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Item 4 (a) of the provisional agenda

**IMPLEMENTATION OF THE WORKPLAN FOR THE PERIOD OF 2008-2010
ENDORSED BY THE HUMAN RIGHTS COUNCIL IN RESOLUTION 9/3**

**CONTINUED DIALOGUE WITH THE SELECTED GLOBAL PARTNERSHIPS
WHICH WERE REVIEWED AT PREVIOUS SESSIONS**

Technical mission report

Brussels, 25-26 March and 29-30 April 2009

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I. BACKGROUND AND PURPOSE OF THE MISSION

1. In its resolution 2005/4, the Commission on Human Rights endorsed that the task force on the implementation of the right to development examine Millennium Development Goal 8 on a global partnership for development and suggest criteria for its periodic evaluation with the aim of improving the effectiveness of global partnerships with regard to the realization of the right to development.

2. In the above context, the Presidency of the European Union suggested the potential benefits of examining bilateral partnerships, as well as partnerships based on a formal legal agreement on development cooperation, such as the "Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part and the European Community and its Member States of the other part" (known as "ACP-EC Partnership Agreement" or "Cotonou Agreement").¹

3. The intergovernmental open-ended Working Group on the Right to Development encouraged the task force to undertake technical missions to respective institutions involved in the implementation of global partnerships for development with a view to continuing the dialogue and to further refining the right to development criteria.² The Working Group decided that priority be given initially to the Cotonou Agreement.³ The Human Rights Council endorsed these recommendations of the Working Group in its resolution 4/4.

4. Consequently, the task force undertook a technical mission to Brussels from 19 to 21 September 2007. At its fourth session held from 7 to 15 January 2008, the task force considered the review of the Cotonou Agreement, including the report of the technical mission⁴ and noted the need for more in-depth assessment of Country Strategy Papers as well as Economic Partnership Agreements (EPAs) and their relationship to the human rights provisions in the Cotonou Agreement⁵. Therefore, it recommended a second technical mission⁶ to enter into further dialogue with relevant officials in the EC Directorate-General for Development, the Directorate-General for Trade, Europe Aid, and the ACP Secretariat, as well as civil society organizations. These recommendations were endorsed by the Working Group⁷ and then by the Human Rights Council in its resolution 9/3.

5. The second technical mission of the task force took place from 25 to 26 March and from 29 to 30 April 2009. The programme of the mission, comprised of meetings in Brussels and Geneva, is contained in the Annex to this report. Mr. Nico Schrijver, task force member, presented the preliminary findings of this technical mission orally at the fifth session of the task force, held from 1 to 9 April 2009.⁸

¹ A/HRC/4/WG.2/TF/2, para. 15.

² A/HRC/4/47, para 55.

³ *Id.*, para. 56.

⁴ See A/HRC/8/WG.2/TF/CRP.4.

⁵ A/HRC/8/WG.2/TF/2, para. 65.

⁶ *Id.*, para. 84.

⁷ A/HRC/9/17, para. 43 (a).

⁸ A/HRC/12/WG.2/TF/2, para. 20.

II. THE COTONOU AGREEMENT AND ECONOMIC PARTNERSHIP AGREEMENTS

6. The Cotonou Agreement was signed on 23 June 2000 in Cotonou, Bénin, and entered into force in April 2003. The Agreement is valid for a twenty-year period from March 2000 to February 2020. It is adapted every five years: the first revision took place in June 2005 and entered into force on 1 July 2008. The second revision is anticipated to take place in 2010.

7. The Cotonou Agreement is designed to establish a comprehensive partnership, based on three complementary pillars: development cooperation, economic and trade cooperation, and the political dimension. The partnership is centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy.

8. The fundamental principles of the Cotonou Agreement include: equality of the partners and ownership of the development strategies; participation (central governments as the main partners, partnership open to different kinds of actors); pivotal role of dialogue and the fulfillment of mutual obligations; and differentiation and regionalization. The actors of the Agreement represent States (authorities and/or organisations of states at local, national and regional level) and non-state actors (private sector; economic and social partners, including trade union organisations, civil society in all its forms according to national characteristics).

9. The Cotonou Agreement established the deadline of 31 December 2007 to conclude EPAs, a process which began in September 2002. EPAs are the new trade agreements that are intended to replace the current non-reciprocal preferences enjoyed by ACP countries, in order to make them compatible with their World Trade Organization (WTO) obligations. The rationale is to 'support regional integration' and 'promote the gradual integration of the ACP economies into the rules-based world trading system'. The ACP countries negotiate the EPAs in six regional groupings.⁹ It is explained that EPAs try to put rules in place as a necessary condition to attract investment, and that the revenue losses in ACP countries resulting from trade liberalization will trigger economic and fiscal reform which will promote better governance.

