. Work has already begun.

Article supplied by the IOC

The objectives and missions established by the founders of the IOC were primarily to strengthen links between the peoples of its member states and improve their standard of living, promoting cooperation in a number of areas: diplomacy, economy, trade, agriculture, fishing, the conservation of resources and ecosystems, culture, science and education.

These islands in the south-west Indian Ocean have much in common: apart from their insularity, meaning that the problems they face are closely related, they share populations and a colonial history characterised by many similarities.

In terms of development, however, these islands are not all on an equal footing and are in fact at various levels which are often, unfortunately, very far apart. Reunion, an ultra-peripheral region of the European Union, is part of the developed world; Comoros and Madagascar are members of the group of Least Developed Countries; while Mauritius is classified as a Newly Industrialised Country and the Seychelles a Middle Income Country.

Some believe that regional cooperation and integration, which require more effective solidarity, not only in economic terms but also in many other areas, are the key to greater cohesion and could close this gap. Work in this direction should be combined with enhanced integration of the countries of the region in the ultra-regional (COMESA, etc.) and global (EPAs, WTO) economy and, as a priority, with protection of insular individualities, the group's strong point.

## At a crossroads

Fast-increasing levels of globalisation, the emergence of new regional groups and changes in the situations of member countries have meant that regional cooperation has taken on a new dimension. In 1997, the IOC undertook a prospective study. As a result, a White Paper redefining the organisation's mission and strategy for the next 10 years was produced and approved by the Council of Ministers.

## Organisation of the IOC

### COUNCIL OF MINISTERS

- Supreme body
- Establishes the main courses of action
- Chairman changes yearly

### COMMITTEE OF PERMANENT LIAISON OFFICERS (PLOs)

- Follows up the Council's decisions
- Review, approval of activities
- Made up of representatives appointed by each member state
- Chairman changes yearly

### GENERAL SECRETARIAT

- Ensures a permanent presence and continuity of the institution
- Prepares the programmes and projects resulting from decisions by the authorities
- Monitors progress of the programmes and projects
- Administrative and financial management of the projects
- Headed by a General Secretary, with the assistance of project managers, a secretariat and an assistant accountant. The General Secretariat is supported by technical assistants provided by donors.
- The General Secretary is the Regional Official who has the power to authorise financing for projects financed by the European Community

### PROJECTS/PROGRAMMES

- Implements projects/programmes

### Ad hoc technical committees

Factors originating outside the region, identified in the White Paper, have been clarified and will continue to influence the countries on the road to economic integration, although in a wider regional context. Other elements have added to the complexity of this regional dynamic, but at the same time they increase the need for a local structure in the Indian Ocean.

Recent changes in the regional and international situation constitute an increasingly clear reflection of the trends forecast in the White Paper: the comparative advantages of large regional blocs (COMESA and SADC) in achieving regional economic integration, the new EU-ACP cooperation framework and the implementation of the Cotonou Agreement, and the recognition of insular individualities. At the same time, we are witnessing a trend towards decentralisation: in Comoros, in Madagascar (the establishment of Provinces), in Reunion (Loi d'Orientation Outremer or LOOM, a law providing for greater decentralisation towards French overseas departments) and in Mauritius. These factors make regional cooperation an even more complex issue, while, however, justifying the need for a local regional structure, as emphasised in the White Paper.

However, when it comes to implementing recommendations, the IOC's weaknesses are brought to light. Some of these are inherent in the countries and their level of development; others arise from the very process of implementing regional cooperation within the IOC and relate in particular to its structure.

Of the organisation's five strategic objectives, political

dialogue amounted to nothing or was inaudible, while the protection of the interests of the particularities linked with insularity and its vulnerability and environmental issues seemed to be the subject of agreement. However, the IOC has yet to demonstrate its ability to assert its role as a driving force in this area. The preparation of the region and its economic actors to face the challenge of globalisation yielded mixed results. Affirming and enhancing regional identity requires conceptual and practical adjustments. Some progress has been made with the involvement of non-government actors, although whether or not this can be made more widespread depends primarily on each country's abilities and initiatives.

There are various reasons why the level of achievement differed in each area. First, structural reasons: the inequalities between the member states in terms of development strategies and levels and technical and financial resources. Then there are methodological reasons, namely the difference in interpretation of objectives, the lack of an implementation plan, and contradiction between decisions and actions. Finally, political reasons, owing to the lack of strong political signals.

The IOC's organisational structure has a bearing on its capacity for implementation (insufficient resources to meet countries' expectations, executive and control bodies that are not always operational, etc.).

For a complete analysis, we cannot ignore the argument, put forward by some actors or observers, that the IOC should be purely and simply abolished, or converted into a light-weight structure for dialogue, a sub-group of COMESA.



#### Union Of The Comoros

Surface area (km<sup>2</sup>): 1862  
 Population (in thousands): 600  
 Independence: 6 July 1975  
 Capital: Moroni  
 Currency: Comoran franc  
 Time zone: GMT +3 or +4  
 Official languages: French, Arabic  
 Spoken languages: Comoran, Swahili  
 International dialling code: 00 269

#### France/Reunion

Surface area (km<sup>2</sup>): 2507  
 Population (in thousands): 750  
 Became a French department: 19 March 1946  
 Capital: Saint Denis  
 Currency: Euro  
 Time zone: GMT +3 or +4  
 Official language: French  
 Spoken languages: French, Creole  
 International dialling code: 00 262

#### Madagascar

Surface area (km<sup>2</sup>): 587 041  
 Population (in thousands): 16 000  
 Independence: 26 June 1960  
 Capital: Antananarivo  
 Currency: Ariary (1 ariary = 5 Malagasy francs)  
 Time zone: GMT + 2 or +3  
 Official languages: Malagasy  
 Spoken languages: Malagasy, French  
 International dialling code: 00 261

#### Mauritius

Surface area (km<sup>2</sup>): 2045  
 Population (in thousands): 1200  
 Independence: 12 March 1968  
 Capital: Port Louis  
 Currency: Mauritian rupee  
 Time zone: GMT +3 or +4  
 Official languages: English  
 Spoken languages: Creole, French, English, Hindi, etc.  
 International dialling code: 00 230

#### Seychelles

Surface area (km<sup>2</sup>): 455  
 Population (in thousands): 81  
 Independence: 29 June 1976  
 Capital: Victoria  
 Currency: Seychelles rupee  
 Time zone: GMT +3 or +4  
 Official and spoken languages: Creole, French, English  
 International dialling code: 00 248

### What does the 21st century hold for the IOC?

With the benefit of its experience and cooperation behind it, bolstered by the unwavering support of the European Union, but also learning lessons from the changes underway and the new order in international cooperation and its effects in regional terms, redefinition of the IOC now seems inevitable: without it, the organisation could slowly fade away. Such a redefinition must be based on a genuine, appropriate strategic and operational framework, taking on board the main points of the White Paper (but with clearer, more precise fields of cooperation), adapting its organisational structure and devising a financing strategy.

The above-mentioned strategic objectives must also be accompanied by a strengthening of the IOC's abilities and a diversification of its partners and its sources of funding.

These objectives are merely tools for the implementation of regional actions. They must be designed around cooperation focus points (or areas of activity, equivalent to a company project). Thus, it should be possible to define the IOC not only in terms of its role but also based on these cooperation focus points, targeted at three areas of excellence constituting as many cooperation focus points: economic integration, environment, and culture/education/research (the latter having a cross-sectional vocation, its activities being supplied by the other two).

This new form of regional cooperation must be based on an action plan and a restructuring of the General Secretariat, of the coordination structures and also of the role, function and position of each Permanent Liaison Officer (PLO) in the member

states. Through them, the place of each member state will be examined: their representation in the General Secretariat, arbitration between representativeness and competence, etc. This should be accompanied by actions in terms of communication (identified as one of the organisation's main weaknesses) and administrative and financial management.

Thus, the IOC would become a reference body in the field of economic development and natural resource management, tailored to the context of insularity and the regional dimension. ■

The IOC's activities are financed by a significant aid package from the European Union, which provides assistance under the Lomé Agreement and the Cotonou Agreement through the European Development Fund (EDF). Being a European region, Reunion does not meet EDF eligibility criteria. Its participation in IOC projects is therefore financed directly by France.

The Regional Indicative Programme (RIP) sets out the spheres of action and intervention in which this aid is used. Under the 8th EDF (1995-2000), a total of €25.5 million was allocated to the IOC.

European financing has been channelled mainly into the following areas:

- Economic development
- Higher education, research, training, communications and culture
- Environment
- Support for the General Secretariat.

## The European Union and the IOC: going back a long way

*Quite some time ago, the European Union and the IOC (now celebrating its 20th anniversary) established a close partnership founded on regional solidarity. Shortly after the creation of the IOC (following Lomé III, which marked the launch of regional policies), the EU financed a number of projects identified by its member states and, when required, provided the General Secretariat with the necessary technical assistance.*

*Our priorities are, as they have always been, centred on what makes this organisation special: its insularity, its environment, its marine resources and the complementarities between the countries of which it is composed.*

*Today, aided by these many years of shared experience, the IOC and the European Union are adapting to the new climate, characterised by globalisation as well as by the emergence of larger regional groups, determined by the ACP countries and in particular COMESA, EAC and IGAD and by its investment in the Economic Partnership Agreement negotiations. The IOC must make the most of this opportunity, not only by adapting to this new challenge but also, and above all, by affirming its identity. In this new, emerging situation, the European Union will again be the IOC's preferred partner, assisting it in the major spheres of intervention, which will henceforth constitute its main courses of action: natural coastal and marine resources, economic integration in the specific context of small island economies, cultural identity and training.*

*This is a new phase, one which requires adapting to meet new challenges, and, more than ever, the European Union is ready to face it and accompany the IOC in its development and institutional change.*

*Juan-Carlos Rey, Head of the European Commission Delegation in Mauritius*

## Economic Partnership Agreement negotiations – state of play

Negotiations on Economic Partnership Agreements (EPAs) between the ACP and the European Community (EC) were opened on 27 September 2002 in Brussels. During the first 12 months, horizontal issues of general interest were addressed at an all-ACP-EC level. Numerous meetings at ambassadorial and technical level took place around groups of issues such as the development dimension of EPAs, market access, agriculture and fisheries, services, legal issues and trade-related areas. A meeting at ministerial level between the ACP and the EC on 2 October 2003 marked the transition from the first phase of all-ACP-EC negotiations to the second phase of regional negotiations.

Christoph Wagner\*

This ministerial meeting was chaired by Hon. Merafhe, Minister of Foreign Affairs of Botswana. Commissioners Lamy and Nielson represented the EC. In the meeting, both sides agreed that EPAs must be instruments for development, promoting sustainable development of ACP countries, their smooth and gradual integration into the global economy and eradication of poverty. Therefore, EPAs will take account of the specific economic, social, environmental and structural constraints of the ACP countries and regions concerned.

Furthermore, a joint report was adopted which referred to the areas of convergence and divergence of the discussions in the first phase. Areas of convergence are, for example:

- regional integration is of crucial importance as a step towards the development of the ACP countries;
- regarding market access, EPAs will foresee flexibility, asymmetry and the improvement of current market access for ACP countries under the Cotonou Agreement, while being WTO compatible;
- the coverage and the length of transitional periods will be defined in detail at regional level, taking account of the specificity of the regions concerned; appropriate safeguard measures will be important;
- as “behind the border issues” are often serious barriers to trade, EPA negotiations should cover these trade related issues (as foreseen in the Cotonou Agreement);
- EPAs need to be accompanied by appropriate development support measures;
- for the second phase, both sides will establish an all-ACP-EC Technical Monitoring Committee, to maintain transparency with regard to regional negotiations and to ensure a free flow of information between all parties;
- the Joint ACP-EC Ministerial Trade Committee will have the task of ensuring the overall coherence of the various regional negotiations.

Discussions on areas of divergence, such as the need for additional resources, will also continue. All the documents and further information are available on the following website: [http://europa.eu.int/comm/trade/issues/bilateral/regions/ACP/index\\_en.htm](http://europa.eu.int/comm/trade/issues/bilateral/regions/ACP/index_en.htm)

Following the meeting in Brussels, Commissioners Lamy and Nielson travelled to Brazzaville, Congo, and Cotonou, Benin, to formally open EPA negotiations with Central (CEMAC + Sao Tomé and Príncipe) and West Africa

(ECOWAS + Mauritania) on 4 and 6 October respectively. In Central Africa, an agreement with the CEMAC Secretariat on the roadmap and structure of negotiations was reached. These documents have now to be endorsed by the CEMAC Council of Ministers at the end of November 2003. As regards West Africa, while views are converging on the negotiation structure and the timing for negotiation topics, the link between EPA negotiations and development support still needs further discussion.

The EU invited the negotiators of both regions, together with representatives of the private sector and civil society, to Brussels in November to participate in workshops on EU institutional structures, decision making processes, trade and development policies etc. These one-week events were appreciated by the participants as they provided first-hand information on the complex EU set-up and offered an opportunity to discuss trade and integration with Commission representatives from different services and with the ACP Secretariat. The workshops also provided a useful platform to exchange views on how to approach regional negotiations.

Also in November, two regional workshops with civil society representatives were organised in West Africa and the Caribbean to discuss the first findings of the Sustainability Impact Assessment (SIA) on EPA negotiations. Results will inform the final report of the first phase of this SIA (for more information see webpage: <http://www.sia-ACP.org/>).

Regarding other ACP regions, a group of African countries has announced that it will negotiate an EPA with the EC. On 2 October the Secretary-General of the Common Market for Eastern and Southern Africa (COMESA) transmitted the list of countries to the ACP Secretary-General and the Commission, and informed them that 17 countries from Eastern and Southern Africa (ESA) had asked the COMESA Secretariat to be the lead regional organisation for providing technical back-up to the ESA negotiators. The region is now selecting the lead negotiators and preparing negotiating guidelines. In southern Africa, SADC has organised internal discussions on its position in regional EPA negotiations. As regards the Caribbean and the Pacific regions, both are currently preparing their positions and it is expected that they will come to a conclusion within the next months. ■

\* Directorate-General for Trade, European Commission, Unit C, Trade relations with ACP countries including South Africa.

# Intellectual property



The Courier



Nassem Ackbarally/Syria International



Crispin Hughes/Panos Pictures

The concept of Intellectual Property (IP) is recognition of the need to provide protection and reward for creativity and innovation, and protection for property like trademarks and trade names. IP rights can also be considered as an instrument of public policy, designed to benefit society through the invention of new drugs, new technologies. From this viewpoint, IP is just as important for developing as for developed countries. But controversy is often generated by the issues surrounding intellectual property.

On one side, mostly the developed world, there is a powerful lobby pushing for longer protection for right holders, believing that intellectual property rights (IPRs) are good for business and for stimulating research and development. On the other side, mostly – but not only – the developing world, there is some hostility towards IP, saying that it cannot stimulate invention where the human and technical capacity is absent, but it rather penalises poor countries by increasing the cost of medicines and agricultural inputs. Furthermore, increased copyright protection for textbooks, journals and computer programmes raises the cost of mass education in developing countries. They push for more access to the benefits of innovation in such areas as pharmaceuticals, software and biotechnology.

IP can also be considered as a system of market control; some observers see patents, for instance, as an exemption to normal competitive trade rules. Trade is about movement of goods and services across borders, but IP law allows owners of IP to stop the movement of goods.

The current debate over access to medicines versus IPR is a stark example of these polarised perspectives. Under pressure from AIDS activists, some pharmaceutical companies have made huge discounts in their AIDS drugs for developing country markets. But some argue against discounting, saying that such two-tier pricing opens the door to infringement of patent rights and undermines the profit margin necessary to reinvest the huge sums needed to develop new drugs. Steps are being taken to allow cheaper generic drugs to reach the market sooner and to end delaying tactics used by some pharmaceutical companies wishing to extend their 20-year patent monopolies. No country has been more actively opposed to medical patents than India. In 1972, the country passed a law which permitted medicines to be copied even if they were under international patent, as long as the process was not the same. An often-quoted statement by Indira Gandhi at the World Health Assembly in 1982 encapsulated the sentiment: "The idea of a better-ordered world is one in which medical discoveries will be free of patents and there will be no profiteering from life and death".

## IP – protection or restriction?

During the Uruguay Round of trade negotiations, new international rules for intellectual property were sought. The result was an international agreement on Trade-



related Aspects of Intellectual Property Rights (TRIPS), under the World Trade Organisation (WTO). But bilateral or regional trade agreements between developed and developing countries often include commitments to IP regimes that go beyond or bypass TRIPS requirements; they include limits on compulsory licenses, export bans on drugs produced under such licenses, and patent protection beyond the 20 years required under TRIPS. During the past two decades, the scope, extent and role of IP protection has expanded at an unprecedented rate, covering new areas such as new technologies, biotechnology and information technology. Few areas remain untouched by IP issues.

In 2001 a Commission on Intellectual Property Rights (CIPR) was set up by the UK government to examine how IPRs could be designed to benefit developing countries by providing objective, evidence-based policy recommendations. Its report "Integrating Intellectual Property Rights and Development Policy", published in September 2002, is a valuable resource in the debate on how IPR might better serve to promote development and reduce poverty.

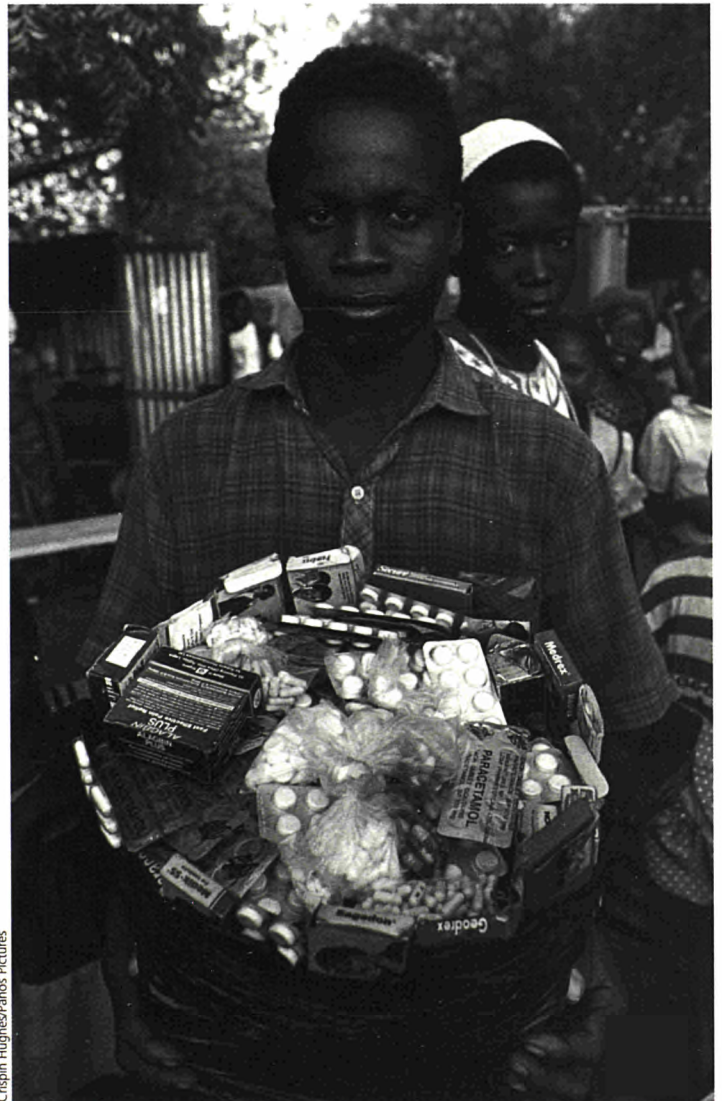
Many countries' economies took off under weak IP systems – Japan, Taiwan and South Korea, even the US and Europe, using strategies of technological imitation. Indeed, some observers believe that "creative" imitation is a necessary stage in the process of becoming innovative. But developing countries nowadays, in an era of strengthened IP regimes, may not be able to follow this path. Uncreative imitation (such as counterfeit), on the other hand, provides no scope for innovation and may remove the incentive to innovate. Indeed, counterfeit goods can be a threat to human safety when they involve pharmaceutical products or spare parts for vehicles and aircraft. Furthermore, some economists believe that growth will depend on Foreign Direct Investment and technology transfer, which need strong legal regimes, including IP protection.

What is sure is that the right equilibrium needs to be found between rewarding and protecting (but not over-protecting) intellectual efforts, while respecting the right to access and the construction of a common heritage. Development objectives need to be integrated into policy on IP, in national IPR regimes and in international agreements. For this to happen, developing countries must be involved in setting standards in IP.

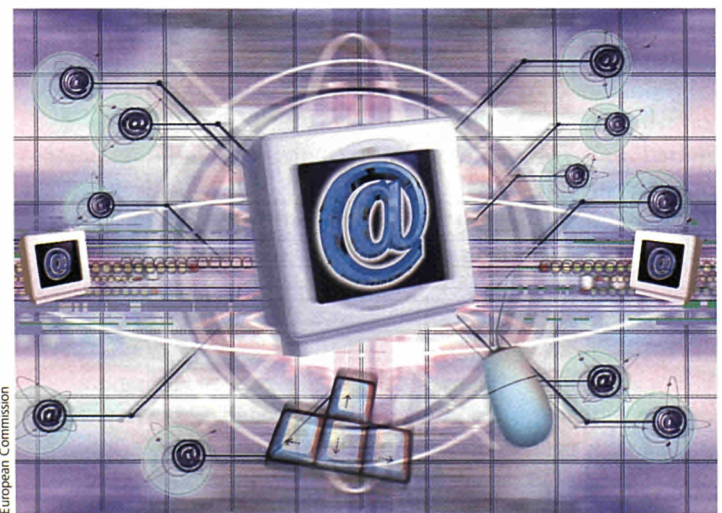
The CIPR summarised the situation as follows:

... our conclusions place a responsibility on the international community to assess whether the mechanisms in place for negotiating intellectual property standards, both multilaterally and bilaterally, take sufficient account of the interests of developing countries and poor people. We consider that the institutional framework is not optimally suited to this task and needs to display considerably greater sensitivity to these issues."

