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Committee on Development

Subcommittee on Human Rights

## INTERPARLIAMENTARY COMMITTEE MEETING

### European Parliament - national Parliaments

#### HUMAN RIGHTS CONDITIONALITY IN DEVELOPMENT POLICY

Brussels, 11 October 2011  
European Parliament  
JAN 4Q4 (József Antall building)  
15h00 - 18h30

#### An orientation to the debate

The interparliamentary committee debate on human rights conditionality in development policy will be divided into two sessions; the first session will be devoted to a discussion on the question as to **whether human rights conditionality could be an obstacle to poverty reduction**.

In the second session discussions will centre on the **effectiveness of human rights conditionality in a multi-donor environment**.

Finally, during the conclusions, some time will be reserved to a debate about the role of national and European Parliaments in establishing and monitoring of human rights conditionality.

The following background information aims to serve as guidance and orientation to the debate.

#### **I. Is human rights conditionality an obstacle to poverty reduction?**

The debate about human rights in development and about human rights-based approaches to development has gained prominence over the past few years as a result of a re-evaluation of development programs since the Vienna World Conference on Human Rights in 1993. Comparing current debates and discourse with those of the late 1990s, a number of changes can be observed. First, there has been a growing acceptance of the place of economic and social rights in development policy. Second, the governance agenda of donors has been broadened to encompass human rights.

Human rights conditionality clauses in EU cooperation agreements were introduced more than a decade ago. Relevant provisions in EU legislation (such as Article 3(1) of Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation (hereafter the DCI Regulation) and Article 9 of the Cotonou Agreement) list the fundamental values on which the EU is founded and call on partner countries to commit to them as well. In case of failure to observe these values, they provide for the suspension of assistance (as for in Article 37 of the DCI Regulation and Article 96 of the Cotonou Agreement).

What needs to be considered is how decisions on human rights conditionality are reached and also whether the application of conditionality helps achieve the stated objectives. In most cases suspension of aid may be the result of an international or European Union ban, which individual governments are obligated to follow. One approach is that an outright suspension of assistance flows in cases of consistent and gross violations of human rights or serious incidents might be needed to prevent legitimising and strengthening a regime through aid. However, from a human rights perspective, suspending aid can be extremely serious as it will affect the very poorest more than the elite.

This example illustrates that despite the complementary nature of human rights promotion and development strategies, important tensions persist between them. Some development actors challenge human rights accountability as both unrealistic and politically sensitive; others view strengthened human rights regimes at odds with state interests and policies; finally others, including NGOs, perceive international human rights as imposed on developing countries "from outside." As a result, critics argue, the international human rights regime remains inconsistent in its application to development and its impacts in that field are not well documented. An increasing number of critics now consider that human rights conditionality might actually constitute an obstacle to poverty reduction, because sanctions following human rights violations in developing countries receiving international aid can have effects across the board, penalizing in particular the poorest and more vulnerable citizens in those countries.

In part due to this fact, the concept of "smart" (or targeted) sanctions has recently gained ground. In theory, smart sanctions are directed exclusively to certain individuals, the political elite or specific economic sectors of countries non respecting human rights and democratic principles, while sparing the general population, in particular vulnerable groups, or the entire economy of the country. Yet, there is no empirical evidence of the effectiveness of smart sanctions on the countries and elites on which they are imposed, or about the feasibility of targeting sanctions thus avoiding damaging the population. For this very reason their effectiveness is contested.

Against this background some key questions to be considered are the following: Is development cooperation policy dependent on foreign policy, or should it be an autonomous policy? Furthermore, how can we succeed in making development cooperation policy reach the poorest, even in cases where the government of the recipient developing country violates human rights and does not cooperate with the donor countries? Are we at this juncture at a turning point whereby the policy on human rights conditionality should be thoroughly reviewed? Do restrictive measures deliver effective results in terms of achieving political objectives and promoting human rights, without at the same time negatively affecting the development of the country, and in particular vulnerable populations in that country? Moreover, can smart sanctions constitute an effective alternative to these restrictive measures? Is human rights conditionality just intended to appease domestic public opinion? To what extent should human rights conditionality be combined with incentives in order not to halt the development of that country? Finally, should we shift from the "whether" human rights conditionality should be used to the "how" it should be employed so as not to create obstacles to poverty reduction?

An exchange of views could also have regard at which actors (both at European and national level) take the leading role in imposing, monitoring and assessing human rights clauses in cooperation agreements and conduct human rights dialogues, how the EU and its Member States apply (or not) human rights criteria in their decisions on whether to engage/suspend aid, how is this balanced with other considerations, whether/how human rights considerations

might 'positively' influence an allocation of resources and what effects human rights conditionality have on the most vulnerable sectors of the population.