10. At the end of 2007, a first full regional EPA was initialed with CARIFORUM. A number of interim agreements were concluded with certain countries or regions in Africa and the Pacific. They intend to serve as a stepping stone for full regional EPAs currently under negotiation. Delays in the EPA negotiations were due to concerns regarding constraints in ACP capacity to negotiate the terms of these agreements as well as their impact on the ACP economies. While the EU is hoping to finalize all EPAs by the end of 2009, some ACP countries or groups of countries have asked the EU to continue negotiations in order to discuss issues that have arisen in the context of the current global crisis or that have not been previously settled to their satisfaction.

11. The analysis and review of the Cotonou Agreement and EPAs from the right to development perspective by the task force, within the framework of its mandate explained in

⁹ The Caribbean Forum of African, Caribbean and Pacific States (CARIFORUM), the Pacific region, the Southern African Development Community (SADC), the East African community, the West African Economic and Monetary Union (ECOWAS), and the Central African Economic & Monetary Community.

paragraph 1 above, can be found in detail in the reports of the task force on its fourth (A/HRC/8/WG.2/TF/2) and fifth (A/HRC/12/WG.2/TF/2) sessions.

III. THE LISBON TREATY

12. The Treaty of Lisbon is an international agreement signed in Lisbon on 13 December 2007, intended to change and modernize the workings of the EU. The treaty would amend the Treaty on European Union (TEU, Maastricht) and the Treaty establishing the European Community (TEC, Rome).

13. Negotiations to modify EU institutions began in 2001, resulting first in the European Constitution which was rejected in a referendum by French and Dutch voters. The Constitution's replacement, the Lisbon Treaty, was originally intended to have been ratified by all member states by the end of 2008, so it could come into force before the 2009 European elections. However, the rejection of the Treaty on 12 June 2008 by Irish voters means that the Treaty cannot currently come into force. As of 30 May 2009, 23 of the total 27 member states have ratified the Treaty.

14. Entry into force of the Treaty of Lisbon would make the Union's human rights charter, the Charter of Fundamental Rights, legally binding. Some other prominent changes include more qualified majority voting in the EU Council, increased involvement of the European Parliament in the legislative process through extended co-decision with the EU Council, and the creation of a President of the European Union and a High Representative for Foreign Affairs and Security Policy, to present a united position on EU policies. A new European External Action Service will provide back up and support to the High Representative, who will also act as the Vice-President of the Commission. The post of the High Representative (also called "Union Foreign Minister") is designed to increase the impact, the coherence and the visibility of the EU's external action, and to strengthen the Union's negotiating power, making it more effective on the world stage and a more visible partner for third countries and international organizations.

15. The implications of the Lisbon Treaty on the EU's policy and action for development cooperation and aid are not clear, thus leading to continued debate and interpretation on the application of the Treaty. Some consider that the Treaty offers clear building blocs since the primary development objectives, eradicating poverty and integration of developing countries into the world economy are clearly written into the Treaty, as are also humanitarian aid and the need for coherence.¹⁰ The designation of the High Representative is seen as a positive element in terms of articulation of links between EU's development objectives and all other EU policies. There are also views supportive of the appointment of a Commissioner to deal separately and comprehensively with development policy and issues of the Union which would greatly help enhance the profile of this area within the broad context of EU external relations.

16. The Lisbon Treaty stipulates that "Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements

¹⁰ See "Is EU Development Aid Entering a New Era in the Wake of the Lisbon Treaty?" Report on the Development Policy Forum Roundtable, 26 February 2008.

which are likely to affect developing countries”¹¹. Nevertheless, critics have pointed out that some fundamental principles through which the stated objective of poverty reduction and elimination could be achieved effectively, are absent from the Treaty. In particular, there is no mention of “partnership” and “ownership”, while these are firmly embedded in the Cotonou Agreement, and in the 2005 European Consensus on Development¹². The Treaty does not establish links between quality, effectiveness and the impact of development cooperation¹³.

17. The main concerns lie in the question of how the Lisbon Treaty will be implemented in practice¹⁴. Indeed, many observers and experts in the field of development cooperation consider that the challenges related to EU external relations are beyond ratification of the Treaty and will emerge in the context of the actual design and functioning of the institutional innovations brought by the Lisbon Treaty in this area. Much will depend on a number of factors, such as how those new institutions will effectively be structured, the political will to support them fully and even the personality of the persons that will be heading them.