D.M.



Crispin Hughes/Panos Pictures



European Commission

# The World Intellectual Property Organization (WIPO)

## and the developing world

The Director General of WIPO, **Kamil Idris**, replies to the *Courier's* questions on the relevance of intellectual property for developing countries. He began by outlining the origin and aims of WIPO.

François Lefèbvre

The roots of the World Intellectual Property Organization (WIPO) go back to 1883, the year that marked the birth of the Paris Convention for the Protection of Industrial Property. In 1886, copyright entered the international arena with the Berne Convention for the Protection of Literary and Artistic Works. The aim of this Convention is to help nationals of those countries that have signed the Treaty to obtain international protection of their right to control, and receive payment for, the use of their creative works.

Like the Paris Convention, the Berne Convention established an international bureau to carry out administrative tasks. In 1893, these two small bureaux united to form an international organisation called the United International Bureaux for the Protection of Intellectual Property (best known by its French acronym BIRPI). Based in Berne, Switzerland, with a staff of seven, this small organisation evolved into the WIPO of today – a dynamic entity with 179 member states and a staff that now numbers over 900, from some 92 countries around the world.

In 1974, WIPO became a specialised agency of the United Nations system of organisations, with a mandate to administer intellectual property matters recognised by the member states of the UN. The Organization has since expanded its role and demonstrated the importance of intellectual property rights in global trade and as a catalyst for economic, social and cultural development.

WIPO's objective is the promotion of the effective protection and use of intellectual property throughout the world through cooperation with, and among, member states and other stakeholders. To this end, WIPO is working to create an environment conducive to an enhanced understanding of the contribution of IP to improving human life. WIPO is committed to assisting developing countries in building their capacity to deliver efficient IP services, and enable greater access to, and more effective use of, the IP system to further their national development objectives.

*Can you explain the importance of IP for developing countries?*

The 21st century presents many challenges – including bridging the widening knowledge divide and reducing poverty. The success of a country in meeting these challenges will depend upon its ability to develop, use and protect its national creativity and innovation. An effective intellectual property (IP)



system, embedded within a national IP strategy, will help nations to promote and protect their intellectual assets and thereby promote national development objectives. The intellectual property system is a powerful catalyst to trigger the application of new ideas and creativity to economic life, generating new industries, new products, new services, and stimulating investment while reinforcing traditional areas of commercial and industrial enterprise.

WIPO is committed to supporting developing and least developed countries in their efforts to maximise the use and effectiveness of IP as a tool for economic, social and cultural development. To this end, WIPO offers help in strengthening national IP systems

and in creating a policy environment that encourages innovation and creativity and that allows for optimal use of these intellectual resources as economic assets.

*The criticism is often made that a reinforcement of IP can lead to restrictions for developing countries, denying them access to ideas and technologies that are vital for their development. How can developing countries afford and benefit from technologies devised by the North?*

The intellectual property system does not discriminate between users, be they from developed or developing countries. The underlying concept behind patent rights, as a typical example of intellectual property rights, is that of an exchange – in exchange for exclusive rights over their inventions or creations for a fixed period of time, the intellectual property right holder must disclose to the public details of their inventions. This feeds the body of technological knowledge in the world and provides fuel for technological development.

The challenge for the developing world lies in overcoming certain barriers that inhibit access to and full exploitation of the intellectual property system. And by barriers to access, I do not just mean financial barriers. Access may be improved by putting an effective legal and policy infrastructure into place. This facilitates use of the system and enforcement of IP laws.

WIPO is working towards the development of a flexible, user-friendly, cost-effective and fully responsive international intellectual property system that is widely accessible, and that provides an appropriate balance between the rights of inventors and creators and the public interest in general.

In the context of developing countries, two factors define the environment for acquiring technological capacity. First, developing countries realise that to benefit from the global trend towards greater free trade and to encourage foreign investment, adequate IP protection is essential. Second, the amount of technological knowledge that is in the public domain – and increasingly accessible through online sources – is much greater than just two decades ago.

*Is it possible to find a balance between legal and commercial interests protected by IP and protection of global public goods? How can IP be balanced with the rights of users?*

Yes, indeed, it is possible. As mentioned earlier, our aim is to develop a flexible system that provides an appropriate balance between the rights of inventors and creators and the general public of all countries. In addition to striking the proper balance within the IP system, we are encouraging countries to develop an IP strategy that is fully integrated with the broader social, economic and cultural context. This is in order to ensure that an appropriate balance between public and private interests is maintained. There is no one-size-fits-all solution and each country must tailor its IP strategy, taking into account its particular circumstances.

*Some people believe that patents threaten "traditional collective knowledge". What do you think?*

The patent system can and should respect traditional knowledge. Many traditional knowledge holders are themselves innovators, and deserve recognition for their inventions. Many innovators working within a traditional context have been granted patents – for example, many practitioners of traditional Chinese medicine hold patents for their inventions.

Much concern has been expressed that patents could be used to misappropriate traditional knowledge. It is a fundamental principle of patent law that patents should only recognise newly-developed inventions. To be eligible for a patent, therefore, an invention has to be a clear step forward, a truly inventive addition to what was known before. Moreover, the entitlement to a patent must be derived from the true inventor. So if a patent applicant asserts that they have invented something that is already part of traditional knowledge, their claim could fail for two reasons – first, the application is not derived from the true inventor, and second, it is not new and inventive.

As it can be difficult in practice to locate traditional knowledge that may be relevant to a particular patent application, WIPO has been working to improve the recognition of traditional knowledge within the international patent system. Governments, too, are taking action in this regard. The government of India has, for example, developed a Traditional Knowledge Digital Library, aimed at ensuring that traditional medical knowledge that is already publicly available is readily accessible to patent examiners.

*Why has WIPO decided to involve indigenous people and local communities in the extension of IP?*

Indigenous people and local communities are the custodians of diverse intellectual and cultural heritages that are invaluable, and indeed often form the basis of their very social and cultural identity. Indigenous and local communities are themselves strongly articulating the need for this intellectual property to be better respected, and for a fair share of the benefits of its exploitation to flow back to them. It has been our priority to involve indigenous and local communities in WIPO's policy debates in this area.

This work began in 1998 and aims to strengthen the capacity of these communities to make their own choices about intellectual property protection, to better control their own intellectual property, and to derive benefits from it. As a first step, a worldwide fact-finding dialogue was established with more than 3,000 holders of traditional knowledge and representatives of indigenous communities. The needs and expectations expressed in this dialogue still provide critical guidance for WIPO's work.

*In your view, is there any contradiction between the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement and the Convention on Biodiversity (CBD)?*

There is a complex legal debate about this issue. It should be put into perspective by looking at the basic objectives of the CBD and the intellectual property system. The CBD aims at conserving biodiversity, the sustainable use of its components, and equitable sharing of the benefits from its use. The thrust of the intellectual property system, and patent law in particular, is to recognise innovation, define and clarify its derived benefits and to promote its exploitation in an equitable way for the benefit both of the innovator and of society at large. Intellectual property rights are therefore an integral component of an overall approach to defining and sharing the benefits resulting from the use of biodiversity. ■

### The evolution of WIPO

The Paris Convention for the Protection of Industrial Property was the first major international treaty designed to help the people of one country obtain protection in other countries for their intellectual creations in the form of industrial property rights, known as inventions (patents), trademarks, and industrial designs. The Paris Convention entered into force in 1884 with 14 member states, which set up an international bureau to carry out administrative tasks.

It was followed in 1886 by the Berne Convention, which also set up its own bureau. The union of these two in 1893 created the United International Bureaux for the Protection of Intellectual Property (BIRPI). In 1960, BIRPI moved from Berne to Geneva to be closer to the United Nations and other international organisations in that city. A decade later, following the entry into force of the Convention Establishing the World Intellectual Property Organization, BIRPI underwent structural and administrative reforms to become WIPO, an intergovernmental organisation whose mandate is to promote creativity and the protection of intellectual property rights through cooperation with its member states.

# Putting intellectual property at the service of development

A nation's well-being increasingly hinges on its ability to convert knowledge and information into tangible economic assets. So a good intellectual property system is a powerful tool for economic, social and cultural development. Here **Khamis Suedi**, Assistant Director General of the World Intellectual Property Organization (WIPO), looks at the importance of using intellectual property to fully realize the economic potential of a country's intellectual assets to foster economic growth, improved living standards and cultural enrichment.

Knowledge and information are fast replacing material production as the engines of economic growth. The intellectual property (IP) system has a key role to play in the process of converting knowledge into earnings, so it is a prerequisite for creating wealth and improving the lives of people throughout

the world. Economic trends show that a nation's ability to generate wealth and protect its cultural heritage depends on its access to and use of the intellectual property system. The World Intellectual Property Organization (WIPO) is at the forefront of efforts to ensure that the rights of creators and owners of intellectual property are protected worldwide and that these are recognised and rewarded for their ingenuity.

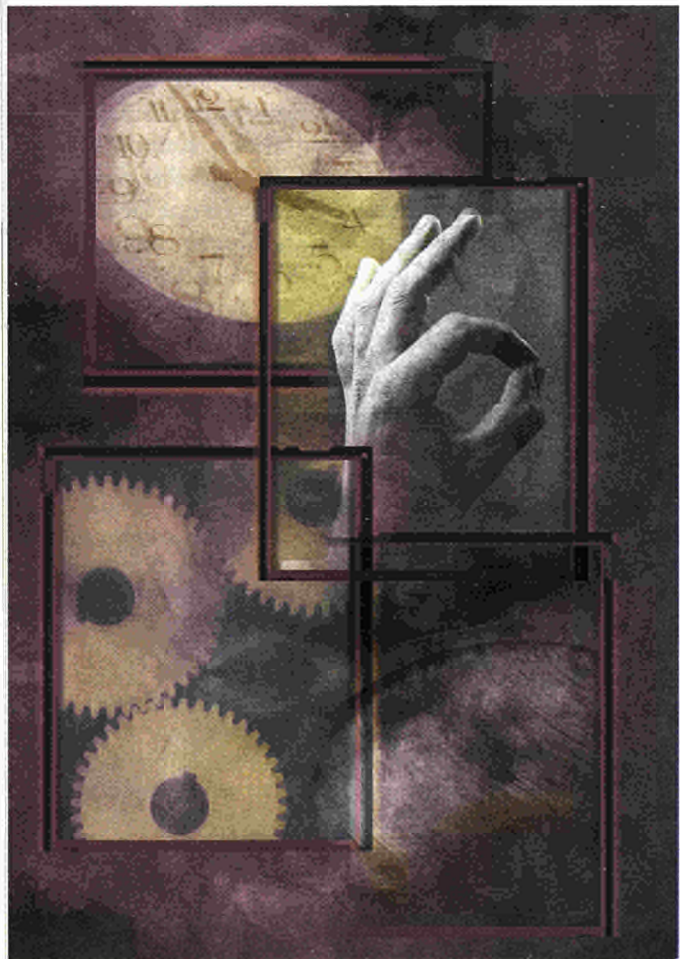
The incentives built into the IP system encourage inventors and artists to realise their talents and push forward the frontiers of technology and creativity. The tools of that system (for example patents, trademarks and copyright) allow them to transform the fruits of their intellectual efforts into assets that can benefit themselves and their countries. The vision guiding WIPO's mission is to ensure that all countries are able to capitalise on the opportunities presented by the knowledge economy and to tap into the limitless creative resources of their people in order to generate sustainable social and economic development.

WIPO believes it is necessary to build a greater awareness in all sectors of society – policy-makers, government officials, the business community and the general public – of the relevance and role of intellectual property in enriching every aspect of life. WIPO is committed to empowering member states to develop, protect, enforce, manage and commercially exploit IP. To this end WIPO offers a range of services to help countries reach their IP goals and development objectives.

## Support services for developing countries

These services include the provision of legal support in response to requests for advice on IP laws and systems, especially on how developing countries and LDCs can use and benefit from the IP system to promote their development objectives. They include support for commercially exploiting inventive and creative works and ensuring the proper distribution of revenues derived from the sale of such works; advisory and technical services in the area of information technologies and the automation of administrative and business processes in IP offices. Training people who are actively involved in setting up the IP infrastructure and making it work is a key component of WIPO's strategy.

The organisation is committed to the use of information technologies and digital networks to deliver and administer its programmes. WIPO is capitalising on new technologies to improve the flow of IP information. The development of WIPONET is an example. It is a global network that will integrate the IP resources and services of the international intellectual property community together with those of the WIPO secretariat. WIPONET will enable broader involvement by developing and least developed countries in IP debates and



European Commission

will enhance access, participation and opportunities associated with IP, knowledge-based services and electronic commerce.

The Distance Learning Program (DLP) offered by the WIPO Worldwide Academy (WWA) enables the organisation to reach out and train a wider audience. It has great promise, particularly for developing countries where distance is often a barrier. In the past five years the DLP has enabled some 20,000 students from 179 countries to learn about IP.

At national and regional levels WIPO responds to the specific needs of member states for legislative advice and practical assistance through "nationally focused action plans" (NFAPs). An NFAP is tailored to the needs and requirements of a particular country. It is designed to generate practical strategies to support national efforts to develop and use all forms of IP as an economic asset.

### International cooperation

Establishing a modern legislative framework, however, is just the beginning. Implementing and enforcing it are major undertakings for developing countries. Efficient enforcement of intellectual property rights, particularly against counterfeiting and digital piracy, requires international cooperation. WIPO is actively engaged in fostering such cooperation.

The development of international IP law is a crucial element in creating a flexible and responsive international system. In September 2001 WIPO launched its Patent Agenda in order to address the many logistical and policy-related challenges facing the international patent system. This initiative coordinates discussions on the future development of the international patent system. Its aim is to make the system more user-friendly, affordable and accessible, and to ensure that it provides an appropriate balance between the rights of inventors and the interests of the general public, taking into account at the same time the implications for the developing world.

The advent of digital technologies and the explosive growth in internet use have also generated a host of challenges for IP policy-makers. The global, anonymous character of the internet and its technical sophistication have underlined the inadequacy of conventional approaches in protecting the rights of IP owners in cyberspace. Increasingly the intangible products that are fuelling the knowledge economy lend themselves to transmission in digital form at the click of a mouse to anywhere from anywhere without any loss of quality.

The WIPO Digital Agenda aims to address these issues by outlining a series of practical steps to broaden participation in the new economies of the 21st century, and to expand the benefits that the internet and e-commerce create. The first item on the agenda is to broaden the participation of developing countries through the use of WIPONET, as described above.

The rise of the knowledge economy has put a premium on information and knowledge of all types and has prompted the organisation and its member states to study, review and initiate activities in new and emerging global intellectual property issues. Traditional knowledge has long been an area where communities, groups and countries have asked for help.

WIPO is now actively involved in the search for answers. Under the aegis of the Intergovernmental Committee (IGC) on Genetic Resources, Traditional Knowledge (TK) and Folklore, created in April 2001, it has been possible to foster better understanding of the approaches available for legal protection of traditional knowledge and cultural expressions and IP aspects of genetic resources.

WIPO is also working to enhance its global protection systems (GPS) for patents, trademarks and industrial designs. These systems are one of the most practical ways in which WIPO supports users of the IP system worldwide. Securing protection of IP rights where registration is required as a formality can be lengthy, complex and costly. WIPO is trying to make the GPS a more user-friendly, cost-effective and attractive option, particularly for developing and least developed countries, by simplifying and improving procedures and reducing costs.

Also, WIPO's Arbitration and Mediation Center Service serves as a global forum for resolving disputes relating to domain names. Since its launch in December 1999 the centre has dealt with over 20,000 domain-name-related cases. These services offer a cost-effective and rapid way of resolving disputes about the abusive registration of trademarks as domain names.

### Progress and innovation

WIPO's approach is based on a growing recognition that nations and enterprises can develop and promote the use of IP as an economic asset. WIPO's cooperation with developing countries will continue to focus on demystifying IP and building capacity in the form of essential IP infrastructure. Initiatives in these areas will help to ensure that countries are better placed to capitalise on their creative resources and to reap their potential social, economic and cultural benefits.

WIPO's current and future activities are underpinned by a deep-rooted belief in the relevance of intellectual property to development. The correlation between the progress of the human race and its ability to invent and innovate is indisputable. Intellectual property is at the heart of the endeavour. ■



# Intellectual property protection and public health

Access to medicines and the link to pharmaceutical patents has been on the table for World Trade Organisation (WTO) members since the organisation's ministerial meeting in Seattle in 1999. At the end of August this year, WTO members broke their deadlock over intellectual property protection and public health, agreeing on legal changes to make it easier for poorer countries to import cheaper generics made under compulsory licensing if they are unable to manufacture the medicines themselves. This article looks at the effect the recent decision on "Paragraph 6" will have on improving access to medicines in developing countries.

Lena Sund\*

Two years after the WTO's Seattle meeting, when ministers met in Doha in November 2001 they were able to conclude a Declaration on the relation between the TRIPS Agreement and public health. This declaration, which stands on its own, separate from the new WTO Development Round that was initiated at Doha, is important for many reasons. Firstly, it is the first time developing countries, with Zimbabwe in the lead, initiated an issue at WTO level that members could react to swiftly. Secondly, it set a badly needed example for the Development Round. Thirdly, and of course most importantly, it brought security to many developing countries in their efforts to develop health policies including provision of patented medicines, for the benefit of their populations.

The Doha Declaration on the TRIPS Agreement and public health recognises the gravity of public health problems in relation to epidemics. Members agreed that the TRIPS Agreement does not, and should not, prevent measures to protect public health and promote access to medicines for all. The most direct effect of the Declaration is that Least Developed Countries (LDCs) will enjoy an additional ten-year period up to 2016, before they have to accept pharmaceutical patents in their legislation. This agreement has subsequently been integrated into TRIPS.

Another issue of utmost importance agreed in Doha is that "each Member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted" (a compulsory license means that a government issues a decision to the effect that a valid patent is "confiscated" without the patent holder's consent in response to an emergency or other valid reason). WTO members then turned their attention to the issue of the unequal relationship between developed and developing members, in the sense that most of the developing members have no or insufficient manufacturing capacity to produce pharmaceuticals on a national level. This means that these countries are unable to make use of their right to issue a compulsory license since import of the products in question is impossible if a patent in the exporting country is in effect. Export under a compulsory license is prohibited under TRIPS and an exemption from this prohibi-

## Will the WTO deal on compulsory licenses for medicines improve access to treatment for disease stricken populations?

tion in order to supply these countries had to be agreed. Members were not able to crack this problem in Doha and referred it back to the TRIPS Council to deal with and conclude before the end of 2002 (the "Paragraph 6 issue").

"Paragraph 6" deal concluded in August 2003

The TRIPS Council did not manage to conclude a solution to the outstanding issue within the set deadline. The EU and other members worked hard on a compromise, which was agreed to by all but one – the US – on December 16, 2002. The US was under heavy pressure from the research based pharmaceutical industry, which feared that the use of compulsory licenses for exports would "open Pandora's Box" in terms of weakened patent protection and therefore insisted on further restrictions in both scope and use. With the next ministerial meeting coming up, this time in Cancún, there was an urgent need, politically, to resolve the "Paragraph 6" issue. The very continuation of the Development Round was in danger and the "Paragraph 6" issue became of central importance. The Decision of the WTO General Council is dated 30 August i.e. just before the Cancún meeting in September.

In short, the Decision states that an importing member, which is an LDC or has notified the TRIPS Council of its intention to use the system and lacks capacity to produce in-country, may issue a compulsory license for the quantity of medicines needed. The exporting country then issues a "back-to-back" compulsory license to meet that need and ensure the entire production, made under the license, is exported to that specific country. It is to be noted that the exporting country pays the obligatory license fee to the patent holder, while the normally poorer importing country is relieved of this.

A set of conditions, notifications and control measures are attached to ensure that the system does not become a regular tool to avoid patent protection and in particular, to ensure that products are not "leaked" to markets other than those for which they were produced. The Decision does, however, recognise the need for free circulation of such products within neighbouring countries which share the same health problem and with whom the importing country has a regional trade arrangement.

This Decision, which can best be described as a political undertaking, needs to be translated into a formal amendment of Article 31 of the TRIPS Agreement, with work starting by the end of 2003 with a view to finalisation by mid-2004. As the system is voluntary on both the importing and exporting side, WTO members are free to use it within the restrictions and conditions set out. National provisions in the patent laws will have to be changed to reflect this agreement. Canada is the first WTO member that has taken this step by proposing an amendment that



© Mikkel Ostergaard/Panos Pictures

Malawi. Sorting drugs in a medical laboratory.

will enable them to export under a compulsory license. It is expected that most members will await the final TRIPS text before they consider their participation. Until this text is negotiated, WTO members have agreed not to initiate dispute settlement proceedings against other members making use of the system.

### Compulsory licenses do not ensure access to medicines for all!

A lot of attention surrounded first the Doha declaration and later the process that led to the "Paragraph 6" Decision. But what will it bring in terms of production and increased access to drugs?

The main issue in the WTO Seattle meeting in 1999 was that medicines are largely out of reach due to patents making them extremely expensive. Patented medicines were and are in general more expensive than non-patented drugs. However, we see a trend today whereby prices for certain patented medicines for certain developing markets have dropped considerably. When the discussion on anti-retroviral medicines to treat HIV/AIDS took off some years ago, prices world-wide were as high as \$10,000 per person per year. Now we see certain types of patented anti-retrovirals on sale in poorer markets for \$200. For countries with a health budget per person of \$10 a year, or even less, it is obvious that these prices are still well out of reach.

