A Human Rights-Based Approach to the ACP-EU Economic Partnership Agreements: Issues and Implications

by Karin Arts

Associate Professor in International Law and Development at the Institute of Social Studies (ISS),The Hague, The Netherlands.

Over the years the cooperation relationship between the European Union (EU) and at present almost eighty developing countries in Africa, the Caribbean and the Pacific (ACP) has built a long-standing record in integrating development, human rights and, as of more recently, governance concerns. However, while this record is strong and fairly clear in the sphere of development aid and the European Development Fund, so far the trade part of ACP-EU relations has not shown equal sensitivity to human rights concerns.

This paper argues that it is high time to extend the full bearing of human rights norms and commitments to the realm of ACP-EU trade as well. While this might entail more serious consideration by the ACP and EU states of the human rights impact of their trade relations, and other more direct linkages (positive and negative) between trade and human rights, this paper in the first place makes the case for a human rights-based approach to the ACP-EU Economic Partnership Agreements (EPAs) that are currently are negotiated. For, all states involved in the EPA negotiations have at various levels explicitly committed themselves to the promotion of "the economic, social and cultural development of the ACP states" (Cotonou Art. 1). According to the Cotonou Agreement, this clearly includes respect for and fulfilment of human rights norms and goals. In addition, in the Treaty on European Union and the Treaty Establishing a Constitution for Europe the EU member states have specifically pledged to strive for consistency in the Union's external activities in general. The combination of these two factors makes a human rights-based approach to Economic Partnership Agreements imperative.

This position is all the more pertinent now that there are more and more indications that the proposed EPA regimes seem unlikely to contribute positively to the economic development of most ACP states, in any case in the short run. To the contrary, EPAs are increasingly seen as carrying serious risks of bringing about a significant deterioration of the terms of ACP-EU trade. According to this negative scenario, it would also be unlikely for Economic Partnership Agreements to strengthen the human rights implementation capacity of ACP states. Worse, the right to development, the right to a decent standard of living, the right to food including food security, the right to health and a range of other fundamental collective and individual human rights could be directly jeopardized. Such consequences would straightforwardly contravene the essence of taking a human rights based approach to development.

After a short review of views on the likely development impact of ACP-EU Economic Partnership Agreements and of the mandatory development and human rights (including gender) agendas of both the ACP and EU states, this paper clarifies what taking a human rights-based approach to EPAs entails, in theory and in practice. Attention will be paid to the major substantive implications of human rights-based approaches, including: framing development as a right, emphasis on the role of states as both duty bearers and rights holders, non-discrimination, participation, accountability, and seeing ACP-EU relations and the Cotonou Agreement as serving the realization of all human rights obligations that rest on ACP and EU states. Some of the reasons for the apparent tensions that exist between the various relevant simultaneous agendas are looked into as well. The concluding section of this paper highlights which elements of a human rights-based approach should be prioritised in the next phases of the EPA negotiation and implementation processes.