18. Summarizing some of those concerns, many in the development community in Europe point to the following unclear areas and unanswered questions:

- (a) Lack of clarity as to the status and implications for development of various new proposals in the Lisbon Treaty;
- (b) Will development be brought to the heart of EU political processes, alongside other EU interests -- or will it be submitted to the “political control” of the High Representative?;
- (c) Will there be a fully-fledged Development Commissioner, overseeing the different development and humanitarian programmes currently fragmented, reducing development’s visibility, effectiveness and due ‘political power’ within the EU?;
- (d) Will there be a distinct Development Budget (which should include the EDF) to strengthen the reality of an independent and coherent development priority within the EU? and;
- (e) The remit of the future External Action Service is still not clear and many are concerned that this major change in the EU set-up will be introduced with little transparency or democratic consultation and that it could sideline and reduce Europe’s development cooperation to an expedient tool of foreign and security policy.

¹¹ The Lisbon Treaty, Article 188 D.

¹² Koeb, E. 2008. A more political EU external action Implications of the Treaty of Lisbon for the EU's relations with developing countries (ECDPM InBrief 21). Maastricht : ECDPM.

¹³ BOND (November 2007) “International Development and the new EU Reform Treaty”, p.2.

¹⁴ Simon DUKE, “The Lisbon Treaty and External Relations”, EIPASCOPE 2008/1, pp. 13-18.

IV. MISSION OBSERVATIONS

19. The mission sought to further analyse and exchange views on the process, latest developments and outcome in the implementation of the Cotonou Agreement as they relate to five concluding observations made by the first technical mission in 2007. They concern respectively (a) human rights impact assessments (A/HRC/8/WG.2/TF/CRP.4, paras. 27-29); (b) development monitoring benchmarks (paras. 30-31); (c) human rights and right to development approach including participation and accountability (paras. 32-34); (d) governance assessments (para. 35); and (e) commitment to mainstreaming and implementation of human rights principles (para. 37). Particular attention was paid to issues and concerns surrounding the EPAs and their relationship with the Cotonou Agreement.

20. Concerns remain about the lack of human rights impact assessments in the implementation of EPAs. The existing studies and impact assessments focus on the issues of sustainability, environment, economy or trade, but not human rights. It is believed that human rights impact assessments could be used to evaluate the claim that trade liberalization leads to development and the promotion of a culture of rule of law as ACP economies are integrated into the rule-based world economy, thus resulting in improvements in human rights. Pessimistic views were also expressed; some claimed that any impact assessment would be regarded as biased or that, even if there were human rights impact assessments, their outcomes would not change the mandate of trade negotiators.

21. The mission concurs with the prevailing view that the human rights impact assessments of the implementation of EPAs should be conducted in an impartial manner, taking into account the right to development framework and criteria including further mainstreaming of gender equality and protection of marginalized groups. The right to development approach to EPAs would address the concern of ACP countries about using trade as a means to push for human rights.

22. Despite more than five decades of development cooperation between the EU and ACP countries, there is no evidence of any development monitoring benchmarks or focus on results and effects, particularly with regard to the reduction and elimination of poverty – the primary objective of the Union’s development cooperation policy, as reaffirmed in the Lisbon Treaty. Existing studies and forecasts in relation to the implementation of EPAs provide benchmark figures and a timeline for tariff reductions (e.g. ACP countries have to open their markets by an average of 80 per cent in 15 years). Nowhere does there exist any such benchmarks in relation to the reduction and elimination of poverty as a result of the implementation of the Cotonou Agreement or EPAs. Questions were therefore raised as to how to achieve sustainable development without benchmarks. It is argued that the EC wants to monitor EPAs without specifying what to monitor.

23. The mission reiterates the importance of elaboration and incorporation of the development monitoring benchmarks (or any other equivalent indicators acceptable to both sides) into EPAs. Such benchmarks should demonstrate not only the gradual elimination of tariffs forecast, but also the proportional elimination of poverty and progress in the enjoyment of human rights on the ground.

24. Human rights and the right to development approach, including participation and accountability, are often highlighted in the context of discussion in relation to EPAs. According to the views expressed, the partnership with civil society envisaged in the Cotonou Agreement is limited to consultation. There is no full engagement of civil society in the process. Moreover, at the country level, there is almost no feedback on the consultations held with civil society in the process. Even if there were dialogue (e.g. on human rights issues), there is no assurance that the outcome of such dialogue would feed into the substance of the partnership between the EU and ACP countries. It was stressed that the EU should respect ownership and promote participation and transparency. The accountability of EU institutions in ensuring consistency between the process and development and human rights principles should be upheld, including through legal instruments and the greater role played by the EU Parliament.