Many producers consider poorer country markets insufficiently profitable to file a patent. Therefore, these countries are able to produce or import most sophisticated medicines

without the new exemption regarding compulsory licenses. Likewise, countries with no patent legislation in force are free to produce or import. This latter situation applies to LDCs (TRIPS implementation 2016 in respect of pharmaceuticals) and to countries which are not members of the WTO and therefore not party to the TRIPS Agreement.

India, as a developing country benefiting from a specific exemption from awarding patents on pharmaceuticals until 2005, is well placed to supply these countries. We know that exports from India to these countries are limited but slightly improving. The reasons for the slow up-take are, again, lack of funds and local health services.

It is clear that the current Decision on "Paragraph 6" will not on its own significantly improve access to medicines, in particular since the system is complicated and burdensome. It is expected that a handful of countries will explore the route as importing countries in order to make a difference to their populations. These are developing countries of a certain standing i.e. with sufficient funds to buy large quantities and possessing negotiating power to achieve the best possible prices. The exporting countries, on the other hand, have more to win but have to be competitive both when it comes to prices and quality.

In the future, when all developing WTO members have fully implemented the TRIPS Agreement, the picture might have changed and the system to allow export under compulsory licensing might prove more useful in improving access to medicines on a broad basis. Until then, poorer countries with populations suffering from communicable diseases are better off looking for available funding and the lowest possible prices.

Countries with manufacturing capacity, including EU member states, should be encouraged to opt for becoming potential exporting countries under the system. This involves amending their national legislation to legalise export under compulsory licenses so as to be ready to provide if and when needed. This could well be done in anticipation of the formal amendment to the TRIPS Agreement to support the political agreement envisaged in the Decision. ■

\* DG Development, Unit B3 Human and Social Development

In February 2001 the European Commission adopted the Programme for Action: Accelerated action on HIV/AIDS, malaria and tuberculosis in the context of poverty reduction (updated on 26th February 2003), which is based on a comprehensive approach to the three major communicable diseases. The Programme for Action focuses on:

- maximising the impact of measures to strengthen health care systems on a national basis,
- increasing "affordability" i.e. seeking to lower the prices of essential medicines,
- identifying ways and means of promoting research into new pharmaceuticals and vaccines to fight these diseases.

The Programme was recently updated by a Commission Communication COM (2003)93.

One of the Commission's objectives is to improve the affordability of medicines, to ensure that the least developed and low income countries benefit from the lowest possible prices. This includes a sustainable framework for tiered priced products and assurances that these products remain in the markets for which they are intended. The latter problem is addressed in Council Regulation 953/2003 which gives tiered-price medicines sold to developing countries protection against re-importation into the EU.

More information is available at:  
[http://europa.eu.int/comm/trade/issues/global/medicine/index\\_en.htm](http://europa.eu.int/comm/trade/issues/global/medicine/index_en.htm)

# The recent agreement on WTO patent rules

## and access to medicines: a flawed deal?

In recent years international controversy has raged over the way in which global patent rules – as enshrined in the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) – are set to further restrict poor people's access to vital life-saving medicines by allowing companies to charge high prices for vital medicines. The WTO TRIPS Agreement requires all member countries, irrespective of their level of development, to provide a "minimum" of 20 years patent protection for all products and processes, thereby providing the pharmaceutical companies with an effective global monopoly for new medicines. Furthermore, the United States is using unilateral pressure and bilateral and regional trade agreements to ratchet up patent protection on medicines beyond the standards in TRIPS.

Ruth Mayne\*

Over 14 million people die each year from treatable infectious diseases such as HIV/AIDS, tuberculosis and malaria. More than forty million people are now living with HIV/AIDS, and close to 8,000 people die of AIDS every day in the developing world. Non-communicable diseases – such as cancers, asthma, diabetes and cardiovascular diseases – account for at least 40 per cent of all deaths in developing countries.

Much of this illness could be prevented if poor people had access to affordable medicines. But currently one third of the world's population does not. Moreover, because poor people lack purchasing power there is a lack of research into diseases

such as tuberculosis, malaria, and shigella. Less than 10 per cent of global spending on health research goes on 90 per cent of the global disease burden.

Many factors restrict access to medicines: poverty i.e. lack of money to buy medicines, lack of political will of governments, poor health infrastructures, inappropriate drug selection. But the price of medicines is also a key barrier in poor countries.

The main public focus has been on the excessively high price of patented HIV/AIDS medicines. But the problems caused by the TRIPS Agreement will extend beyond HIV/AIDS. There are many other diseases that ravage developing countries, for which new or improved treatments are, or will be, patented and expensive. Drug-resistant strains of tuberculosis, malaria, pneumonia and gonorrhoea are spreading fast, with enormous human cost. Non-communicable diseases pose an increasing burden in poor countries, and new diseases – such as SARS – can emerge.

As a result of a growing global concern, and the strong and united stance of developing countries, WTO members agreed the Doha Declaration on TRIPS and Public Health at the Doha ministerial meeting in 2001. This landmark Declaration affirmed the primacy of public health over private patent rights, and confirmed the rights of governments to use the existing public health safeguards in the Agreement, such as compulsory licensing, "to promote access to medicines for all". While the Declaration will not solve all the public health problems arising from the TRIPS Agreement, it was an important step forward in the struggle for affordable medicines, and a victory for developing countries at the WTO.

Activists of the Global Access Project during a protest in Cancún, Mexico, during the 5th WTO Ministerial Conference in September 2003. The AIDS activists are protesting against the current barriers for AIDS medicines and other medicines for other diseases and demand an accord on improving access to generic drugs.





### A case of double standards?

Paragraph 6 of the Declaration on TRIPS and Public Health mandated WTO trade ministers to find a solution to one unfair and highly damaging double standard in the Agreement. This double standard prevents countries without drug production capacity – including most developing and least developing countries – from making effective use of compulsory licensing to gain access to affordable generic medicines. Currently rich countries can issue a compulsory license to produce a cheaper generic version of a patented medicine if the price is too high or supply limited. But most developing countries do not have the manufacturing capacity or market size to do so, and so rely on imports, at least for the active ingredients.

However, when the developing country drug-producing countries have to comply with WTO rules in 2005, it will be much harder for them to continue exporting. At this point countries without adequate drug production capacity will no longer be able to get access to cheaper generic medicines. They will have to pay the high price of the patented product – which they can ill afford – or leave patients without treatment.

### A flawed deal?

Finding a solution to this double standard, should have been a purely technical matter, but the drug companies used their influence through the US and the EU, to try and backtrack on the promises they made at Doha. Rich countries exerted great pressure on developing countries to accept a deal which could only be used for certain diseases, emergencies or only by the poorest countries, even though the Doha Declaration contained no such restriction. They also tried to pressure developing countries to accept new layers of bureaucracy and legal hurdles. Finally, following two years of intense wrangling the WTO finally agreed a “solution” to this issue on 30 August, just before the 5th WTO ministerial meeting in Cancún. Supachai Panitchpakdi, WTO Director-General, was quoted as saying:

“This is a historic agreement for the WTO. The final piece of the jigsaw has fallen into place, allowing poorer countries to make full use of the flexibilities in the WTO’s intellectual property rules in order to deal with the diseases that ravage their people. It proves once and for all that the organization can handle humanitarian as well as trade concerns.” However, NGOs, including Oxfam, MSF, Third World Network and others, which had campaigned for a much simpler and fairer solution originally backed by the WHO and many developing and ACP countries, took a different view. In a joint statement at Cancún they said: “The August 30 WTO deal on exports of generic medicines is being presented as a gift to the poor. However, it is a “gift” bound tightly in red tape. As a measure of trade policy, it contradicts the basic principles of the WTO and free trade. The good news is that the developing countries resisted pressure from the United States, the European Union, Japan and other developed economies to limit the agreement to only a few diseases or for only extraordinary circumstances. But for a WTO “deal” to be more than a public relations exercise for a new round of trade rules, it should actually work in practice. The WTO took a 52-word mechanism that was endorsed by the European Parliament in 2002 and created a 3,200-word maze of red tape.”

The mechanism agreed by the WTO requires both the importing and exporting country to issue a compulsory license (if patents are in place), leaving most poor countries dependent on a political decision in another country to meet their health needs. Along with other restrictions, the double compulsory license also creates the possibility for uncertainty and delay, making the deal unnecessarily difficult for developing countries and generic companies to use. Moreover, ambiguities in wording leave the door open for the US and industry to restrict the scope of the deal by exerting bilateral pressures behind the scenes. However, despite these problems, the priority now must be for countries to implement it without any further restrictions, to try to make it work, and see if it can deliver the desired results. The NGO joint statement called upon every country that does not have “access to medicines for all” to begin to use the TRIPS public interest safeguards, and the 30 August 2003 WTO decision, to provide affordable medicines to the poor. This could still include simpler and more effective ways of allowing exports under TRIPS, for example under an Article 30 exception or Article 31k. The NGO joint statement noted that the current decision is only a temporary waiver, and the permanent amendment to TRIPS is scheduled for 2004. They called upon WTO member countries to draft an amendment to the TRIPS Agreement that simplifies and clarifies the procedures and removes unnecessary obstacles to the export of medicines to address public health problems.

The NGO statement also strongly urged countries to resist implementation of TRIPS-plus obligations in regional or bilateral trade agreements. Finally, the NGO joint statement said that if the framework imposed on countries by the WTO cannot be used effectively to promote public health and access to medicines for all, then poor countries should not be obliged to issue patents on medicines.

### Deeper problems with TRIPS

The deal was supposed to remove restrictions on the export of affordable generic medicines – but it does nothing to address the 20-year patent period imposed by TRIPS which restricts the production of affordable medicines. Increasingly, in the future the supply of generic versions of newly patented medicines will rely on countries issuing compulsory licenses. Unless this can and is done in a routine and flexible way, or unless patent rules are relaxed in developing countries, it will become increasingly hard for generic companies to achieve the necessary markets and economies of scale to produce affordable, quality generic medicines. If this happens it will mean new improved medicines will remain priced out of reach for many of the world’s poor. For this reason the international community must continue to monitor the health impacts of the Agreement, and consider further future reforms to the TRIPS Agreement in order to give developing countries greater freedom to decide the appropriate length and scope of patent protection for medicines based on public health needs. More broadly, evidence from authoritative sources indicates the need for a substantive review of the entire TRIPS Agreement in the light of its detrimental impact on global intellectual property rules on innovation, access to knowledge-based goods and development. <sup>1</sup> ■

\* Policy Adviser OXFAM GB

1. Powerful critiques of the one-size fits all, high level of intellectual property protection mandated by TRIPS can be found in the reports of the UK’s expert International Commission on Intellectual Property Rights and the UK-based Royal Society, and in World Bank studies.

# Information for all:

## access to knowledge as a basic right

Knowledge is increasingly stored in digital form and some of it is freely available through Information Technology. At the same time information covered by copyright – whether in the private or public sectors – is becoming more closely protected and costly. In this article Dr Michel Loots\* argues that the kind of information necessary for the development of the least developed countries (LDCs) should be made freely available to them, and looks at ways in which it could be distributed.

Copyright rules are global but are tailored to the cultures and economic needs of industrialised countries. Despite calls to ease these rules for developing countries, the opposite is happening. Encryption, fingerprinting, watermarks and digital signatures<sup>1</sup> will make it easier to enforce them in developing countries. These new technologies track, monitor and control the use and redistribution of digital objects such as software, text, audio and video. It will become impossible to use protected digital files in unauthorised ways.

Most users in developing countries will not be able to pay for or subscribe to commercial licenses. But there is an enormous amount of intellectual property that belongs to governments and non-profit institutions. Much of this is as good as its commercial counterparts in fulfilling basic and even advanced information needs in LDCs, but it needs to be released and distributed in a more efficient and general way.

### A widening digital gap

Libraries used to own and store books. Even without an acquisition budget a library could survive because of its books. But information is rapidly becoming unavailable in hard copy, replaced by digital versions ruled by licenses. For these licenses, the library or user has to pay a rent on a time or usage basis. Soon some libraries will not hold hard copies, but will provide access to digital information through digital licenses – as long as they pay for them. Many libraries in developing countries, with no budgets and no licenses, will have even more outdated shelves than they have now, or might simply cease to exist.

Informal unauthorised copying, as is currently practised in many developing countries, will become impossible with new copyright protection technology. This creates an immense challenge in redefining fair use and access as a basic human need in LDCs. Education, water, food and shelter are human rights. Simple, reliable access to essential information and knowledge should be a basic right as well.

The intellectual and knowledge property in governments and non-profit institutions can supply this right in part. The challenge is to define basic information and software needs and to ensure optimum access to them. One measure should be to facilitate redistribution by local multipliers, making basic information packages available to all free of charge, by copying

them onto every computer in the target group. Digital libraries can fulfil this basic promise of “information vaccination”. Public-commercial partnerships and “intellectual philanthropy” could meet the next level of basic information needs.

### Access to essential information in LDCs

The first maternity hospital in Somaliland<sup>2</sup>, Edna Maternity Hospital, is using old, recycled computers. Because of the cost, staff cannot use the internet on a daily basis, and they have minimal IT skills, or none at all. International volunteers and donors are helping to bridge this digital divide by providing the hospital with resources and a library, training and research facilities including IT. There are many other maternity hospitals without donor support or IT volunteers. These unaddressed training needs could be met by providing free or low cost digital collections, education toolkits, and DVDs and CDs with training videos.

Medical school libraries throughout sub-Saharan Africa have suffered massive budget cuts over the past 10 years. Many libraries, let alone individual students and lecturers, have no money to buy books, journals or computers<sup>3</sup>. Whereas a US medical library subscribes to about 5,000 journals, the Nairobi University Medical School Library, long regarded as a flagship centre in East Africa, received just 20 journals in 2000 (compared with 300 a decade earlier). In Brazzaville, Congo, the university had only 40 medical books and a dozen journals, all from before 1993, and the library in a large district hospital was a single bookshelf filled mostly with novels<sup>4</sup>.

There are innovative UN-private initiatives to mitigate this problem of access to journals. The WHO’s “Health Inter-network Access to Research Initiative” (HINARI) and the world’s biggest biomedical publishers allows free online access to hundreds of their journals to more than 1,000 institutions in least developed countries. Medical schools and research institutions in developing countries are given free access through the internet to 2,000 of the world’s most important medical and scientific journals<sup>5</sup>. The AGORA (Access to Global Online Research in Agriculture)<sup>6</sup> initiative led by the Food and Agriculture Organization of the United Nations, will provide free or very low cost access to 400 journals in the agricultural, biological, environmental and social sciences.

These initiatives could be expanded to other fields and to cover all institutions in the target countries. But this depends on a degree of intellectual philanthropy on the part of commercial or semi-commercial publishers, and will be difficult to impose or regulate without touching the economic foundation of the industrialised countries: intellectual property rights and patents. So it might be better to empower the UN system to expand these intellectual philanthropy projects to a level that meets as many of the research information needs of developing countries as possible.

There are also several university projects aiming to make academic journals or courses available free of charge online – for example the Open Docs project of the Open Archives initiative<sup>7</sup>

and the OpenCourseware<sup>8</sup> initiative of the Massachusetts Institute of Technology (MIT). The OpenCourseware initiative provides about 1,000 MIT course materials free online and is inspiring other universities to do the same. This could become a model for exchanging and distributing research information for developing countries over the next five to ten years.

### Non-commercial intellectual property rights

Most non-profit or governmental organisations (including the UN) provide many of their publications free online and have copyright notifications on these documents and a copyright explanation on their sites. But these intellectual property rights

(IPR) provisions are mainly of help to end-users and not to multipliers. Very few organisations provide a clear and easy-to-apply scheme for authorising copying and redistribution. So even within the public and non-profit sector it can be very difficult to identify, obtain permission and use documents belonging to others for cross-compilations or multidisciplinary digital collections.

Many of these publications will only be available in English or a few other Western languages. Therefore national projects should be started to translate thousands of such essential free publications into local languages in universities in each country.

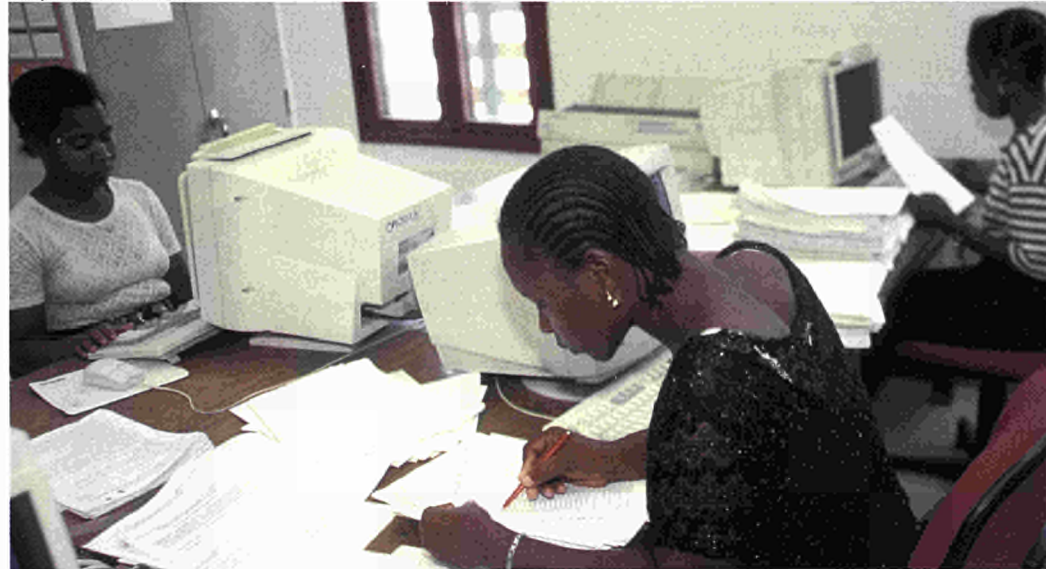
Ways need to be identified to make it easier to find out what information is readily available, appropriate, and affordable to different target audiences (such as hospital nurses, municipal engineers, ministries, vocational schools or the food processing and manufacturing industry). This would also help pinpoint where the priorities are for new publications in the international development community and non-profit sector, whether printed or electronic.

### Free distribution of relevant, reliable and usable information

Dissemination of development and humanitarian information is an area where personal digital libraries<sup>9</sup> can compensate for the failure of traditional distribution mechanisms to address local needs and get information where it is needed. Digital libraries can be accessed or downloaded over internet, via radiowaves, satellites, from a CD-ROM or DVD and copied at virtually no cost from these media onto the hard disks of an unlimited number of computers

The first step is to bring intellectual property rights relating to public information and knowledge in line with the need to access and redistribute this information without charge. Next, the quality and accuracy of such information must be assessed before it is released. High quality information should be relevant, reliable and usable. Once the right information has been

©Andy Johnstone/Panos Pictures



Manhica hospital, Mozambique. Collaborating test results on computers in the Malaria Research Unit.

selected, it should be combined and packaged for local, regional, sectoral or global redistribution and copying onto hard disks in the form of digital libraries.

### Access to information as a "vaccine" for poverty

In this way it should be possible to achieve a universal basic "information vaccination" for all. It could be done at low cost and in a short time. Self-copyable CD-ROMS containing up to 1,500 appropriate full-text publications cost only US\$1 to reproduce. The solution consists of loading locally adapted and tailored collections of publications and other useful digital objects (text, data, video, audio, software) as a standard onto the hard disk of virtually every PC in developing countries.

As a conclusion, information and training needs in LDC can be met with high-quality materials (documents, publications, video, audio, slides, training kits, software) currently freely available in the international community. Basic IT infrastructures need to be provided, copying and redistribution rules simplified, and clearinghouses of this free information and open source software<sup>10</sup> should help identify, coordinate and distribute this essential information to LDCs. ■

\* Dr Michel Loots is a medical doctor and founder and director of Human Info NGO - Humanitarian Information for All. This NGO works with 15 UN agencies and many other NGOs to develop open source technologies and projects to provide free information collections to developing countries. He can be contacted by e-mail at [info@humaninfo.org](mailto:info@humaninfo.org) or via the web at [www.humaninfo.org](http://www.humaninfo.org)

1. WIPO, Standing Committee on Copyright and Related Rights, Current developments in the field of digital rights management, [www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr\\_10\\_2.pdf](http://www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr_10_2.pdf) August 1, 2003
2. <http://ednahospital.netfirms.com>
3. INASP - International Network for the Availability of Scientific Publications, [www.inasp.info/health/about.html#2](http://www.inasp.info/health/about.html#2), November 2003
4. *The Promise of Digital Libraries in Developing Countries*, Ian H. Witten, Michel Loots, Maria E Trujillo, David Bainbridge, <http://www.cs.waikato.ac.nz/~ihw/papers/01IHW-MI-ME-DB-PromiseDL.pdf>, 2001
5. [www.healthinternetwork.org](http://www.healthinternetwork.org)
6. [www.aginternetwork.org/en](http://www.aginternetwork.org/en)
7. [www.openarchives.org](http://www.openarchives.org)
8. [ocw.mit.edu/index.html](http://ocw.mit.edu/index.html)
9. A digital library is a collection of digital objects (text, data, video, audio, software) with methods for access and retrieval tailored to specific users, allowing selection, organisation, and maintenance of the information. Prof Ian Witten, New Zealand Digital Library ([www.nzdl.org](http://www.nzdl.org))
10. Open source software is software that has been developed by the worldwide Internet community and made available for the benefit of all other Internet users. It is typically available for anyone to download and use without cost (see <http://www.gnu.org/philosophy/>).

# Branding rights: trademarks in a branded world

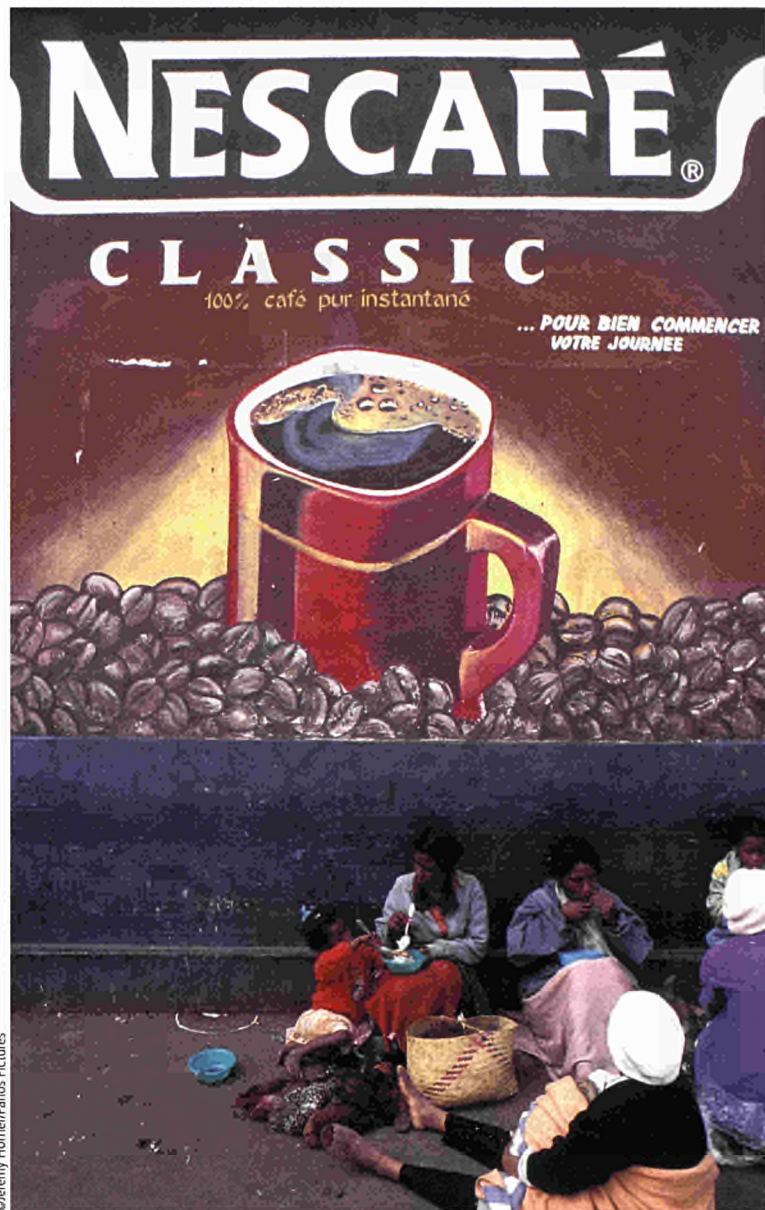
For good or ill we live in a world where brand names sell goods. Protecting brand names or trademarks through registration is now crucial for companies wanting to maintain and expand their market share. But is this just a means of reinforcing the global domination of the rich world, imposing obligations on developing countries, or can it benefit them as well?

Elizabeth Solomon

On the cover of *Globalising Rights*<sup>1</sup> a scene, obviously from a developing country, features a young man painstakingly painting "Coca-Cola" on a wall. The picture speaks of the irony of economic development where brand name products symbolise the success of free trade for some and inaccessible lifestyles for others. In his introduction the book's editor describes globalisation as a shorthand way of referring to a set of profound material changes that have had an increasing impact on relations between societies in the past few decades. He points to some of the identifiable features of these changes: the web, transnational corporations, satellite transmission, fibre-optic cables, easier and quicker travel, and the World Trade Organisation. He argues that with globalisation has come a transformation in how ideas travel and the nature of their final destination.

How does this relate to trademarks? It serves to emphasise the huge importance brand names play in a shrinking world. The author and journalist Naomi Klein, in *No Logo*, chronicles our journey into the "branded world" where the logo is a common language understood by everyone. She describes the shift in corporate marketing strategies: from promoting commodities based on the needs of the marketplace, to promoting a brand or trademark representing a lifestyle in order to create needs in the marketplace. In this way producers can control both supply and demand by manipulating consumer trends through the skilful promotion of a brand.

Trademarks have become more than a means of protecting market share. They have become an invaluable tool in claiming and creating markets. In the context of developing countries the most vexing issue is perhaps the imbalance created by the capacity of larger markets to control market trends aggressively through branding. Economists and social scientists say, however, that this concern must be viewed quite separately from the strict principles governing the registration of trademarks. So while the unfair struggle to capture markets, resulting from the promotion of trademarks, may be a form of "asymmetric globalisation" and may be considered detrimental to developing countries, the principle of registering trademarks is not in itself unfair.



Madagascar, Antananarivo. Brand name products symbolise the success of free trade for some and inaccessible lifestyles for others.

## The rise of global branding

International trade has increased steadily so that few companies today can afford to rely solely on their home markets. Companies expand by penetrating established markets and by creating new markets for their products. Marketing the same product under different trademarks in different countries is inefficient and costly in terms of promotion, advertising and packaging. Global branding can reduce these costs and is becoming increasingly common. The more international a trademark gets, the greater is its value and the greater the need to protect the mark by registration on a worldwide basis. Trademark registration costs money. To reduce the cost the World Intellectual Property Organization (WIPO) has

©Jeremy Homer/Franos Pictures

initiated and promoted the Madrid Protocol, which establishes a system for the international registration of trademarks.

An international registration is issued by a central body (WIPO). This takes effect in all the countries designated by the applicant. It is in effect just a collection of independent national registrations all bearing the same number, but it reduces the cost of obtaining and maintaining the protection of a trademark across many countries. The problem is that for many developing countries intellectual property offices are understaffed and lack resources, so they have difficulty in accessing the Madrid Protocol. In any event the issue for them lies not so much in providing protection for their own trademarks, but in compliance with anti-counterfeiting regulations and in ensuring that regulations and penalties do not become too oppressive.

The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) of 1995 provides rules, as its name suggests, for intellectual property rights in trade. It covers the basic principles of intellectual property conventions (prior to 1995); standards of availability, scope, and use of intellectual property rights; effective and appropriate enforcement; settlement procedures for multilateral disputes; and transitional arrangements for developing countries. The agreement is administered by the World Trade Organisation (WTO), which has the power to enforce it through administrative panels and mechanisms for resolving disputes.

### The flourishing business of counterfeiting

TRIPS compliance is of great concern to developed countries. Trademark owners want to be sure that when their company makes an investment in a market, its valuable intellectual property rights will be protected. A recent report<sup>2</sup> on compliance indicates a general trend of strong compliance with the regime although "nearly every country surveyed had at least one area where TRIPS compliance was deficient and most had multiple areas". The report says that many countries lacked protection for service marks and for non-traditional trademarks such as alphanumeric marks (using letters and numbers) and combinations of colours.

Looking at enforcement policies and practices, the report identified two problem areas: customs procedures and court authority. Many countries do not have a procedure that would allow a right holder suspecting the importation of counterfeit trademark goods to lodge an application with customs to stop the release of the goods. Many countries also have not allowed the courts to take measures on behalf of an applicant (*ex parte* measures) even where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

Apart from the importation of counterfeit goods, in some jurisdictions the production of counterfeits of well-known brands is widespread. According to one study Thailand is a case in point<sup>3</sup>. Thailand's government and police authorities are consistently under heavy pressure from multinational companies owning registered trademarks because of a

perceived lax attitude towards adequate protection of intellectual property rights. While the problem of trade in counterfeit goods is not unique to Thailand, the study claims that trademark owners are justified in their assessment that counterfeiting of trademarked products is indeed rampant. This is despite one of the most aggressive legislative schemes to help enforcement in any country in Southeast Asia.

There have also been well publicised public education initiatives in Thailand to make people aware that trade in counterfeit goods has damaged Thailand's ability to migrate from a primarily agrarian economy to an industrialised economy that can compete in the globalised marketplace. Because of the very popularity of the brand names themselves, demand for counterfeit goods ensures that it remains a lucrative business.

### Problems of enforcement

According to this study a trademark owner is entitled to take civil action under Thai commercial law against an infringer for use of his mark without authorisation. In a civil suit, an owner could request a permanent injunction against the offender and/or recover any actual proven damages. However, in practice, most trademark owners prefer to proceed under criminal law because of the uncertainty of outcome, costs, delays and difficulty in collecting court awards, associated with civil litigation.

A more popular approach is for a trademark owner to bring criminal charges against an infringer by either submitting a complaint directly to the court, or more commonly, lodging a complaint with police authorities. Penalties for forgery of a trademark registered in Thailand can include fines of up to 400,000 Baht (approximately €7,624) and prison sentences of up to four years. Penalties for imitation of a mark registered in Thailand are similar but less severe. As with all things, the difficulty in enforcement experienced by trademark owners must be balanced against ensuring that the penalties are proportional to the problem.

### Reaping the benefits

An international symposium on Intellectual Property Protection, held in Cairo earlier this year (2003), called on non-governmental organisations, the media and educational institutions to play a part in raising awareness of the importance of trademarks, copyrights and patents. New multi-lateral enforcement mechanisms were discussed, including alternative procedures for resolving disputes. Most significant was the call for developing countries not merely to fulfil their obligations, but to develop new technologies and create new products in order to reap the benefits of the intellectual property system. ■

1. The 2003 Oxford Amnesty Lecture Series (in support of Amnesty International)  
2. By the International Trademark Association TRIPS 2000 subcommittee  
3. A paper prepared by Edward J. Kelly and David Lyman

# Intellectual property rights and native communities

If hundreds of thousands of shareholders in limited companies have long benefited from their intellectual property rights, the same cannot be said for the thousands of people from a small country like Tuvalu in regard to their collective creations. The fault lies in the difficulty of defining the objects covered by this right and of authenticating the level of their creativity or originality.

Hegel Goutier\*

The first obstacle to the recognition of property rights of communities is one of semantics. Are these the intellectual property rights of native, indigenous or local communities? Are they linked to traditional knowledge, the knowledge of native populations, the heritage of native peoples, skills, innovations and traditional practices, or to folklore or expressions of folklore? Even the expression "knowledge of native communities" gave rise to a dilemma regarding the noun qualified by the adjective "native". Did the adjective refer to the knowledge or to the communities? There was even more controversy surrounding the word "folklore" which has a connotation of something outdated, quaint, antiquated.

However, despite all this, some headway is being made. For example, the World Intellectual Property Organization (WIPO), opted for the expression "traditional knowledge" since it felt emphasis should be placed on the word "knowledge" because it is, above all, the outcome of intellectual activity, while the traditional aspect is determined by the context in which it is revealed rather than by the knowledge itself. Unlike prejudices, traditional knowledge is neither static nor unchanging. It generally comprises the activities of a community and is passed on from one generation to the next. However, this is not always so. Traditional knowledge can be codified, although this doesn't always happen! It encompasses many more areas than folklore and may include food, the conservation of architectural heritage, biodiversity, the use of biological resources, and folklore.

## Too few or too many legal instruments

Legal resistance to the protection of traditional knowledge centred on the fact that intellectual property rights may be accorded only to physical or immaterial objects that are recorded and authenticated as being original and inventive – characteristics to which traditional knowledge could not lay claim. This perception no longer stands up to analysis and the facts which attest to the dynamism, innovation, and intellectual creativity of popular knowledge.

Is it that popular knowledge is not protected at all? Many experts see no need to create specialised legislation because existing legal instruments may be adequately utilised. For example, the Berne Convention on copyright covers scientific, literary and artistic productions and has a very wide scope since it even considers a computer programme as a literary work. Then there is the Paris Convention on trade and

industry, laws relating to industrial designs and models; the rights of composers and performers, trademark rights; the Convention to Combat Desertification and for the protection of biodiversity, to name just a few.

This range of legal instruments has, however, not prevented the illegal appropriation of property from native communities. Even countries like Australia and Canada which are able to record and document the heritage of their native peoples and provide legal assistance, are unable to guarantee a high level of protection.

## Protection or safeguard

A number of international conventions designed to protect the heritage of native communities contain safeguard measures to forestall their deterioration or disappearance, but do not offer offensive or defensive protection which would enable the communities with these intellectual property rights to benefit from them and thereby safeguard them from illegal appropriation. Theft of the intellectual property rights of communities is a rapidly developing activity. Traditional medicines are patented by third parties and the names of communities are being registered as trademarks. Sometimes even individuals are deprived of their names. WIPO provides an example of the worst case of piracy: the New Zealand singer Moana Maniapoto is unable to use her first name on her CDs when touring in Germany, because a company there registered her name as a trademark.

WIPO and UNESCO's commitment to this issue, along with the many legal measures taken by states and regions, as well as the increasing involvement of communities in defending their interests – demonstrated by their participation in defining their traditional knowledge – has created a situation which augurs well for future progress. It is therefore with a certain degree of optimism that we can hope that soon Africa, for example, will no longer fit the description given it by Professor Houtondji, i.e. a reservoir of scientific knowledge – excessively plundered – which was a source of raw materials in the colonial era. ■

\* Head of Press and Communication, ACP Secretariat

The Bambara people of central Mali practise the craft of Bogolanfini – printing textiles with mud. A girl carries strips of cotton woven by village craftsmen.



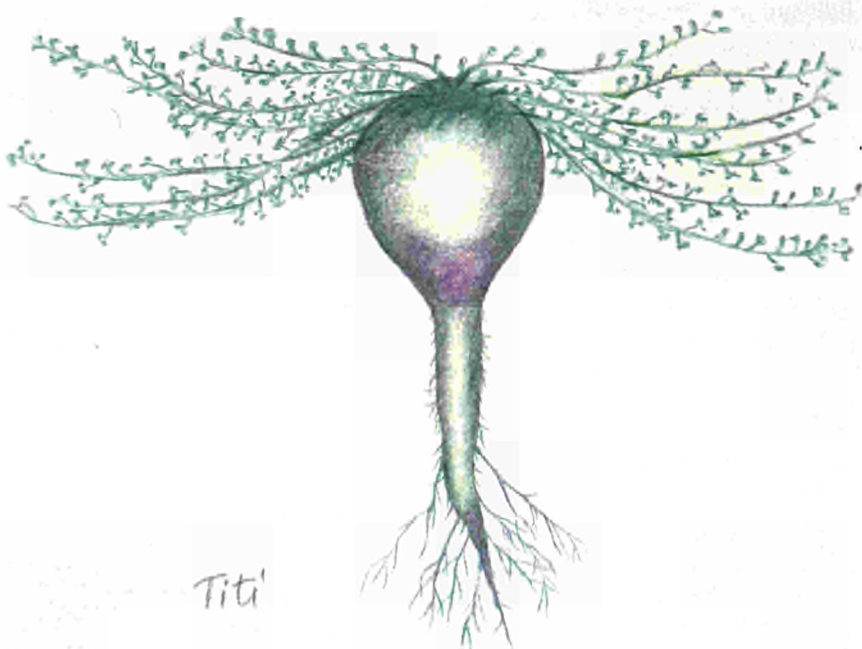
©Christian Jaspard/Panos Pictures

# Traditional knowledge

## and patents relating to *Lepidium meyenii*: an example not to be followed

Much debate has been generated on the subject of how traditional knowledge can be protected within the existing intellectual property system, and there are some well-publicised cases of patents being granted for traditional knowledge that was already publicly known.

In this article, **Begoña Venero Aguirre** describes one such case, that of maca or *Lepidium meyenii*, a plant cultivated high in the Andean mountains. Native Peruvians have traditionally used maca since pre-Incan times for both nutritional and medicinal purposes.



Originating in Peru, maca or *Lepidium meyenii* has been grown for centuries. Peruvians have long been using its edible roots as a source of food and to increase fertility. It is also thought to have anticarcinogenic and aphrodisiac properties, and has been used, amongst other things, as an aphrodisiac and a defence against cancer.

### Invention or reinvention... that is the question

In 1998, the people who were later to become the “inventors” – according to patents filed in the United States – took some dry maca roots from Peru (from the Herbarium at the Natural History Museum “J. Prado” Un.H.S., Lima).<sup>1</sup> Using a purified maca root extract, they carried out trials on mice to confirm the traditional use of maca as an aphrodisiac. They were successful.

Later, patent applications were filed and patents were granted in the United States for the following inventions:

1. *Lepidium meyenii* root extract for pharmaceutical use;
2. Treatment of sexual disorders using *Lepidium meyenii* root extract.

An international patent application (PCT) was also filed for compositions and methods of preparing them from *Lepidium*.

### Peru's response

In June 2002, INDECOPI (National Institute for Defence against Competition and the Protection of Intellectual Property) learned of the existence of these patents and this patent application. In July 2002, INDECOPI set up a working

group and asked it to examine the patents granted in the United States and the international patent application under examination, to analyse the consequences and to assess possible responses. This working group included representatives from government institutions and non-government organisations.

The group gathered together a great deal of information on maca and its uses and listed the technological procedures used to produce the end product as compared to the ones described in the patents granted in the United States and the international patent application filed. On the basis of these processes, the group examined the patentability of the above inventions and reached the following conclusions:

- the patents granted in the United States did not, amongst other things, meet the requirement of an “invention”,
- the international patent application did not, amongst other things, meet the requirements of novelty and inventive step.

### In other words...

- Taking *Lepidium meyenii* root extract and using it to treat sexual disorders was obvious given the prior use and processes identified by the group,
- The compositions and methods for preparing them from *Lepidium* were already known and obvious given the prior use identified by the group.

The group also verified that the materials used as a basis in the above inventions were taken from Peru.

However, there was no proof that:

- i) these materials were obtained legally, and
- ii) that there was any provision for the equitable sharing of profits resulting from the use of these patents with Peru.

In view of these conclusions, the group plans to dispute the validity of the patents granted in the United States. The group has also contacted the patent offices of the countries designated in the international application so that they can look at the prior use identified by the group before making a final decision on this application.

The group is in the process of trying to set up a National Commission for the prevention of acts of biological piracy. The aim of this National Commission would be to monitor patent applications filed at patent offices in other countries and to act each time it learns of the existence of patent applications<sup>2</sup> or of patents relating to inventions developed on the basis of Peru's genetic resources or the traditional know-how of Peru's indigenous peoples. It would be desirable if this Commission could establish a channel of communication with patent and intellectual property offices in other countries.

## A few reflections

1. What is the purpose of the patent system? To protect inventions? The logic of the patent system only works if protection is only given to new inventions that involve an inventive step. This is the only justification for giving the patentee an exclusive right.

2. Outside the patent system...

- Should we ignore infringements of the rights of countries in which genetic resources originate and the rights of their indigenous peoples?

Grounds for refusal laid down in a number of patent laws prove that the patent system is not necessarily indifferent to considerations not directly resulting from patent law.

- Should just any type of research be encouraged?

This is not to say that genetic resources and traditional know-how should not be used to develop real inventions. On the contrary, authorised access to genetic resources and traditional know-how in the interests of research is encouraged.

Biological prospecting can be used for research and development of new and original inventions provided that access to genetic resources and traditional know-how is authorised by the country of origin or the indigenous people respectively and provides for the fair and equitable sharing of profits.

## Lessons to be drawn from this experience

Researching the prior use of inventions similar to those above has to be improved. There is a great deal of information about these types of inventions but it is difficult to find. This practical obstacle makes it very arduous to identify the nearest prior use and, as a result, prevents a rigorous and exhaustive examination of the patentability of these types of inventions, allowing patents to be granted for inventions that do not deserve it or that perhaps deserve it but should have a more limited scope.

To overcome this practical difficulty, it would be desirable to organise and arrange this information in such a way that it is easy to use in search and examination procedures by patent offices all over the world.

It should be borne in mind that these types of situations are damaging to the patent system. Only experts understand that these are merely isolated cases and that the same system has provided for solutions to these types of situations (such as patent revocation proceedings), which means that public opinion reacts against the patent system itself.

It would be fair and equitable to demand disclosure of the origin and legal provenance of the biological materials and traditional know-how serving as a basis for the achievement or development of an invention as a requirement necessary for the filing of the patent application. This requirement would have to be incorporated into international patent legislation or the internal legislation of every country.

This would enable the patent system to discourage the achievement or development of inventions without respecting the rights of the countries of origin or the indigenous peoples, which would redress the balance.

It is fair and equitable to recognise the contribution made by those developing inventions on the basis of biological materials or traditional know-how. However, it is also fair and equitable to recognise the contribution made by countries that supply the biological materials and by the indigenous peoples who supply their traditional know-how. To fail to recognise the latter contribution shows the recognition of the former to be unfair and inequitable. ■

1. See Zheng, B., He, K., Kim, C., Rogers, L., Shao, Y., Huang, Z., Lu, Y., Yan, S., Qien, L. y Zheng, Q. 2000. *Effect of a Lepidium meyenii lipid extract on the sexual behaviour of mice and rats*. *Urology* 55 (4): pages 598-602.

2. It is much more complicated and expensive to act once patents have already been granted.

One of the key agreements adopted at the 1992 Earth Summit in Rio de Janeiro was the Convention on Biological Diversity (CBD). This Convention, signed by the vast majority of the world's governments, establishes three main goals; to conserve, to sustainably use, and to share the benefits of biological diversity. One of the most controversial issues addressed by the CBD is intellectual property rights related to biological and genetic resources; although much of the earth's biodiversity is found in developing countries, these countries have not necessarily benefited equally with developed countries from industrial, medical, agricultural, and other uses of biological and genetic resources. The CBD commits signatories to "fair and equitable sharing of the benefits arising out of the utilization of genetic resources." Much debate has centred around the extent to which the intellectual property system should support the CBD.