25. Views were also expressed to the effect that the various complex EU and EC establishments had no coherent understanding, interpretation and implementation of EU policies, particularly in the field of human rights. This may well be one of the factors causing criticism from EU partners and other actors, especially civil society organizations, on the process of the Cotonou Agreement and EPAs. For instance, in the view of many actors, the Cotonou Agreement is the chapeau agreement for EPAs; therefore, the human rights principles enshrined in the former automatically apply to the latter. However, there are views, including within EC quarters, that the Cotonou Agreement would, in due course, be replaced by EPAs, and that there is no place for human rights in trade negotiations. Some actors are concerned about different trade regimes and the difficulty of consolidating them into the second revision of the Cotonou Agreement, while others do not foresee such consolidation. In this regard, the designation of the High Representative under the Lisbon Treaty to increase the impact, coherence and visibility of the EU's external action is seen as welcome and timely.

26. The EU's commitment to mainstreaming and implementation of human rights principles is well and widely expressed in its policy and legal documents including the Lisbon Treaty. Human rights are enshrined in the Cotonou Agreement as one of its core values or "essential elements", alongside democratic principles and the rule of law, the violation of which can lead to the suspension of aid under Article 96 of the Agreement. The essence of this provision, however, guides and defines the approach of the EC in its reference and application of human rights principles as means or indicators for its decision to suspend aid rather than to measure the effectiveness of its partnership with the ACP Group of States.

27. It is argued that any conditionality for aid delivery throws into question the equality between the partners in the agreement, when one side is dependent on aid from the other. Dependence of ACP countries on EU aid does not make them equal partners in political negotiations. Moreover, the human rights conditionality for aid delivery also raises questions on the equality between the partners in terms of their shared responsibility for protecting and promoting human rights on the ground, including through agreed partnership activities, regardless of their form and settings.

28. Mainstreaming or integrating human rights in all aspects of EU action, particularly in economic and trade cooperation, remains a challenge, as does the translation of agreed provisions into practice. Some of the criticisms are that country strategy papers do not often mention gender equality, and when it is, it is in a theoretical rather than action-oriented sense.

Focus on human rights in the context of the Cotonou Agreement process remains at the international level, not the national level. The value of political dialogue as foreseen in article 8 of the Cotonou Agreement is brought into question with regard to which political dialogue brings about development or contributes to the development agenda. Since the political dialogue is not transparent, it is not possible to assess its impact on development.

29. Other concerns expressed with regard to EPAs include structural adjustment of ACP economies required by EPA implementation, inequality in the partnership owing to differing factors (e.g. EU markets are competitive and subsidized while those of ACP countries are not; or institutional, human and financial capacity constraints on ACP countries in embracing EPAs), policy space for ACP partners and the need to establish a clear link between human rights and all aspects of EPAs.

V. CONCLUSIONS AND RECOMMENDATIONS

30. The outcome of all the meetings that the technical mission held in both Brussels and Geneva and the analysis by the mission of information received emphasize the need to recall the observations and conclusions made by the first technical mission of the task force on 19 to 21 September 2007 with regard to human rights impact assessments (A/HRC/8/WG.2/TF/CRP.4, paras. 27-29), the development of monitoring benchmarks (paras. 30-31), human rights and the right to development approach, including participation and accountability (paras. 32-34), governance assessments (para. 35) and commitment to mainstreaming and implementation of human rights principles (para. 37).

31. The technical mission believes that the consideration and application of the above-mentioned observations and, in particular, the integration of right to development principles into the negotiations of EPAs will contribute to addressing many concerns surrounding these agreements, thus removing obstacles to the early conclusion of full EPAs. Moreover, such an approach will help realize the EC's intention to use EPAs as a model for its future agreements with Asian and Latin American countries.

32. The human rights principles and framework could provide common ground and equal opportunity to partners in their approach to the negotiations and conclusion of EPAs. In this context, it is worth referring to General Assembly resolution 63/178 on the right to development, adopted on 18 December 2008 by 182 Member States, including all EU and ACP States.

33. In order to be consistent with the right to development, the conclusion and ratification of EPAs and the revision of the Cotonou Agreement should be transparent and involve parliamentary scrutiny and consultation with civil society. This applies equally to ACP States and to the European Community and its Member States, as well as the European Parliament. The Lisbon Treaty will provide for increased involvement of the European Parliament in the legislative process. In this context, the Parliament is encouraged to review its decision and upgrade its subcommittee on human rights to a full committee, which should help the Parliament to measure the accountability of EU institutions in ensuring that the process is consistent with human rights principles and commitments.