# Intellectual property and agriculture

The issue of intellectual property rights (IPRs) arises in a number of areas within the agricultural sector. IPRs pose particular challenges for developing countries in areas such as new plant varieties, genetic resources, traditional knowledge and agricultural product names. This article outlines some of the IPR issues for the sector and suggests some strategies to maximise their benefits.

Vili A. Fuavao\*

These issues (new plant varieties and so on) are at the crossroads of international developments in fields such as agriculture, trade, environment and health. As such, they are discussed in a range of international forums and in various international instruments. One of the key challenges for developing countries is to coordinate policy development in these areas so that they can take advantage of the benefits of IPRs while promoting their national interests.

The term "intellectual property" is an umbrella term that encompasses a range of separate legal regimes. Intellectual property rights provide formal legal recognition of innovation and inventiveness. In the agricultural context, IPRs can be used to recognise new plant breeds, new agricultural chemicals or marketing names for produce.

This formal rights-based system contrasts with informal systems of recognition that are in place in many developing countries. Such informal systems may concern knowledge about breeding plant species, farming techniques and the healing properties of plants. There has been increasing tension between these systems, played out, for example, in debates about the role of IPRs in biotechnology compared with traditional agriculture.

## New plant varieties and plant genetic resources

Botanical innovation resulting in the creation of new plant varieties is afforded legal protection through IPRs – specifically plant-breeders' rights and patents. These are currently the subject of debate in forums such as the Food and Agriculture Organization (FAO) and World Trade Organisation (WTO), resulting in shifts in legal norms concerning IPRs in plant varieties and plant genetic resources.

There are a number of competing policy objectives driving this debate. One issue centres on whether granting IPRs to plant breeders encourages the preservation of genetic diversity or erodes it. The relationship between farmers' rights and IPRs

in plant varieties poses another challenge. On the one hand farmers' rights acknowledge the role that traditional farmers, particularly in developing countries, have played to preserve and improve plant genetic resources. Many of these farmers do not claim exclusive rights in the plants they have cultivated over time.

On the other hand IPRs provide exclusive rights to innovations in plant varieties. How to accommodate both these approaches poses a key challenge and is closely linked to the traditional knowledge issues considered below. Further issues are the regulation of access to plant genetic resources and the ownership of IPRs over unimproved plant germ plasm that is already in the public domain, such as wild plant varieties, or in seed collections.

**Patents could pose a threat to the practices of many farmers in developing countries of re-using and exchanging seeds. The FAO's 2001 Treaty on Plant Genetic Resources attempts to facilitate the exchange of seeds, and encourages countries to protect farmers' rights**

## Developments in international forums

Key developments in IPRs and plant genetic resources have been taking place in the FAO. The FAO International Undertaking on Plant Genetic Resources was for many years a central instrument for the protection and equitable sharing of the benefits of plant genetic resources. It formed the basis for the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), finalised in 2001<sup>1</sup>.

The ITPGR codifies and updates the Undertaking's non-binding principles and includes provisions about plant-related IPR issues. Its main purpose is to facilitate the exchange of seeds and germ plasm for research, breeding and crop development. This is promoted by the "Multilateral System", which is in effect a communal seed treasury of specified crops held both in

situ and in national and international seed banks.

The ITPGR seeks to strike a balance between open access to plant genetic resources and exclusive legal rights (such as IPRs) that seek to restrict access to those resources. The result is a compromise so that access to the plant genetic resources in the Multilateral System will only be granted on condition that recipients do not then themselves claim any IPRs that will limit access. Access is also conditional on payment of a fee used to promote the conservation and sustainable use of plant genetic resources.

A second key forum for debate is the WTO and its Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS Council is reviewing the plant-related IPR obligations in the TRIPS Agreement, particularly those concerning genetic resources and patent rights<sup>2</sup>. Many

developing countries regard this review as an opportunity to reconsider whether plant varieties should be able to be the subject of an IPR, such as a patent or a plant breeders' right. The latter is a *sui generis* (i.e. unique, or of its own kind) system of IPRs for new plant breeds, created by the treaties administered by The International Union for the Protection of New Varieties of Plants (UPOV).

Developing countries have raised the question of harmonising the TRIPS Agreement with other treaties such as the ITPGR and the Convention on Biological Diversity (CBD). They have looked at the issues in the context of conserving biodiversity, ensuring farmers' rights and protecting traditional knowledge. The CBD considers issues of IPRs and plant genetic resources from an environmental perspective. Its provisions are founded on the presumption that individual countries have sovereign rights over their genetic resources and can determine access to those resources.

However, states must also make access available to those resources for environmentally sound uses. The CBD contains a number of broad provisions dealing with IPRs, shaped by its aim to conserve biological diversity, use it sustainably and share equitably the benefits arising from genetic resources. For example, the CBD requires states to cooperate to ensure that IPRs are supportive of, and do not run counter to, the treaty's aims.

### Protection of traditional knowledge

Traditional knowledge is closely linked to the issue of farmers' rights and the role of farmers in preserving and developing genetic resources through longstanding farming practices. It poses challenges when balancing conservation against the exploitation of plant and animal genetic resources, and balancing traditional farming practices against biotechnology. Some of the IPR issues in this context concern the patenting of inventions that use traditional knowledge and whether traditional knowledge should be protected through its own *sui generis* system of IPRs.

Protection of traditional knowledge, access to genetic resources and sharing of related benefits are issues of great importance for developing countries because of their enormous cultural, social and potentially economic value. These issues are cross-cutting and have emerged in a number of policy areas including food and agriculture, the environment, human rights, health, cultural policy, trade and economic development. This diversity is reflected in the range of international forums considering legal mechanisms and policy developments relating to the protection of traditional knowledge and access to genetic resources.

The World Intellectual Property Organization (WIPO) is engaged in a key policy dialogue that is being used to inform other international discussions, such as those in the TRIPS Council and the CBD. WIPO's work is being spearheaded by the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), which was set up in October 2000.

The IGC's objective is to consider the issues of access to genetic resources, benefit sharing and the protection of traditional knowledge. It has undertaken significant work to define and assess the policy and legal issues, while facilitating the sharing of practical experiences of traditional knowledge and genetic resource issues at the national level. This may result in the development of a new international treaty on IPRs, traditional knowledge and genetic resources<sup>3</sup>.

The WTO TRIPS Council has also been considering protection of traditional knowledge and access to genetic resources, principally through the review of the TRIPS Agreement provisions dealing with the patenting of genetic resources. The dialogue has covered the disclosure of traditional knowledge used in inventions claimed in patent applications.

In the Doha Round, the TRIPS Council has been asked to examine further the issue of protection for traditional knowledge and the relationship with the CBD. The CBD encourages the protection of traditional knowledge that relates to the conservation and sustainable use of biological diversity. It also permits the broader promotion of traditional knowledge with the approval of the traditional knowledge holders, provided there is equitable sharing of the benefits arising from such use.

### Names of agricultural products

The names of agricultural products may be protected by intellectual property rights. This can include trademarks used by producers to brand their particular crop for market, using the farm or farmer's name. Other associated IPRs are geographical indications that are similar to trademarks in that



The Courier

they concern the origin, quality, reputation and characteristics of goods. However, geographical indications (GIs) differ from trademarks in that they are names of places or regions, and the characteristics of the goods are linked to their geographic origin. "Champagne" is a well-known GI for sparkling wines made in the Champagne region of France.

GIs are an important issue across the agriculture sector, particularly in terms of current law and future developments in the WTO. At present there are two levels of protection for GIs provided by the TRIPS Agreement<sup>4</sup>, with a higher level of protection for GIs relating to wines and spirits. The lower level of protection prohibits the use of names that suggest something originates from other than its true place of origin. But a GI could be used on a product if, for example, the label simply refers to the geographical area but makes clear that the goods are not from that area. The higher levels of protection for GIs for wines and spirit means they can only be used when the product actually comes from the area referred to in its name. For example, only spirits from Tequila in Mexico can be labelled as such.

Negotiations have been undertaken in the Doha Round about extending the higher level of protection to a wider range of products, including foods, agricultural products and handicrafts. The issue of GIs has various implications for developing countries, such as protection of their own geographical names associated with local agricultural products. If stronger GI protection were extended to food products, it would also have implications for the use of geographical names from other regions or countries to describe their own produce.



Public funding of research relevant to farmers in developing countries is stagnant. Private sector research, supported by IP protection, means that research is not oriented to the needs of poor farmers

Strategies for developing countries to make the most of IPRs

Given the importance of agriculture for most developing countries, how can developing countries make the most of IPRs in the agriculture sector? They face a range of challenges, given the limits of their human and financial resources. For example, the IPR regimes in many developing countries are based on colonial-era laws and do not include recent developments such as plant breeders' rights, protection of traditional knowledge and geographical indications. Domestic change may be driven by international legal requirements in related areas such as trade (the WTO) or the environment (the CBD). Governments may face difficulties when undertaking policy development and legal reform in what is a complex area.

The main challenge to developing countries is to coordinate policy and legal developments across a number of areas, both within government and the community, in view of the cross-cutting nature of many of these issues. It is important for developing countries to have mechanisms in place to coordinate policy developments, such as a government focal points to coordinate IPR matters. A focal point could make dialogue easier between ministries dealing with agriculture, trade, development, culture, justice and commerce, as well as enabling contributions from the community and the private sector. It could also play an important role in relation to regional and international development and cooperation.

Other strategies that could be adopted include:

- developing national policies relating to IPR issues that identify and promote the national interest;
- ensuring that the national implementation of international IPR standards takes account of flexibilities in international agreements, such as non-mandatory provisions;
- ensuring that IPR implementation is appropriate for the country in the light of its national interest and development priorities;
- increasing awareness and understanding of IPRs amongst farmers, industry and government officials through training and education campaigns;
- enhancing negotiation skills to enable greater participation in various international forums; and
- initiating and participating in regional initiatives for developing countries to work together to implement these strategies.

IPRs pose many challenges to the agriculture sector in developing countries, especially in view of the cross-cutting nature of the policy dialogues and legal frameworks. But IPRs also offer opportunities. With the right strategies, developing countries can maximise the benefits of IPRs. It is vital that they are involved in and informed about current developments, particularly as legal norms are shifting in important areas such as plant genetic resources and the protection of traditional knowledge. ■

\* FAO Sub-Regional Representative for the Pacific.

1. The ITPGR will come into force with 40 ratifications. As of the date of writing, 32 countries had ratified the Treaty.

2. Article 27.3(b).

3. At the recent WIPO General Assembly held in September 2003, member states agreed to extend the term of the IGC's mandate. No outcome, including the possible development of a treaty, is excluded.

4. Article 22.

# Beethova Obas: claws beneath the velvet

Haitian musician of renown, Beethova Obas is adored in his native country, not only for his romanticism, eclecticism and the sophistication of his music, but also for the swipes he takes at those in power and the shortcomings of Haitian society. His music has hints of Cuban and Brazilian influences, but behind the sensuality lie commentaries on the struggles of Haiti, a country that became the world's first independent black nation almost 200 years ago.

Hegel Goutier

Beethova Obas is probably the best-loved singer in Haiti, but his admirers are spread far and beyond his native island. Adulation based on the smoothness and sensuality of his songs, the mellowness of his music and on his own person; on the "velvet" aspect but also on the claws beneath which take sophisticated swipes at the indifferent authorities and the shortcomings of Haitian society.

A talented songwriter with a voice full of beauty and warmth, his journey has led him to a vibrant, subtle blend of Haitian music – from the classic inspiration along the lines of Frantz Casséus to the Haitian *musique racine* of Boukman Eksperyans – flirting with Cuban and Brazilian influences. He himself calls it "Cubhabra" (Cuba, Haiti, Brazil), but this is a narrow description of his work, which also contains elements of blues-type jazz, lively African affinities, and Russian and Central European romantic music which his father, an eclectic

amateur, instilled in him. From his orchestral journey have emerged the most original innovations, such as the transcription of carnival-type percussion scores for violin.

**Regarding the regularity with which you bring out your albums, spaced apart by on average three and a half years, would you say you have the discipline of a craftsman?**

I always take the time to do things properly. I need time to write my songs. I also need time for observation, to capture certain situations and translate them into songs. Making music means being an antenna which captures energy and tries to translate it into melody.

**A paradigm: are you serious or farcical? A track like "Kè'm poze" (I'm calm), the title track of your latest album, is all about hardship. Is it farce?**

There is often a very ironic undertone in my singing, which has enabled me to touch the most unfeeling people. A couple of anecdotes: An extremely rich man, allergic to poverty, told me that he had been listening to me since the 1980s, explaining, "You made me angry and I admired you". Michel François, a former high-ranking police officer and Duvalier's right hand man, also revealed that he appreciated what I was doing although he could not stomach it. Poetry and humour ease the passage for a lot of things.

**Your style of music is very subtle, something one would associate with a refined cultural environment. What does it consist of?**

I come from a family in which I discovered music at a very early age. My father was a painter but he also made music. He was murdered under the Duvalier regime. My grandfather played the mandolin. My father took care to spend time with us. Unfortunately he was taken away too soon, when I was just five years old. My mother brought up five children by herself. I learned to identify with the majority of people in this country who suffer so much. This is why my music is made up of many parts. One very important part: the fact that I was constantly woken up by the music of a very well-known popular singer, Rodrigue Millien, who used to play a couple of blocks from our house.



Pierre SCHEYS



Pierre SCHEYS

Every evening, I would learn from hearing him practise. It was a sweet pleasure to find myself, at four o'clock in the morning, already awake and listening to the end of his concert.

**Your music does not belong anywhere in particular. Do you feel like an exile within Haiti?**

Because of social prejudice, the Haitian elite often shut itself off from others. My father's open mind protected us from such confinement. For example, my father taught me to love the "band apié" (rural carnival groups – ed). At an early age, I became interested in the instruments of the carnival, the movements of the crowd. Then, I had a fateful meeting, with Manno Charlemagne and his musique racine choir with "band apié" instruments and voodoo temples. Culturally, I have not felt like an exile. Politically, on the other hand, after the disappearance of my father, my family was exiled. The fear of being branded "camoquins" (opponents – ed) drove a number of former friends of our family to keep their distance.

**Your music: romantic subversion, but subversive all the same. What is its subversion now?**

Right from the start, I decided to speak out about the reality of Haiti. The first track I wrote, around 1985, was "Plézi, mizè", which challenged a government which had nothing to offer its youth but more carnival days. I was the golden child in the eyes of the democratic government which came to power in 1990. And again in 1994, after the coup and the return to democracy. Not any

more. My last CD contained a track I wrote in 1987 about the military junta. It happens that the media find it still relevant to the current situation. If someone is let down by something he used to admire, it is up to him to take stock of himself. I am in a state of permanent self-analysis.

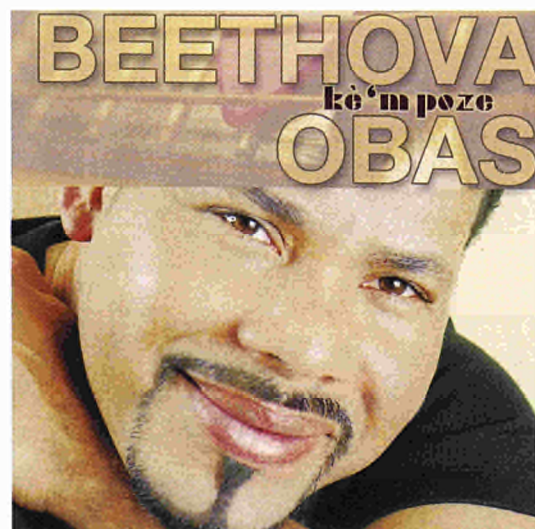
**What are the hallmarks of your albums? Do they form a series, or a palette of five different colours?**

I started writing music at 17, but at the time I did not see myself as a singer, merely a songwriter. Encouraged by friends, particularly Ralph Boncy and Joe Charles, I began to sing after I had received two awards for my compositions. Then, one day Joe Charles made me understand that I had to throw myself in at the deep end and, there and then, he booked a studio for the following day. Joe Charles is an excellent bass player, who, with his style of playing, has helped revolutionise Haitian music. I was 21. And that's how it all began. That first album, "Chant de la liberté" had a certain innocence in terms of music.

For the second CD I had already gained some experience on stage. I had already recorded my track "Nou pa moun" on Malavoi's album "Matebis". One day, in Bataclan, I was invited to perform one of my tracks live. I received such applause that the group let me continue with a second. Suddenly, I was approached by a producer. And the album "Si" was born, which was a huge success particularly in the French-speaking world.

I followed it up with "Pa Prese", an album about which I have mixed feelings. I approached things with perhaps too much confidence. Meanwhile, my propensity for a fusion of Haitian music with Cuban and Brazilian influences asserted itself. My fourth album, "Planèt La" is symbolic of this sensibility. Finally, "Kè'm pozé", my most recent offering, goes perhaps further in terms of fusion, and some commentators have said that it contains a perceptible hint of jazz. ■

<http://perso.wanadoo.fr/gwanadienne/>





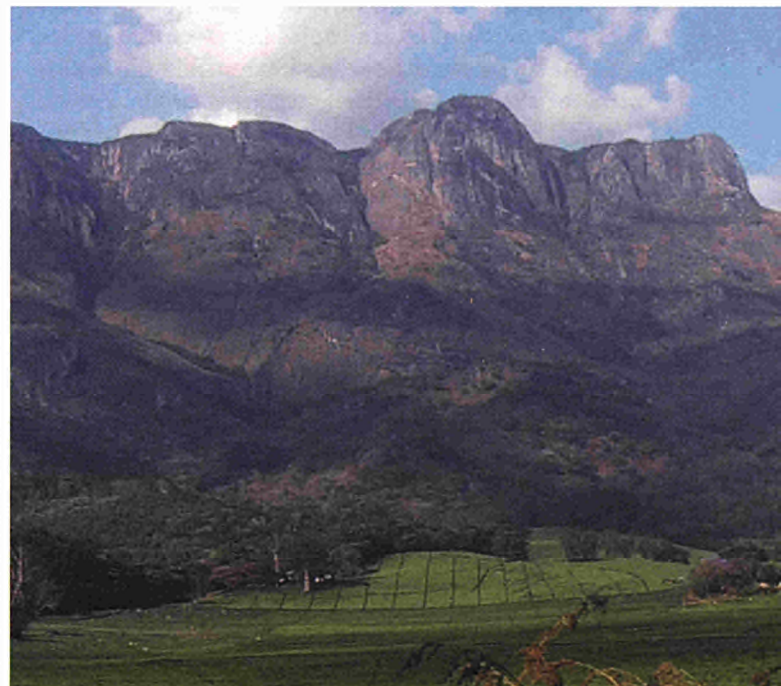
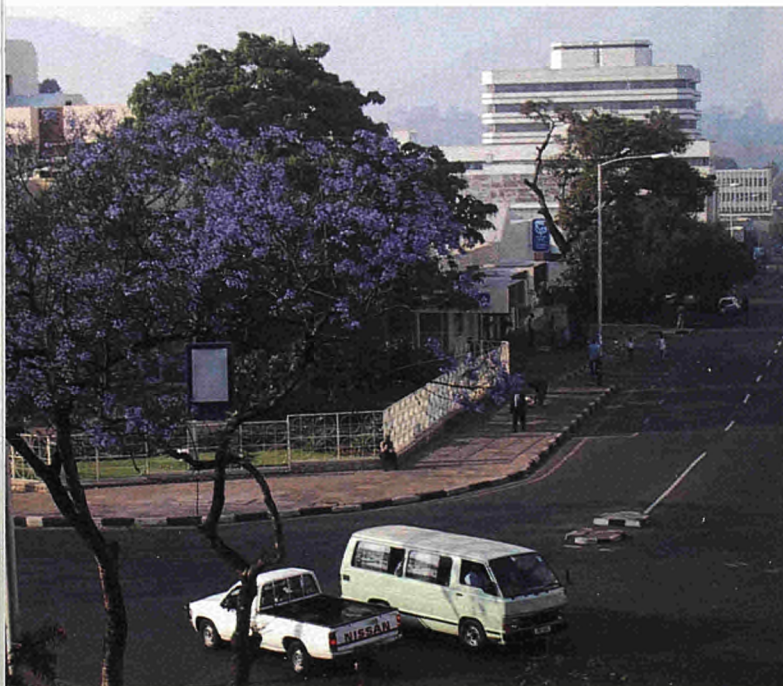
# Malawi

Malawi is a small landlocked country in south east Africa, with approximately one fourth of its area covered by Lake Malawi. It is amongst the 10 least developed countries in the world. Its economy is based mainly on agriculture: the country's staple is maize, while tobacco is by far the largest export crop. Malawi also depends heavily on foreign aid.

The aim of this report is to show where this country could go in the next years. It is true that Malawi faced a severe food crisis in the past two years, but with the assistance of international donors, this has now been somewhat solved. It is true that, like most countries in Africa, Malawi faces the challenges of HIV/AIDS, which is killing entire generations and posing a threat to the future of the whole continent: government, opposition parties, and international donors all cooperate in awareness campaigns and assistance to people in pain, but much more should be done at the international level. It is true that Malawi has not yet developed a full democracy: the opposition, the media, civil society, are not functioning properly.

Against this negative background, however, this country report wants to look at the future with some degree of optimism. An important decision was made in October 2003: first the IMF, followed by four European donors, recognising the progress made by government in macro-economic stability, decided to restore their budgetary support aid, which had been frozen for the past two years. This will probably boost the private sector, which in the past years has suffered from the high interest rates caused by the excessive borrowing by government. Malawi and its leader have finally realised that they cannot rely only on tobacco and subsistence agriculture: there is a need to diversify the economy and this is where Malawi wants to go in the short/medium term.

*Report and photos (unless indicated otherwise) by Maurizio Carbone*



## From a multiparty system to full democracy: the real challenge for Malawi

Following pressure from international donors and local civil society, multiparty democracy was reintroduced in 1994. Ten years later the state of democracy gives rise to concern: patronage, political violence, lack of a credible alternative to the ruling party, not independent media, weak civil society are some of the major obstacles to the achievement of a full democratic system.

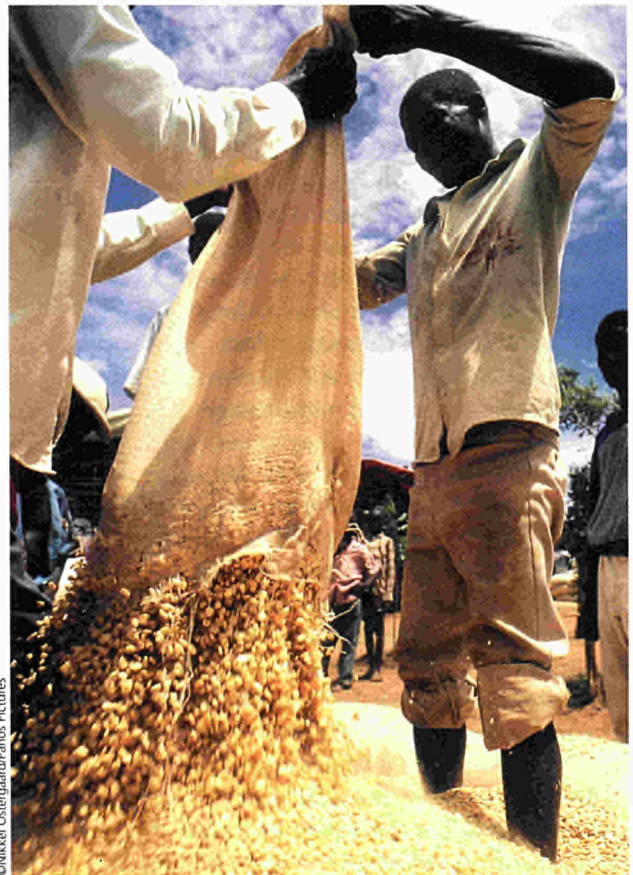
The year 1994 marked the end of one of the most repressive and corrupt political systems in Africa. Under the one-party regime of the former "President for Life" Dr Hastings Kamuzu Banda, no parties except the Malawi Congress Party (MCP) were allowed; freedoms were curtailed; civil society was virtually non-existent; violence was used as a political means; public services were highly inefficient. "Still, that regime was a friend of the West and therefore received large amounts of foreign aid," says Professor Garton Kamchedzera, Dean of the School of Law at Chancellor College, University of Malawi.

### Transition to a multiparty system

With the end of the Cold War, as they no longer needed to use economic assistance to support friendly regimes, international donors withdrew their support to Malawi until human rights were improved and a programme of political liberalisation was announced. For an aid-dependent country like Malawi, that aid freeze was very harmful, as it prevented government from carrying out its development programmes. At the same time, the Catholic Church, through a pastoral letter entitled *Living our Faith*, denounced the corruption, lack of freedom, and violations of human rights. Students at the University of Malawi and workers embarked on a series of riots and demonstrations. Eventually, Banda was forced to call a referendum on the introduction of multiparty politics, which was held in June 1993.

Following the referendum, the first free elections, held in 1994, registered the victory of the United Democratic Front (UDF). However, most of the UDF leaders, including the new President Bakili Muluzi, were former MCP leaders, who had been dismissed from the party. While UDF was the conservative alternative, Alliance for Democracy (AFORD), the other new party which contested the election in 1994, was a more militant party.

In the past ten years, the political system has been dominated by these three parties, but the frequent shifts of alliances demonstrate their ideological flexibility. "In Malawi's politics, ideology does not play a major role. What parties have to offer are only different personalities", says Professor Lewis Dzimbiri, Dean of the Faculty of Social Science at Chancellor College, University of Malawi. Nevertheless, it is interesting to note that the UDF is a member of Liberal International, AFORD has an association with Socialist International, and MCP in the past had strong relationships with the Conservative Party in the UK. These international affiliations, though, are not used in the public discourse.



©Nikkel Ostergaard/Panos Pictures

Malawi is one of the poorest countries in the world. Despite decades of assistance many structural impediments still remain.

Rather than ideology, in the previous two free elections people's votes followed regional patterns. "The geography of the past two elections can easily be explained with the genesis of the parties in the early 1990s. The UDF was started by President Muluzi in the South, where he was a major figure in the Chamber of Commerce and therefore had a lot of business connections. AFORD grew out of the trade union movement; but most of its members were outside the country and came back once they had organised themselves outside. AFORD's leader, Mr Chakufwa Chihana, has his roots in the North", explains Vice President Justin Malewezi.

### The state of democracy

UDF has been in power for the past ten years, "Our first concern was how to get rid of the one-party state. We have made substantial progress towards establishing a fully operative democracy. But we should remember

that we come from a background of a very authoritative state, and to dismantle that in the minds of people will take time," asserts Mr Malewezi.

Public confidence in politics has been eroded: poor economic performance, rising corruption, weak opposition, rising cost of living, general decline of social indicators; political violence, are all clear signals of the fact that the state of democracy is deteriorating. According to John Tembo, President of MCP, "it is true that all the components of a proper democratic society are in place; but when it comes to the applications of those principles I see many weaknesses. For instance, the Constitution establishes the separation of powers. In reality, the executive goes often beyond its power to influence the legislature as well as the judiciary. This may not be formally so, but perceptions of the people about what happens are different."

Another worrying example comes from the media sector. "The media law is very liberal and gives people the right to say anything, but its application is very different. People operating in the media sector work in a state of fear: they just cannot publish the truth," states Mr Robert Jamieson, editor of *The Chronicle*, the major independent paper in Malawi. Along the same lines, Dennis Mzembe, a journalist from the Nation and Chairman of the National Governing Council of NAMISA, a media institute in charge of raising public awareness on media freedom issues, argues that "the media sector in Malawi, like in any other country in Southern Africa, is constantly under threat. The government has tried to suppress as much as possible freedom of expression. Most of the press is owned by politicians, and therefore there is no freedom to criticise the owner of that paper. The public media, which are controlled by government, only air the views of the ruling party. The opposition has little chance to make their views known to citizens. Actually, I have never seen any opposition leader speaking on TV Malawi or talking on the public radio. Only some private radio stations sometimes try to give the opposition some time. But once they do it, the government threatens them with withdrawing their broadcast licenses."

Civil society is also weak. "The work of civil society has been impressive over the past ten years, considering that there was not a culture of civil society under the Banda regime. However, the strongest voice came from the Church. I am not sure what we would have done in this country without the Church. The major weakness today is that there is not a uniform voice: a section within civil society is pro-government, one is neutral, and one is pro-opposition. But I think civil society organisations still have to find their way as a unified and coordinating voice. CONGOMA, which is supposed to do this job, is very weak", argues Professor Kamchedzera.

### Democracy within parties

If the relations between parties are not constructive, intra-party politics is also a major concern. In fact, parties have not established a truly democratic process to select their leaders through regular discussions and dialogue. "People have been victimised because either they



Zomba is the former capital of the country and seat of government. Today it is home to the University of Malawi.

offer a different viewpoint or they do not agree with the party leadership: democratic behaviour is not always part of the mindset of political leaders", says Professor Dzimbiri. The explanation seems simple: "Most of the leaders of the new political parties are recycled politicians, people who had a role in the previous regime. Thus, they don't know other tactics than the ones used by the one-party system," continues Reverend Boniface Tamani, chairman of the Public Affairs Committee (PAC), a key civil society organisation which was instrumental in the change in 1992-1994.

The preparation for the next election to be held in 2004 is a good example of the lack of an inclusive democracy within parties. President Muluzi, who had been in power for two terms, wanted to run for a third term. To do so, he had to change the Constitution. Following strong opposition by religious leaders and civil society organisations, he decided to give up. However, without consulting UDF members, he chose as presidential candidate Bingu wa Mutharika, former Common Market for Eastern and Southern Africa technocrat. Mutharika's selection opened up rifts within the ranks of UDF, who did not agree with the choice. Some of the most critical ministers were sacked.

In addition, President Muluzi appointed Mr Chihana and four other AFORD officials as cabinet ministers, forming a government of "national unity". This is the last of several shifts of alliances which have characterised AFORD's history: in 1994 it was in a coalition government with UDF, then it ran with MCP in the 1999 elections, and finally joined UDF again. "In the 2004 elections my party will support Bingu wa Mutharika", said Mr Chihana. But this recent change of alliances was not accepted by some senior party members, who decided to leave AFORD to found a new party. Finally, major internal rivalries caused the main opposition party, MCP, to split into two major factions, which for a long time prevented it from being a credible alternative to the current ruling party. Since summer 2003, though, these two factions have committed to work together and are now finally ready for the next elections. ■ MC



## "We are still a young democracy"

After about thirty years of autocracy and a one-party system, the United Democratic Front (UDF) won the first democratic elections in 1994. Mr Justin Malewezi has been Vice President since then. In this interview he discusses issues of democracy, economic diversification, and relations with international donors.

**After thirty years of a one-party regime, in 1994 Malawi became a multiparty democracy. How do you assess the state of democracy in Malawi?**

When the UDF came to power as the first democratically elected government, the main concern was about building the structures necessary for democracy, starting from the Constitution. We now have a modern Constitution, with a complete Bill of Rights protecting the rights of the citizens and with all the various institutions that are important for democracy. In the previous regime there was not much debate in the Parliament, whereas now there is a vibrant discussion between the different parties. The judiciary is now independent and has ruled several times against the government. Another area of concern is civic education: thirty years of a one-party system is a long time and it will take a long time for people to change and to understand what democracy is, to be educated on issues of tolerance, to accept that people can have different views and still operate together.

**Despite some progress, there are still some challenges to meet: the opposition is weak, civil society is not well organised, the media is not totally independent.**

Of course we have not reached the ultimate stage of full democracy. We were coming from a background of a very authoritative state. I think we should be given a lot of credit that in only nine years we have made major strides in putting on the ground the foundations for a full democracy. We have liberalised the media sector. During the previous regime there were only two newspapers, controlled by the government. Since 1994 there have been over 20 newspapers which have come and sometimes gone, but they are free to operate. Anybody can start a television station if they have got the money and respect the rules set up by the Malawi Communications Regulatory organisation. As for radio, there is only one state radio station, but we have seen a mushrooming of other radio stations; some of them are very critical towards the government. As for civil society, we look at them as partners, not adversaries; we have encouraged them to work with us; after



all, they are there because of this government, which allowed their existence. But they also have responsibilities. They cannot talk about transparency in government if they are not transparent. This is the beginning, and there is a long way to go, but as government we must check that people do not unduly misuse their freedom to create tensions or confusion, which can lead to problems, particularly in Africa where there are several ethnic groups. We are not perfect, we have made mistakes and as we go along we will correct them.

**Malawi is one of the poorest countries in the world. What lessons have you learned since your party came to power?**

Poverty is the result of some neglect in both policies and implementation over the years. If Malawi is to be better off, its economy must grow and for it to grow we must address basic issues: the major one is food security. During the previous regime, agriculture was heavily subsidised, farmers received help to buy fertilisers, the market was controlled by a parastatal. This arrangement was not sustainable. When we came to government, we started to liberalise. But, unfortunately, we went ahead liberalising without a regulatory organisation. We removed the subsidies, fertilisers shot up, the marketing of the basic crops did not respond. We, Malawi, both the previous and our government, have not adequately addressed the issue of food security. We must also look at other cash crops that can bring an income. But we have to look at all aspects, from growing to selling them. Tobacco earnings have gone down. Finally, we must look at donor support, particularly through structural adjustment programmes: some of these policies have not been pro-poor. We have implemented them religiously, but they have hit poor people very badly.

**Malawi is an agricultural country, but there is an urgent need to find other sources of income. Can diversification be pursued in the short term?**

The first assumption to make is that Malawi is going to be an agricultural country for quite some time. So agriculture is our first priority and we must make sure that it does grow. Then we must look at how to diversify.



One of the major interventions of the UDF government concerns free primary education.

We have traditional crops, tobacco, tea, sugar, and cotton. Tobacco has been so successful because it is well organised. If a smallholder grows tobacco he knows where to go to sell it; if you grow something else you have to wait for someone to come and buy it, and you don't know who is coming, when, how much is going to be offered. There are some positive moves towards economic diversification, but this process would be more successful if we could make sure that it is well designed, from planting the crop to marketing it. If we select some areas and develop them throughout I am very hopeful that we will see a major movement towards diversification, also because tobacco is now facing many problems in terms of prices.

***For the private sector to work effectively, the government should borrow less from the banks. What are the intentions of the government in the future?***

We must go back to understanding this. The balance of payments programme started in 1981 and it was good at the beginning. But it also meant that the part of our budget that was under the control of donors became bigger and bigger. By the time we came to government, we called for the free primary education policy and we had to increase our budget, then we had to deal with issues of health, HIV/AIDS, infrastructures. It is true that we were getting assistance from donors in the balance of payments, but it was soon unsustainable because if one donor did not like the way we were running our country we were in trouble. In the past three years we had some of those problems again, and because of that, donors have withheld their balance of payment support. But we have schools, hospitals, roads. For this reason, we have to borrow from local banks. When we borrowed for the first time we thought we were doing it for only one year. Then we were hit by the food crisis, which made things even worse. We had to import a lot of maize. So,

as of now, we have a large domestic debt, but we also have a very large external debt, both of which are constraining the growth of the economy. With the IMF decision to provide support again, we can wind down the domestic debt over probably the next six to nine months. But we need to have the understanding of donors that we are a young democracy and that things cannot always work perfectly. There are pressures from many different groups that the government has to cope with and therefore sometimes we cannot move quickly enough. But by withholding balance of payments support we are really punishing the ordinary people

in the villages. I believe that donors are starting to understand that this is the way to go: we have to trust each other, to be real partners.

***Many people, including key members of the current government, complain about Malawi's loss of economic sovereignty.***

In the field of international development, we must work with other people as partners, and for this reason we can lose a little bit of our sovereignty. It is important for us, and for all developing countries in general, to put across our concerns, our problems, our solutions, and for the donors to respond and trust that we know what is happening in our country. What destroys the relations, sometimes, is the feeling that because somebody has got a large chunk of money, which he can give to others, he feels superior. That is not correct. We must respect each other, we must be partners. Development in Malawi is important to Malawians, but it is also important for people in Europe and America. A disease is here today and the next morning it is in Europe. It must be a win-win situation, so we all benefit from development.

***The goal for the future of Malawi is outlined in "Vision 2020". Where will Malawi be by then?***

The poverty reduction strategy paper is the strategy to implement "Vision 2020". Some of these targets will be reached but some will be missed because of the constraints that have since come into play; for example HIV/AIDS was not as severe in the beginning; environmental degradation was not as relevant as it is now; human resources development, and so forth. In certain areas we will reach the planned targets, in other areas we will miss them. But what is important, though, is that we have a target, against which to measure our progress. The value of "Vision 2020" is that it forces us to go in a certain direction. ■

MC

## "We should subsidise production, not consumption"

John Tembo is the President of the Malawi Congress Party (MCP), the major opposition party. In this interview, he presents the proposals of his party in view of the 2004 elections, arguing that more emphasis should be placed on the agriculture sector: subsidies should indeed be available for farmers to improve production.

**The MCP was the only party allowed for about 30 years during a very controversial time in Malawi's history. What is your party's link with that past?**

MCP has a long history. It was established in 1958, actually even much earlier, but was only formalised in 1958. It was the first political party established to fight colonialism and to fight the Federation of Rhodesia and Nyasaland. That same party exists today. There have been some changes in policies, but it is still the same party. If you look at what progress has been made since 1994, it is true that all the components to strengthen the multiparty democracy have been put in place and democratic institutions have been established. But when it comes to issues, there are major weaknesses. There is supposed to be separation of power, but often the executive goes beyond its power to influence the legislature as well as the judiciary.



**What are the major differences between the MCP and the current government?**

To a certain extent, regional preferences still play a role, but no party would agree to say that they are a regional party: we all claim to be national parties. It is true, though, that the MCP gained the majority of its seats in the centre of Malawi. I think that the major difference is how we handle issues which affect the people. Our party believes that the top priority is the welfare of all the people, whereas the party in government wants to protect the interests of a few people. That is why our country is in such poor shape. Also, we believe that the government should not borrow so much from the domestic market, crowding out business people from borrowing at reasonable rates. There is too much internal and external debt. If you combine the debt portfolio, we are in an impossible position. We really fight on these issues.

**The opposition is believed to be weak. In the past years the MCP has been internally fragmented. Has this changed? Do you have any relationship with the other small opposition parties?**

The last MCP Convention was intended to unite the party. We made an agreement to stop the internal divisions. Previously there were two main factions, one led

by Gwanda Chakuamba, and the other one by me. But at the Convention I was elected as the President of the MCP. Therefore I lead the opposition, but not in Parliament; because of a Court decision, at the moment I am not a Member of the Parliament. I have appealed the ruling of the Court. Until the final decision is made, I believe it would be wrong to talk about it. On the contrary, the party in government continues to discuss this issue in public, trying to interfere and influence the final decision.

As for the relationship with the other opposition parties, the bottom line is that we all oppose the current government. But we don't work with those parties, we operate separately and differently. We are trying to talk to each other, but it's not easy.

**Some recent studies have shown that Malawi's economic situation has worsened since 1994.**

**Does Malawi rely too much on agriculture?**

If you go to the marketplace, the countryside, the villages, you get a fair picture of the real condition of the people. I can only say that in our judgment the life of the people is worse than it used to be, except for a few individuals. The party in government is making sure that a few people become rich. It may be true that we rely too much on agriculture, but unlike other countries we don't have diamonds or oil. The greatest resources we have are land and people, and the best way to use them is to grow crops. The only problem is that, from whatever we grow, we don't get a fair price when we export it to other countries. This depends on the fact that there is not a structure in the world trade system which protects the interests of developing countries. We got some access to international markets with some initiatives. For example, AGOA should allow us to export goods to America. But who are the people involved in the exporting of the clothes? Only a few people may benefit, and they are not even indigenous Malawians. Our own national textile factory has closed. AGOA is a good initiative but it does not benefit Malawians. It is up to the government to change this, but they are not putting enough emphasis on it.

***It seems that there has not been much progress on economic diversification. Do you think that tobacco is sufficient to guarantee a better future for Malawians?***

From a growing point of view, there is no problem for Malawi to maintain or even to increase its tobacco production, in spite of the negative propaganda against smoking. Since this campaign started, world consumption has not been affected very much. We can produce more. All we need to do is to put the proper policies in place. For instance, we are not taking advantage of the problems that Zimbabwe, one of the most important producers of tobacco, is experiencing. Actually, I found out that in Mozambique they are building a factory attempting to make up for the low production in Malawi. Diversification is a good thing, but it takes time. Finding a viable alternative crop, which is as highly profitable as tobacco, is not easy: for example, people talk about cassava, paprika. These crops cannot be as dominant as tobacco. Malawi should diversify, but diversification cannot take place quickly and cannot bring in, at least in the short term, the same value as tobacco.

***International donors have helped Malawi in its development efforts, but they have increasingly expressed concerns about good governance. Do you think that the conditions they place on aid are too strict?***

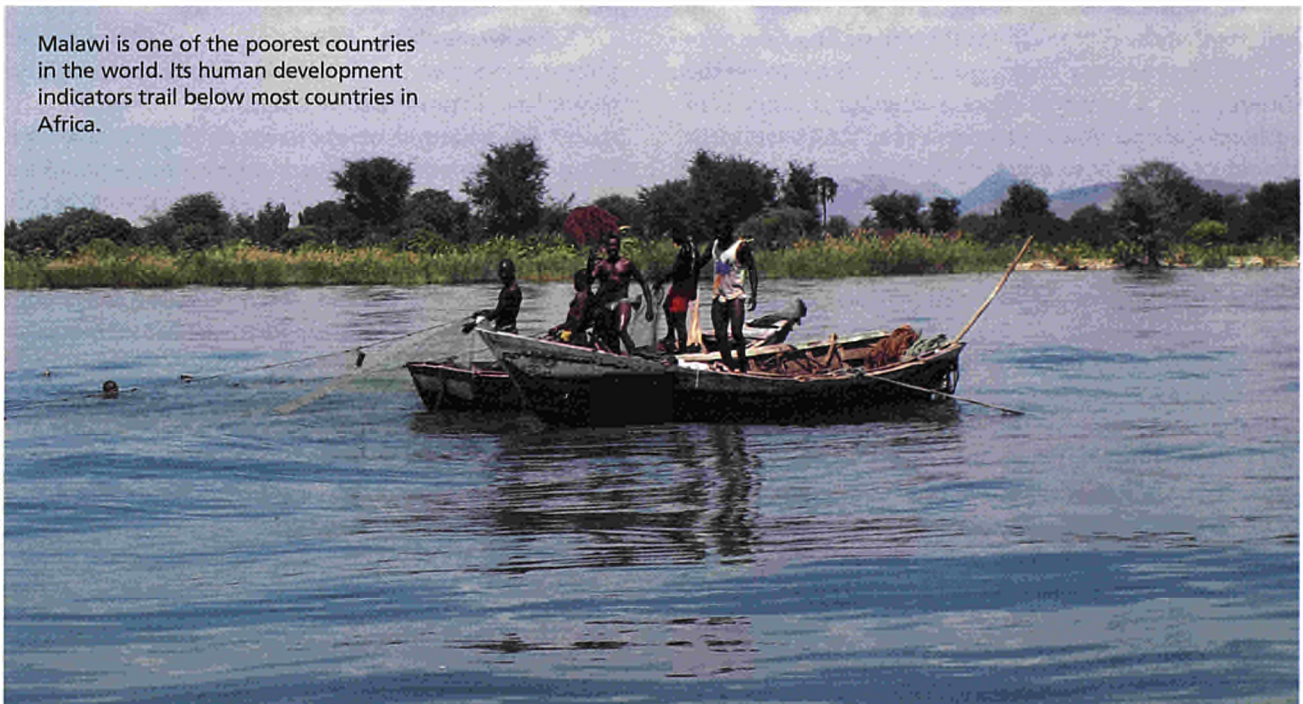
As Malawians, we are very grateful for the assistance we get from international donors. But I must admit that sometimes we have misused generosity from donors. We must use the assistance we receive for projects, and not for travelling. I believe that donors should want us to use money more stringently than they do now. If you read the papers in Malawi, you see many people complaining about the use of resources. If we used the resources properly I don't think donors would interfere. But there is a major difference between the UDF and the MCP about how to use the money we receive. We believe that there

should be a slightly different orientation on aid and agriculture. Spending a lot of money to bring in maize when there is a food crisis does not make sense: that money should be used at an early stage to help the farmers have access to cheaper inputs. Subsidies is a bad word, we cannot mention it! But how can we encourage farmers to grow more unless there are some subsidies going into inputs? The money that is spent when there is a famine should be used during the growing season. We should subsidize production, not consumption. I don't see enough resources designed for developing the agricultural sector. We must first encourage agriculture. We must also have a government free of corruption, with proper management of Malawi and its economy.