34. Because of their dependence on the export of commodities, remittances and foreign aid, ACP countries are particularly vulnerable to rising food prices, declining commodity prices and the ongoing financial crisis, which greatly diminish their prospects for realizing the right to development. These prospects would be enhanced if counter-cyclical and economic stimulus measures and effective aid for trade programmes could be put into practice.

35. The mission shares the concern that the regionalization resulting from EPA agreements risks eroding the general negotiating position of ACP States in their partnership with the European Community. Supporting the development efforts of weaker trading partners should therefore be a priority.

36. Current negotiations for the conclusion of additional EPAs are an opportunity to consolidate the human rights approach to development as enshrined in the Cotonou Agreement and to ensure that this approach applies to the agreements.

37. Consultations on the second review of the Cotonou Agreement, planned for 2010, will be an opportunity to appraise its human rights provisions and consider proposals consistent with the right to development criteria. The review process may benefit from an assessment by the task force of the Caribbean Forum of African, Caribbean and Pacific States-European Community economic partnership agreements and other such agreements with a view to making recommendations, if necessary, relating to the implementation of the right to development.

Annex

Programme of mission

Mission team

The mission team consisted of Prof. Nico Schrijver (Member of the high-level task force on the implementation of the right to development), Mr. Ayuush Bat-Erdene (OHCHR), Dr. Maria van Reisen (Director, “Europe External Policy Advisors”, an institution based in Brussels, who has been commissioned by the OHCHR as a consultant to prepare a study¹⁵ on the Cotonou Agreement and the Right to Development) and Mr. Ben Moore (Project and Programme Manager, Europe External Policy Advisors).

Key meeting agenda

25 March, Wednesday, Brussels

10:00 – 11:00 – Mr. Koos Richelle, Director-General, EuropeAid Cooperation Office, European Commission.

11:30 - 12:30 – Mr. Lingston Cumberbatch, Director, TradeCom Facility.

13:30 – 14:30 – Mr. Simon Stocker, Director, Eurostep.

16:00 – 17:30 – Mr. Marc Maes, Chair, CONCORD Working Group on Trade.

26 March, Thursday, Brussels

10:00 – 11:00 – Directorate-General for Development, European Commission: Mr. Alfonso Pascual (Principle Administrator, Panafrican issues and Institutions, Governance and Migration), Ms. Patricia Vicente Vila (Principle Administrator, General Affairs and Operational Support, Relations with UN system, Member States and other OECD Donors) and Ms. Dorothee Starck (Policy Officer, Panafrican issues and Institutions, Governance and Migration).

12:00 – 13:00 – Ms. Wiske Jult, Chair, CONCORD Cotonou Working Group.

15:00 – 16:00 – Directorate-General for Trade, European Commission: Mr. Jacques Wunenburger, Head of Unit, Economic Partnership Agreements 2 (East Africa, Southern Africa and the Pacific), Ms. Jana Popelkova, Coordinator of Trade Relations with the Pacific, and Mr. Americo Beviglia Zampetti.

16:30 – 17:00 – Dr. Sanoussi Bilal, Programme Coordinator, Economic and Trade Cooperation, European Centre for Development Policy Management.

¹⁵ See A/HRC/12/WG.2/TF/CRP.3/Rev.1

7 April, Tuesday, Geneva

09:30 – 11:00 – Mr. Junior Lodge, Senior Coordinator, World Trade Organization (WTO) Negotiations - Caribbean Regional Negotiating Machinery.

29 April, Wednesday, Brussels

14:00 – 15:00 – The ACP Secretariat: Mr. Karinge Githinji, Expert, Multilateral Trade Issues and Mr. Emmanuel Opoku Awuku, Legal Counsel.

15:30 – 16:30 – Mr. Jeannot Rakotomalala, Ambassador, Head of Mission to the EU, Embassy of Madagascar.

30 April, Thursday, Brussels

10:00 – 11:00 – Directorate-General for External Relations, European Commission: Mr. Charles-Michel Geurts, Deputy Head of Unit, Human Rights and Democratization, and Ms. Emma Achilli, Human Rights and Democratization; Directorate-General Development and Relations with Africa, Caribbean and Pacific States: Ms. Sandra Bartelt, Legal Adviser, Aid Programming and Management; Directorate-General for Development: Ms. Patricia Vicente Vila (Principle Administrator, General Affairs and Operational Support, Relations with UN system, Member States and other OECD Donors).

11:30 – 12:30 - Mr. Guido van Hecken, Administrator, Committee on Development, European Parliament.