***The elections will take place in May 2004, but you have had some problems in selecting a presidential candidate. Do you have hopes to win?***

The MCP is a credible alternative to the current government. The issue in the 2004 election is not about candidates, it is about people. If the government does not interfere in the elections, I think we will have a chance. People are very tired of what is happening in Malawi. There is a limit. For example, when President Muluzi wanted to run for a third term, the country refused. Now, he decided to get somebody else, who was not even a member of the UDF. It is not up to me to tell if people in the UDF have accepted him, but I would doubt very much that he is going to win. They are very confident about winning because they have got the money. Some people are financing them. The law says that they are supposed to declare where they get the money from, but in practice it does not happen. The MCP has no money. We fund our campaign by internal mobilisation; we also get a small amount from Parliament, based on the number of seats we have, but it is not much. It is true we don't have a candidate, but you must understand that the MCP is not an issue of an individual, it is a movement. ■ MC

Malawi is one of the poorest countries in the world. Its human development indicators trail below most countries in Africa.





# "Green gold": tobacco as Malawi's lifeline

©Isopress/All over Press

Malawi has for a long time been the world leader in burley tobacco production, but recently the drop in production has knocked Malawi off its position.

Viewed by the local population as the "green gold", tobacco represents more than 70 per cent of Malawi's foreign exchange earnings, making it the country's economic lifeline. In the past three years, though, tobacco revenues have dropped due to slumping prices, declining yields, rising production costs, and deteriorating quality.

Tobacco production started in the early 1970s and within a few years became the country's major foreign earner, growing from 39 per cent in 1974 to 69 per cent in 1993 of total tradable exports. The sector was extremely regulated: the market was organised in a way that an elite could appropriate the surplus of the smallholders, while the only way to market tobacco was through a parastatal, the Agricultural Development and Marketing Corporation (ADMARC). This situation led some observers to argue that the growth of the tobacco industry could be seen as a history of exploitation. "During the previous regime, Malawians were forbidden to grow tobacco. Only big conglomerates run by Europeans, who held large hectares of land, were allowed to grow it. In sum, there was great exploitation in this sector", states Mr Chakufwa Chihana, currently Second Vice President and Minister of Agriculture and Irrigation, who has a past in the trade union movement.

The collapse of this system came with the end of the one-party regime. The new democratic government led by the UDF abolished the estate monopoly and pursued a full liberalisation of the sector, thus making a profound shift in Malawi's agricultural strategy: from estate-led growth towards a smallholder cash crop regime. In fact, the number of smallholder farmers cultivating tobacco (defined as those who own less than two hectares of land, and generally cultivate between 0.1 and 0.3 hectares of tobacco) has grown tremendously: recent estimates from the World Bank indicate that their number is about 300,000 (representing about 70 per cent of the total tobacco crop).

After a severe drought in 1994, production expanded and reached a peak in 1997. Several reasons can be given

for this expansion. First, growing tobacco was very remunerative compared to other crops. Second, due to their previous experience as labourers in the larger estates, smallholders were able to grow tobacco easily. Third, a series of facilitating measures were introduced, including the formation of "burley clubs", meant to help smallholders in procuring inputs, access to credit, providing technical assistance, and organising the transport of the tobacco to the auction floors; the introduction of "intermediate buyers" of tobacco, meant to provide cash for harvested or cured tobacco at highly discounted prices; the availability of credit to smallholders, mainly from the Malawi Rural Finance Company.

## Lower profitability

After the initial boom which followed liberalisation, production has levelled off over the past five years. Actually, in 2002 there was demand for at least 135 million kg of burley tobacco, but the country managed to produce only 103 million kg, which represents a 25 per cent gap. Liberalisation has also caused a shift in the type of leaf cultivated. Production of burley, due to its low production costs, has increased and contributes to over 80 per cent of total production, with a record of 92 per cent in 2001. On the contrary, the production of flue-cured tobacco, which requires substantial investment, has dramatically declined.

More dangerously, the profitability of the entire sector has worsened. Data provided from NASFAM (National Association of Smallholder Farmers of Malawi) show that returns per kg fell by 50 per cent in 2000 and almost by half again in 2001. Several reasons have been given.



Some farmers prefer to employ children because they pay them less. But now the whole tobacco sector is mobilised against child labour. Public campaigns have been conducted to tell farmers that a child has the right to go to school and to have some free time.

First, the rising cost of production versus stagnant world price. According to Mr Sigman Chirambo, executive secretary of the Tobacco Association of Malawi (TAMA), the organisation in charge of defending the interests of the growers, “fertilisers are too expensive. The devaluation of the currency penalises us. Also, farmers can no longer afford to borrow from commercial banks because interest rates are prohibitive. We need a cheaper social fund credit system. The state of the food sector also constitutes a problem: if someone has to grow tobacco with a labour force, he has to feed his workers, but now maize comes at a much higher price than before”.

Second, the antagonistic relationship between growers and buyers. Almost every year the negotiations on the auction floors are suspended because prices offered by buyers are considered too low by growers. The longer the tobacco remains unsold, the more farmers have to pay for storage costs and security. Nevertheless, farmers often accept low prices in order to defray those costs, and therefore are sometimes unable to repay the loans they obtained during the production stage. “I think the prices we offer are fair. Not only the growers, but we also face major problems. The entire sector has suffered from the currency devaluation: technology is imported, transport costs are too high. Moreover, it is a mistake to look at average prices. The quality has gone down in the past years, but we still pay a good price for good tobacco. Still, we need to make sure that more tobacco is produced in Malawi,” asserts Mr Charles Graham, Managing Director of Limbe Leaf, the major buyer company in Malawi.

Third, illegal selling. Some growers sell their crop illegally in neighbouring countries (Mozambique and Zambia) because they claim to get a better price that they would obtain on the auction floors. But, according to Mr Godfrey Chapola, general manager of the Tobacco Control Commission (TCC), a government parastatal in charge of regulating the whole sector, “it all depends on how one defines the price. Actually, the price is often even higher in Malawi than it is in Zambia and Mozambique.

When farmers sell tobacco illegally no money is deducted from their earnings, while in Malawi they have to pay taxes and levies for classification, membership of tobacco organisations, research”. Furthermore, adds Mr Chirambo, “it takes too much time for growers to receive their money. They first bring their crop to the auction floors, but tobacco is not sold immediately. Then the money they collect for their crop is deposited in banks. It is only at that moment that farmers can collect their money. On the other hand, if they take tobacco to the border and sell it illegally, they get their cash immediately. We, as an organisation of the growers, are trying our best to encourage farmers to be loyal not only to the tobacco sector, but also to the people of Malawi. I also think that the government should take more strict measures to stop this illegal selling”.

Another major concern in the sector is child labour. “We cannot deny it: the issue is there but we are very active in eliminating it, because we believe children cannot be denied school,” says Mr Chapola. Also, there is another element that should be taken into account: “if the international community starts boycotting Malawian tobacco because of child labour, the whole country will be in big trouble. That is why we tell our farmers to stop child labour: we simply cannot risk that our tobacco is boycotted in international markets”, advocates Mr Chirambo.

### The effects of liberalisation

Deregulation of the tobacco sector was conceived in the interests of smallholders, with the ultimate aim of poverty alleviation. While there is no doubt that the previous economic regime benefited only big estates, it should be noted that the gains from liberalisation for smallholder farmers have been less widespread than previously thought. In addition, the extension of burley tobacco to smallholders had a negative impact on food security by reducing fields for maize and other food crops. Among the buyers, there may be some competition, but in reality there is more a kind of cartelisation than free market. All tobacco is sold on auction floors, where buyers must have a license to participate in the negotiations. The number of licensees has decreased in the past years and currently there are only three major buyers, which are linked through shareholding to multinationals.

Despite these problems, tobacco still remains an economic lifeline for Malawi. While demand for tobacco is contracting in some areas of the world, it is expanding in others, with world consumption not declining substantially. “Despite the world campaign against smoking, tobacco will remain our main commodity export for the near future and we will continue to rely on it. We will still continue producing tobacco, and actually we will try to produce even more until something is found not to replace, but to supplement it,” concludes Mr Chihana. ■

MC

# A strategy for economic growth: improved macro-economic conditions and private sector development

After having followed sound economic policies from 1995 to 1997, in more recent years the overall performance of Malawi's economy has not been conducive to trade and investment: expenditure control has weakened, agricultural prospects have become mixed, the deficit has increased, interest rates have gone up. As a result of the poor economic management of the country, the private sector has collapsed. However, in the past year, the joint commitment of government and private sector to diversification from tobacco is a positive signal for business growth in the future.

Malawi is predominantly a rural economy, relying on favourable climatic conditions for its agricultural production. Agriculture supports 90 per cent of the population, contributing 45 per cent of the Gross Domestic Product (GDP) and over 90 per cent of export earnings. Even though in the past two decades the structure of the economy has not varied substantially, some major changes have occurred since the early 1990s.

During the one-party system the overall production structure of Malawi consisted of two distinct sectors: the export-oriented large-scale sector, which produced mostly tobacco, and the smallholder sector, which produced mostly subsistence maize. When it took over, the UDF government adopted a different development strategy by placing smallholder agriculture as the engine of growth. A decade later, the results of this reform are significant. The country's food basket has changed, with a remarkable growth in the production of cassava and sweet potatoes over maize. In the tobacco sector, the number of

smallholders has grown tremendously, but at the same time it is increasingly realised that Malawi cannot rely only on tobacco in its efforts to reduce poverty.

## A comprehensive economic growth strategy

Overall, the economic performance of the Malawi economy in recent years has been very weak. It has been characterised by low or negative GNP growth rates, currency devaluation, high inflation, a large budget deficit, and high interest rates, which have impacted negatively on the fight against poverty. In response, the Malawi Poverty Reduction Strategy Paper (MPRSP), launched by government in April 2002, provided a pro-poor economic growth strategy to directly tackle poverty. "One of the main pillars of the MPRSP is the stimulation of the private sector. In Malawi there is too much government and too little private capital. But this will change soon. New jobs will be created and as soon as the private sector becomes more dominant a new work habit based on systems of rewards and penalties will be installed in Malawi. Companies that are not profitable will no longer be in the market", says Minister of Commerce and Industry Samuel John Mpasu.

Meanwhile, a comprehensive business plan to stimulate private sector growth was put forward by the National Action Group (NAG). Matthew Chikaonda, economist and chief executive of Press Corporation Limited, one of the largest employers in Malawi, explains the goals of the NAG: "It is a gathering of key players in the private sector who meet to decide what to do to unlock the potential for growth in Malawi. For each sector there is now a lead player, who works in conjunction with the government to see what the constraints and opportunities are for that specific sector. Several public sector entities are also active in this process: the Ministries of Commerce and Industry, Economic Planning and Development, Finance, and also the Central Bank."

Malawi has also an ongoing Poverty Reduction and Growth Facility (PRGF) programme with the International

Cotton production has seen a major decline since the 1980s as the arrangements serving the industry began to break down; low prices have meant that there is less incentive to grow cotton. But the recent investment by two international cotton ginners has given fresh impetus to the sector.



Monetary Fund (IMF). The PRGF is the IMF's concessional facility for low-income countries, based on country-owned poverty reduction strategies to ensure that PRGF-supported programmes are consistent with a comprehensive framework to foster economic growth and reduce poverty. In 2001, disbursements were suspended due to lack of progress on achieving the macroeconomic stabilisation targets, but following an IMF mission to Malawi in July 2003, disbursements resumed in October 2003. "Malawi has made substantial progress in meeting the targets set under a track-record programme. It has agreed to commit itself to undertake certain actions, including strict control in public spending and the repayment of government domestic debt. Returning to macro-economic stability and implementing structural reforms is key to accelerate growth", said Girma Begashaw, IMF resident representative.

Following the approval of Malawi's PRGF arrangement review, four European donors providing budgetary support under the Common Approach to Budget Support (CABS) pledged to resume their €45 million aid package. However, the CABS, which is made up of the European Union, Britain, Norway, and Sweden, in a common statement declared that "should government fail to meet the requirements, there will no alternative but to re-evaluate budget poverty programmes."

### Constraints for business growth

Working together, the private sector and the government have launched a comprehensive Economic Growth Strategy (EGS) whose objectives are: to create an overall macro-economic environment conducive to broad-based growth of at least six per cent, to be maintained in the long term; to ensure wide participation in and sharing of the benefits from higher economic growth. Several constraints affecting the business sector have been identified in the EGS. The major ones relate to the poor macro-economic conditions of the country. "The business environment is simply not conducive for doing business. Many firms have shut down; others still operate but only because they need to recover their initial costs. The poor management of the economy is the result of a lack of vision of our leaders: too many people just look at the short term," says Mr Chancellor Kaferapanjira, chief executive of the Malawi Confederation of Chambers of Commerce and Industry (MCCCI).

The primary cause of slow growth in the private sector is the large budget deficit and the consequent need for government to borrow from local banks. This has resulted in an increase in the real interest rates, which are over 40 per cent. Inflation rates, though having declined substantially as of the beginning of 2003, remain unstable and higher than anticipated; the exchange rate is volatile and unpredictable. Furthermore, the level of savings is too low, essentially for three reasons. "First, people do not earn a lot of money, so they have very little to save from; second, due to inflation and the devaluation of the currency, people tend to consume because the value of the money tomorrow is not the same as today; third, because of the extended family idea typical of our society, people who earn some money tend to support their relatives who are struggling," explains Mr Thomson Frank Mpinganjira,



Tea represents about nine per cent of Malawi's exports by value. Even though there has been a gradual improvement in production and productivity over recent years, world prices have been very low for the past three to four years, impacting negatively on the profitability of the whole sector.

managing director of First Discount House Limited, one of the major financial institutions in Malawi.

In addition to this, as Mr Kassam Okai, former chairman of the National Economic Council (NEC) and a major figure in the business sector, points out, "Malawi faces two more non-economic constraints. First, the absence of infrastructures for the development of entrepreneurship, which is partially a consequence of the fact that the education system, being more directed towards the academic side, lacks the technical side. And then we also have the problem of HIV/AIDS, which is killing the most productive people in our society. Also, it should not be forgotten that in Malawi, being a landlocked country, freight costs are very high."

### Manufacturing

In addition to further improvement in the tobacco, tea and sugar sectors, which at the moment constitute the sole foreign exchange earner in the country, the growth strategy focuses mainly on three sectors which can quickly generate growth: manufacturing, tourism, and mining.

Manufacturing has been in constant decline over the last decade, accounting in 2001 for only 11.5 per cent of GDP. Therefore, there is an urgent need to improve the incentives to encourage investment, particularly in export and employment-oriented activities. Two main sectors have been identified: agro/food processing and textiles.

Agro/food processing has potential for growth especially in processing fruit and vegetables, rice, processing Macadamia nuts, and in the production of starch from cassava. Cassava has recently been identified as a major product for agricultural diversification as it is used in the making of glue, animal feeds, ethanol, the garment industry and for incorporation into food products. "Very often in developing countries, the basics are forgotten. Where Malawi cannot compete because of freight costs, concentration should be on organic products and horticulture, high value products. Further, there is knowledge within the country to grow several species of trees and plants, which would yield high returns with their use in medical fields. These include the neem tree and *prunus africanis*. The neem tree not only prevents mosquitoes breeding in



the area, but is also used for a host of medical purposes, including herbal medicines. *Prunus africanis* is used for the treatment of prostate cancer,” argues Mr Okhai.

An integrated cotton-textiles-garment chain has been identified as a key component of the economic growth strategy. Mr Kantilal Karsanji Desai, chairman of the Textile and Garments Industry Association of Malawi, shows a lot of optimism about the prospective growth in the textile sector. “Malawi is an agricultural country but is not taking full advantage of its current resources. The industrialisation process could easily start from cotton. The conditions for growing and processing it are favourable: the soil is fertile, the weather is conducive, the cost of labour is cheap. But if countries in Western Europe and the US remove their subsidies we would be even more competitive”. In this sense, Malawi has not yet been able to take advantage of the measures offered by international donors to low income countries: “It is true that in the textile industry we face the competition of some Asian countries which also have cheap labour. But Malawi has the advantages provided by AGOA and the Everything But Arms initiative: its products are duty free and quota free. There are other problems, such as imported technologies, high taxation, prohibitive transportation costs, but we still have a comparative advantage”.

Furthermore, “there is a very lucrative sector in which to invest, thus benefiting further from AGOA: the apparel industries. We could manufacture for the entire American market. This would not only create enormous employment opportunities, but would also allow us to have some additional foreign exchange,” explains Minister Mpasu.

### Tourism

Tourism represents a negligible part of GDP (about 1.8 per cent in 2001). It is constrained by several factors, which affect both the number of visitors and the further development of the sector. According to Mr Kaferapanjira from MCCCCI, tourism is a sector that can grow fast. “The problems faced by tourism are well known. There is a limited number of international flights coming to Malawi, prices are high, and in the past there has been a negative publicity for Southern Africa. I think we should market Malawi better. We also need to build the necessary infrastructures, such as roads, airports, hotels, and think of other complementary activities to attract tourists. There are several businesses which have expressed an interest in investing in this sector. But we need a vision: different ministries must work in conjunction. The government needs to

make it a priority, to provide incentives, and build the necessary infrastructures.”

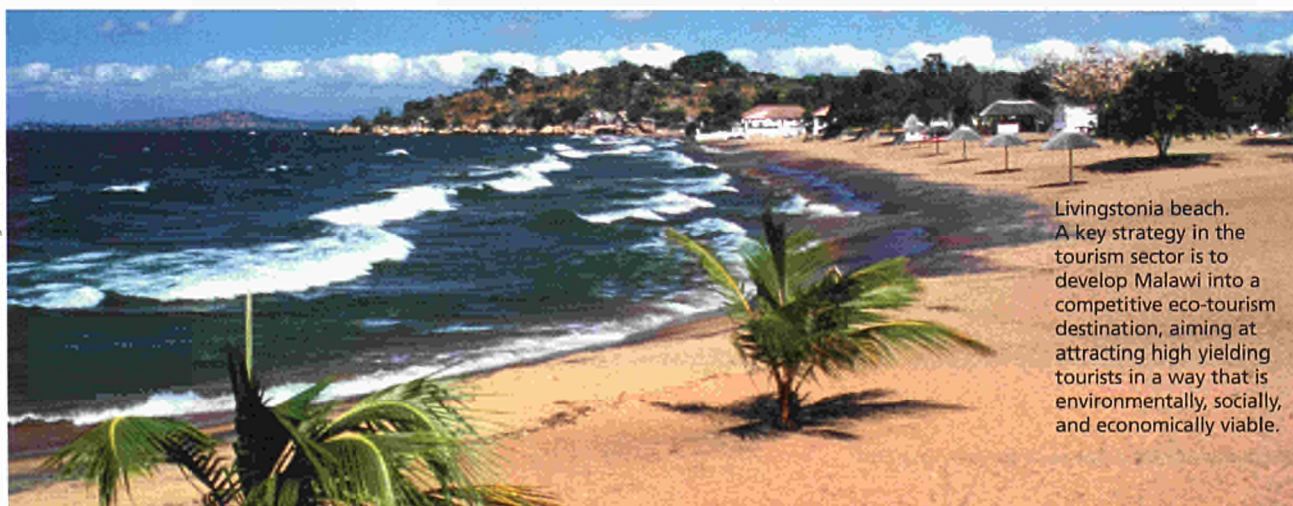
Lake Malawi is still under-exploited. Last December, the government granted Malawi Development Corporation (MDC), a government parastatal set up to contribute to the development of the agricultural, industrial, and tourism sectors, the concession to develop Cape Maclear. The plan includes the construction of a chain of bungalows, water sports and hiking facilities. According to Mr Stewart Malata, general manager of the MDC, “in the past, government did not look at tourism as a priority area. But we have natural resources and historical sites and we should capitalise on that. Cape Maclear is one of the most beautiful places in Africa: the waters are crystal clear, the animal life around is very rich, there are so many different types of fish, snorkeling is marvellous. But we need an airport: there is already a landing strip in that area, but it must be upgraded. Tourists want modern facilities: let’s give them something decent and attractive”.

### Mining

Even though no big mines operate in Malawi, mining is one of the sectors with the highest growth potential. Yet, the mining industry remains one of the under-exploited areas within the economy, contributing only 1.6 per cent of GDP. A recent study from the department of geology noted that the absence of a mining culture among Malawians is making it difficult for government to fully appreciate the benefits that the country could gain from increased mining activities. Efforts must be made at two levels: small-scale and medium/large-scale. In the short term, support is needed to help small-scale mining cope with low productivity, low value-added, and limited access to market outlets. In particular, gemstones, monazite, silica and bauxite are already being mined in several districts of Malawi. For the medium/large-scale mining, a new Mining Policy and Act is necessary: this could provide investor protection, incentives for investment, support infrastructures and guard against the risk of environmental damage.

The plan developed in the Economic Growth Strategy is very ambitious. Now, the implementation stage is very critical. A positive element is that such a strategy is based on an extensive dialogue between the private and the public sector, and that it can also count on a true partnership with international donors. “That is where the hope is at the moment for the future of Malawi,” concludes Mr Chikaonda. ■

MC



Livingstonia beach. A key strategy in the tourism sector is to develop Malawi into a competitive eco-tourism destination, aiming at attracting high yielding tourists in a way that is environmentally, socially, and economically viable.

## Food security and transport: the priorities of EU-Malawi cooperation

Malawi, as one of the poorest countries in the world, receives substantial amounts of economic assistance from several donors. The European Union (EU), with one of the largest allocations in any ACP country, concentrates its development assistance on agriculture and natural resources as well as transport infrastructures, with a particular focus on road maintenance and macro-economic support.

Development assistance in Malawi amounts to about US\$400 million per year, which represents 23 per cent of GNP. Aid dependency is very high: it has been estimated that about 80 per cent of government development expenditure is financed by external donors. Moreover, Malawi is one of the most highly indebted countries in the world. Following a decision made in December 2000, the assistance under the HIPC (Heavily Indebted Poor Countries) Initiative will reduce the debt annually by around \$40 to \$50 million over the 2000 to 2020 period, equivalent to around 1.3 per cent of GNP for the 2000-09 period and 0.7 per cent of GNP for the 2010-20 period.

Several donors are currently active in Malawi: the UK is the major bilateral donor, followed by the US, Canada, Norway, Germany, and Japan; as for multilateral donors, the EU, the World Bank, the United Nations agencies, and the International Monetary Fund (IMF) are all very active. Overall, donor coordination is good: donors meet regularly in the context of an established framework, which is chaired by selected missions taking the lead role in each of the key sectors (i.e. UK for health; the EU for transport; the World Bank for macro-economic issues). The common framework for donors is the Malawian Poverty Reduction Strategy Paper (PRSP), which was launched in April 2002 and endorsed in August 2002. In a preliminary assessment (October 2003), the World Bank concluded that although there is only limited progress in its implementation, the PRSP continues to provide a credible framework for development in Malawi.

### Promoting food security

The EU has been one of the major donors for a long time. Its major interventions in the past decade (EDF 7 and 8), have been through the Social Forestry and Promotion of Soil Conservation and Rural Production (PROSCARP) projects and through an integrated programme in the field of food security.

The major achievement of the PROSCARP has been reduction in land degradation through soil and water conservation and the generation of sustainable land husbandry techniques, which ensure greater food security and an increase in rural incomes. For instance, more than 170,000 smallholder farmers have increased their maize production by 30 per cent; more than 300,000 people have obtained access to clean potable water.

The Food Security Programme, which started in 1995 as a pilot programme, was launched in 1997 with the aim of promoting national and household food security in the framework of market and economic liberalisation. Support to the people was given through several programmes, including safety nets such as the Public Works Programme, which provides employment opportunities in road rehabilitation, forestry and irrigation, and the Agricultural Production Investment Programme (APIP), which provides credit in kind for seed and fertilisers to smallholders for food grain production (see also issue 196 of the *Courier* on this matter). While the short-term results of the food security programme have been substantial, the long-term impact remains problematic, partly due to the fact that the Malawian government has not been able to develop a comprehensive food security policy.

The EU has been the main donor supporting the government in replenishing and managing food reserves. The Multi Annual Security Programme (MAFSP) introduced a series of policy measures related to the Strategic Grain Reserve (SGR). A major step forward has been the

Workers at the National Food Reserve Agency. In addition to the emergency response to overcome the food crisis, the EU spelled out the concept of income security vis-à-vis food security, insisting that food aid is a necessity, but cannot be a sustainable solution to hunger: in this sense, a series of cash-for-work activities were funded to empower people.





The Maize Mill in Tujamichenje, supported also by the National Association of Business Women (NABW), is one of the most successful EU micro-projects in helping rural and urban communities improve their standards of living.

establishment of the National Food Reserve Agency (NFRA), which is now in charge of managing the SGR. The introduction of the NFRA is an important instrument in the Malawian food policy. According to Mr Chihana, Minister of Agriculture and Irrigation, this represents a key for the future of food security in the country: "There is no longer waste, the situation is under control, we have a new computer system, a new management system, new procedures to ensure transparency and efficiency. We keep an emergency quantity of maize so that in case of another food crisis we can lean on what we have in Malawi, without seeking any international support."

Along the same lines, Mr Patrick Makina, general manager of the NFRA, states that the EU support is essential for the good management of the NFRA: "We receive three types of support from the EU: financial assistance for the administration and management of the NFRA; technical assistance in terms of expertise in this sector; financial support to procure grain within the region and in Malawi, which has the advantage of not distorting the local market, as food is not dumped, while at the same time providing an incentive to farmers to grow more".

### Assisting the tea industry

The EU has also provided some assistance through the STABEX (Stabilisation of export earnings) system, which supports agricultural diversification, coffee smallholders, and tea replanting. The assistance provided to the tea sector is meant to improve the productivity and quality of the tea. In particular, the objective is to replant the existing inferior seedling tea with the superior clonal tea, which is high yielding and of better quality.

The programme has been particularly successful, and, following a request from the Tea Association of Malawi (TAM), the initial end date of the programme has been extended. "Tea prices are now very low, which keeps the amount of investment for the replanting programme at a minimal level. On the contrary, replanting the tea is very expensive. If the low prices continue, we will only

survive as an industry by increasing yields. This is why the tea replanting programme is vital for the industry", says Jim Melrose, Chairman of TAM.

### Building and maintaining roads

The EU has been the major donor in the transport sector for a number of years. The EU interventions have significantly contributed to improving the road network by funding various components on the Northern Corridor (e.g., the road from Karonga to Mbeya in Tanzania) as well as links to the southern border with Mozambique. "The road network in Malawi is one of the best in Southern Africa. Being a developing country, though, we rely on external assistance. If donors continue to support our efforts we will certainly be able to enjoy more business opportunities in trade and tourism. Our concerns are now focused on the Nacala Corridor, which is the shortest rail access route to a sea port", argues Mr Clement Stambuli, Minister of Public Works and Transport.

A major ongoing project, which started in March 2003 and is supposed to be completed by June 2005, is the reconstruction and improvement of an existing road of 127 km between Masasa and Golomoti (Masasa-Golomoti-Monkey Bay road) in the Dedza district. According to Mr Wiepke van der Goot, Head of the EU delegation, "the road will not only facilitate access to markets, schools, and health centres, but it is also likely to provide a major boost to the tourism sector, with the possibility of earning valuable foreign currency and increased employment possibilities. The road will shorten the route to the southern part of Lake Malawi which is a major tourist attraction".

But building roads is not enough. "Roads, once built, must be maintained," says Attilio Pacifici, senior EU official dealing with the transport sector at the EU delegation, "and for this reason we have supported the creation of the National Roads Authority (NRA) and continue to support it. Our efforts must be complemented by those of the government, whose involvement in road maintenance is essential". ■ MC

### EU-Malawi cooperation at a glance

EU cooperation with Malawi occurs through different sources:

- EDF 9, Envelope A (€276), used for long-term development operations as follows: agriculture and natural resources (€60 million), with the aim of improving and diversifying income earning opportunities and better food security for the poorest areas, and for improved economic and sustainable management of natural resources; transport infrastructures (€90 million), which will be used for reducing transport costs and better access to and from rural areas; macro-economic support (€70 million), in particular support for government efforts to ensure equitable access to social services; other programmes (€56 million), such as micro-projects and governance/non-state actors projects.
- EDF 9, Envelope B (€69 million) to cover unforeseen needs.
- Investment Facility, which is not part of the Indicative Programme, but is a financing instrument managed by the European Investment Bank.
- EU budget lines, which can be used to finance specific operations, in particular for food security within the agriculture and natural resources focal sectors.

## Taking part in public life: democracy and civic education

Even though the first democratic elections were held in 1994, democracy is still not widely appreciated by every Malawian. In this sense, a project funded by the European Union on civic education is making a difference on the ground.

Established in 1999, the National Initiative for Civic Education (NICE) is a joint project of the Republic of Malawi and the European Union, managed by the German Agency for Technical Cooperation (GTZ). Its objective is to entrench core democratic values at the grassroots level through the provision of civic education. "The unique approach of NICE is that, contrary to other civic education projects in Africa, it is a country-wide programme, operating throughout all districts and villages. Our structures reach at least 10-15 per cent of the population of Malawi. We have been on the ground for four years and we have already seen the impact that our programme is making: people now understand things in a different way; they

know they have rights, but they don't have to wait for government, donors, or NGOs to deliver; they have to help themselves to improve their lives", argues Christian Peters-Berries, a German national who is the project manager.

### The "goat culture"

NICE provides information and training while facilitating various services that make people aware of their own interests and responsibilities. Instruments used include workshops, debates, and cultural activities involving local communities. "Democracy is not meaningful if people do not take part in public

life. Participation must start at the village level. Specific community needs, HIV/AIDS, food security, environmental protection, gender and general issues on democracy, local governance and rule of law are used as entry points", explains Mr Pius Mtike, district officer of the Thyolo district.

A crucial factor contributing to the success of NICE is its decentralised implementation structure, which comprises 29 district offices, three regional offices, and one national office. NICE works with thousands of volunteers called zone coordinators and paracivic educators. Throughout all its activities, the programme aims at promoting self-organisation and empowering people.

"Through NICE we have contributed to re-vitalising voluntarism in Malawi. When people participate in a workshop generally they expect to receive an allowance. But if we provide a payment, we cannot be sure that people are really interested in what we do and in the services we provide. Actually, we have invented the so-called "goat culture", which is now very popular in Malawi. We buy a goat, some maize meal, some rice and we give them to the community to prepare a meal. Then, after that we have conducted our activities, we sit together and continue our discussions while eating", says Mr Peters-Berries.

### Rural libraries

One of the most original initiatives promoted by NICE is the establishment of rural libraries to enable rural people to have access to information. At the moment there are about 80. One of them is the Chimvu Rural Library. "At the very beginning there were no places for these libraries. Communities got mobilised and built their own structures. In our library people can read books, magazines, newspapers. Many people come every day: teachers, villagers, women, but also students whose schools do not have such facilities. The rural libraries have also become a venue to discuss public issues in everyday life: people are thus able to appreciate what government does, and perhaps they will be in a good position to demand better services", says Group Village Headman Charles Mangazi.

### Civic education

A major role is played by NICE in view of the elections to be held in May 2004. NICE, which contributed to the high voter turnout during the 1999 elections, is working to ensure that every Malawian participates in free and fair elections. "First we have to tell people that they have the right to choose, but as we are a non-partisan organisation we certainly don't tell people who to vote for. We just produce and circulate voter education materials. We analyse the manifestos of the different parties so that people can make an informed choice", explains Mr John Tabwali, one of the paracivic educators.

For this reason, NICE faces some constraints and challenges: political violence and intolerance in some areas frustrates the efforts of district officers. At national level, NICE was seen by some politicians as an antagonistic force and faced a few attempts to close it down. These calls have now stopped, and actually some politicians have asked to extend its reach. In an environment where the democratisation process is deteriorating, NICE goes in the opposite direction: "Actually, our aim is to formalise NICE into a model that can be replicated in other countries to deliver the same results as in Malawi," concludes Mr Peters-Berries. ■ MC

Christian Peters-Berries



Starting with the Thyolo district, NICE today has established rural libraries in other districts where such useful documents as the Malawi Constitution and other publications on human rights and general knowledge are made available to the public.

## Civil society: balancing political and economic issues

Malawi has a rich history of organised social life, which can be summarised into three periods: pre-independence, one-party regime, multiparty democracy. Today, civil society is rather weak, but this weakness is due not only to the distrust which characterises its relations with the state, but also to some major constraints within the sector.

During the colonial period, civil society was very dynamic: in the 1940s and 1950s pressure from a large number of traditional associations, welfare societies, religious organisations, and trade unions resulted in substantial reforms; in the 1960s, these organisations participated actively in the decolonisation process.

During the post-independence period, the role and autonomy of civil society was very much undermined by the one-party regime. Even though their number grew substantially between the mid-1970s and the late 1980s, civil society organisations (CSOs) operated only in the area of development and relief, providing health care, basic education, refugee protection.

### Democracy issues

In the early 1990s, CSOs became involved in democratisation issues. The most prominent was the Public Affairs Committee (PAC), a religious and inter-faith organisation made up of the Episcopal Conference of Malawi (Catholic Church), Muslim Association of Malawi and the Malawi Council of Churches (Protestants). PAC, supported by lawyers, businessmen, and students, was the key actor in the transition from despotism to multiparty democracy.

With democracy, the number of CSOs increased exponentially. Most of the new CSOs deal with governance and human rights issues, and are often urban-based. The relationship with the state, if compared with the previous regime, has improved but is still characterised by mistrust and fear. Civic education is the area which attracts several CSOs. Gender issues have lately received considerable attention: a number of organisations have emerged, dealing not only with women's rights but also with business financing. "Democracy in Malawi is in crisis. Even though we have a multiparty system, it seems that people in power have not learned much from the failures of the one-party system. The Church in particular is very much in touch with people at the grassroots level. Our task is facilitated by the fact that we have a podium every Sunday, whereas other organisations have to struggle to get authorisations and resources to organise meetings. But we are all very concerned about the deterioration of democracy: the tendency in government is to do things as if there are no other parties or forces in society", says Reverend Boniface Tamani, chairman of PAC.



Despite its coordinating role, CONGOMA has not been yet a strong force in the Malawian development process.

### Economic issues

A major opportunity for CSOs to get involved in economic issues was provided by the Poverty Reduction Strategy Paper (PRSP) process. During a meeting of 28 CSOs, a task-force, subsequently named the Malawi Economic Justice Network (MEJN), was created in November 2000 to coordinate civil society participation in the PRSP process (and now also in Malawi's budget cycle). Although the involvement of CSOs in the PRSP process is a major step forward, serious doubts still remain: "At the beginning we questioned the fact that we were not given enough time for a meaningful participation, but then we got an extension. Once we became involved, we saw that the major problems Malawi faces were not adequately addressed, starting from good governance. But very important, if we are serious about poverty reduction we should discuss the issue of debt relief: servicing the huge debt we have accumulated over the years is one of the major causes that prevents Malawi from developing," argues Francis Ng'ambi, chairman of MEJN.

### Constraints and challenges

Overall, civil society is weak in Malawi. Several constraints have been identified, some of which lie outside and some inside the sector itself. First, some political leaders still perceive civil society organisations as a threat to their power. Second, probably out of fears from the past regime, people are not inclined to get involved in controversial political and economic issues. Third, some CSOs lack a solid constituency as they are not rooted in the Malawian society. Fourth, the majority of these CSOs lack organisational skills, do not use reliable information, are staffed with not well qualified people. Fifth, almost all CSOs have a weak financial base, as they are not able to generate resources locally, and thus are too dependent on donor funding and agendas.

In sum, balancing political, social and economic issues is a key challenge for civil society in Malawi. While much progress has been achieved in civil liberties, major emphasis should be placed on economic issues: poverty reduction should be the highest priority for everybody in Malawi, both government and civil society. ■ MC



Angela Politzer/ECHO

# Malawi



## General Information

Area:	118,480 sq km (land: 94,080 sq km; water: 24,400 sq km).
Population:	11.6 million.
Capital:	Lilongwe.
Major cities:	Blantyre, Dedza, Dowa, Kasungu, Mangochi, Mzimba, Mzuzu, Mulanje, Ntcheu, Salima, Thyolo, Zomba.
Religions:	Christianity (80%), Islam (13%), traditional beliefs (7%).
Languages:	English, primary language in business; Chichewa, major national language.

## Political structure

Constitutional status:	Republic of Malawi.
Constitution:	18 May 1994.
Government type:	Multiparty democracy.
Executive branch:	The president is both the head of state and the head of government. Elected by popular vote for a five-year term, he names the members of Cabinet.
Legislative branch:	The unicameral 193-member National Assembly is elected by popular vote to serve a five-year term. The last election was in 1999, next election in May 2004.
Political parties:	United Democratic Front (UDF); Malawi Congress Party (MCP); Alliance for Democracy (AFORD); Malawi Democratic Party (MDP).
Legal system:	Based on English common law and customary law.

## Economy

Currency:	Kwacha (1€=121 Kwacha).
GDP per capita:	166 US\$ (PPP: US\$ 570).
GDP per capita annual growth rate, 1975-2001:	0.2
Inflation rate, 2002:	14.9
GDP composition, 2002:	Agriculture (36.5%); Industry (14.8%); Services (48.7%).
ODA received (as a % of GDP), 2001:	23.0

## Social Indicators

Human Development Index:	0.387 [ranking: 162nd out of 175 countries (2003)]
Population living below \$1 a day (as % of total), 1990-2001:	41.7
Annual population growth rate (as % of total), 1975-2001:	3.1
Urban population (as % of total), 2001:	15.1
Life expectancy at birth (years), 2001:	38.5
Infant mortality rate (per 1,000 live births), 2001:	114
Adult literacy (as % of total), 2001:	61.0
Population with access to improved water source (as % of total), 2000:	57
Population with access to improved sanitation (as % of total), 2000:	76
HIV/AIDS prevalence rate, 2001:	15

Sources: Human Development Report (2003), World Bank (2003), European Commission

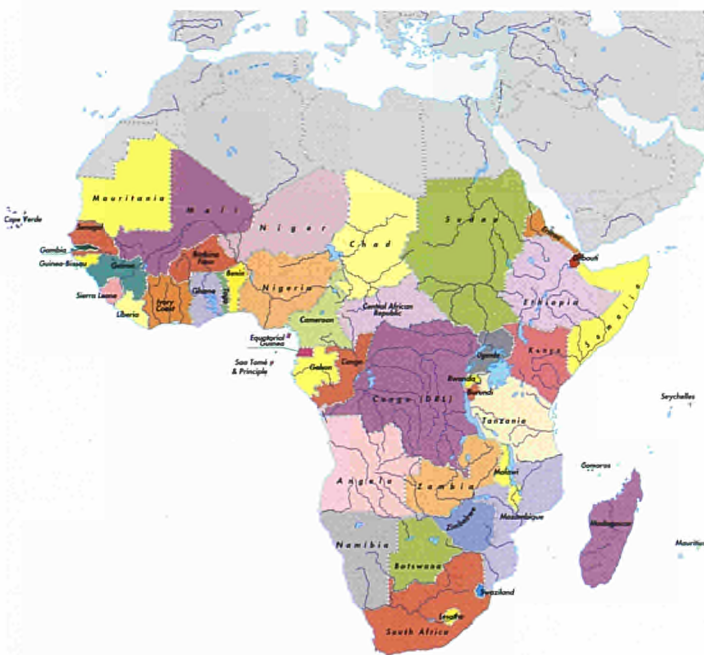


Austria  
Belgium  
Denmark  
Finland  
France  
Germany  
Greece  
Ireland  
Italy  
Luxembourg  
Netherlands  
Portugal  
Spain  
Sweden  
United Kingdom  
**France**  
Territorial collectivities  
Mayotte

St Pierre and Miquelon  
Overseas territories  
New Caledonia  
and dependencies  
French Polynesia  
French Southern and Antarctic  
territories  
Wallis and Futuna islands  
**Netherlands**  
Overseas countries  
Netherlands Antilles:  
Bonaire, Curaçao, St Martin,  
Saba, St Eustache  
Aruba  
**Denmark**  
Country having special  
relations with Denmark  
Greenland

**United Kingdom**  
Overseas countries and territories  
Anguilla  
British Antarctic Territory  
British Indian Ocean Territory  
British Virgin Islands  
Cayman Islands  
Falkland Islands  
Southern Sandwich Islands  
and dependencies  
Montserrat  
Pitcairn Island  
St Helena and dependencies  
Turks and Caicos Islands

## The European Union



## The 79 ACP States\*

Angola	Dominica	Madagascar	São Tomé and Príncipe
Antigua and Barbuda	Dominican Republic	Malawi	Senegal
Bahamas	East Timor *	Mali	Seychelles
Barbados	Equatorial Guinea	Marshall islands	Sierra Leone
Belize	Eritrea	Mauritania	Solomon Islands
Benin	Ethiopia	Mauritius	Somalia
Botswana	Fiji	Micronesia	South Africa
Burkina Faso	Gabon	Mozambique	Sudan
Burundi	Gambia	Namibia	Suriname
Cameroon	Ghana	Nauru	Swaziland
Cape Verde	Grenada	Niger	Tanzania
Central African Republic	Guinea	Nigeria	Togo
Chad	Guinea Bissau	Niue	Tonga
Comoros	Guyana	Palau	Trinidad & Tobago
Congo	Haiti	Papua New Guinea	Tuvalu
Cook Islands	Jamaica	Rwanda	Uganda
Côte d'Ivoire	Kenya	St Kitts and Nevis	Vanuatu
Cuba*	Kiribati	St Lucia	Zambia
Democratic Republic of Congo	Lesotho	St Vincent and the Grenadines	Zimbabwe
Djibouti	Liberia	Samoa	

\* Cuba was admitted as a new member of the ACP Group in December 2000; East Timor was admitted in May 2003.



Published by the Directorate General for Development,  
European Commission,  
B-1049 Brussels  
[http://europa.eu.int/comm/development/body/publications/  
publications\\_courier\\_en.htm](http://europa.eu.int/comm/development/body/publications/publications_courier_en.htm)