## **II Can human rights conditionality be effective in a multi-donor environment?**

- The topic of this panel raises **two questions**: should we discuss conditionality in a multi-donor environment?; indeed, the query into effectiveness begs the preliminary question of what the policy's objectives are and whether conditionality is the right tool to achieve them.
- Firstly, let us address the question of the conditionality policy's objectives and the means capacity to attain them.
- Concern for human rights in the external policies of the (then) EEC first emerged in the late 1970s, triggered by flagrant human rights violations occurring in countries such as Uganda and the Central African Republic, both of which had been parties to the Lomé I Convention and hence entitled to trade preferences and aid. Bound by the international law principle of *pacta sunt servanda*, the Community was faced with a moral and practical dilemma: its funds were benefiting a government involved in atrocious human rights violations, but it had no way of suspending the granted privileges.
- A second impulse came from the European Parliament. Influenced by public opinion and civil society pressure, the EP's first annual report on human rights in the world, in 1983, invited the Commission to draw up a proposal aimed at incorporating human rights considerations into the Community's external relations. Although the Commission at that point declined to do so, this marked the starting point of continuous pressure from the European Parliament aimed at the establishment of a true external human rights policy.
- Thus, we can discern two impetuses lying at the basis of the development of a conditionality policy. First, the need to provide a mechanism which allows for the suspension or termination of an agreement or part thereof if the partner country's authorities flagrantly violate human rights or democratic principles. Second, a positive impulse, chiefly substantial in character and emerging from the European Parliament, namely the need to develop a comprehensive external human rights policy.
- The tools available can be divided into two categories: negative conditionality, namely punishing partner countries for bad behaviour; and positive conditionality, which rewards progress.
- Although we had to wait until the 1990s, human rights clauses are now part and parcel of the Union's framework agreements. In their current form these clauses contain two provisions: the substantial 'essential elements clause', which states that the relationship is based on respect for human rights and democracy; and the procedural 'non-execution clause', which allows for the unilateral suspension of privileges in case of violations. To what extent, however, do these clauses address the concerns which lie at their basis?
- Since the seminal judgment of the Court of Justice in *Portugal v. Council*,<sup>1</sup> it is beyond doubt that human rights clauses can serve to suspend an agreement, thus satisfying their 'negative' conditionality objective. Indeed, the Court confirmed that the suspension dimension is 'an important factor' in the interpretation of the clauses' functioning. Do

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<sup>1</sup> C-268/94, [1996] ECR I-6177.

they, however, also have an underlying potential? Indeed, it can be argued that a human rights policy worthy of its name cannot content itself with merely reacting to violations.

- The answer to the above question is a qualified 'yes'. It is true that the essential elements clause may serve as a basis for including human rights and democracy as elements of political dialogue, and that it can be used to stall objections of partner governments to EU action on its territory (for example the funding of civil society or the establishment of compliance mechanisms). However, human rights clauses cannot serve to enact rules on human rights or to adhere to human rights conventions and with the procedural leg focused on non-execution it is chiefly a reactive instrument, exemplifying 'negative conditionality'.
- Negative conditionality has a number of problems linked to its use. Firstly, through the application of the sanction the EU loses (part of) its leverage over the partner country. It is also quite a challenge to direct pressure towards the offending authorities without harming the country's population. Moreover, the application of sanctions against one regime and not against another similar offender raises the question of double standards. So far, the application of the human rights clause has been limited to a handful of cases, often concerning the poorest and least influential partner countries. Negative conditionality indeed seems at home in the field of economic inequity and asymmetrical dependency relations.
- Hence, whereas negative conditionality serves its purpose of providing a tool which allows the EU to prevent its funds flowing to authoritarian regimes violating their populations' rights, it is questionable to which extent it contributes to the development of a coherent policy aimed at the promotion and improvement of human rights in third countries.
- Positive conditionality then involves the prospect of awarding benefits, should the recipient country meet certain elevated standards related to the protection of human rights and the implementation of democratic principles. These incentives form part of a pro-active policy, based on cooperation with the partner countries, and represent a 'carrot' rather than a 'stick'. The measures not only reward previous positive behaviour, but reinforce it and buttress further development along the same lines. Responsibility is shared, as both actor and recipient are active in the attainment of the conditions that are set. However, these measures come with a number of technical and budgetary problems attached, not least the fact that they are expensive and can lead to unpredictable demands for expenditure.
- The above illustrates the fact that 'conditionality' is a multi-layered, complex concept which serves multiple purposes through multiple tools. Application, especially of negative conditionality, arguably depends to a large extent on geopolitical considerations and effectiveness depends on the partner country's attitude as much as on policy measures themselves. These considerations are important, as their consequences reflect on the debate on the effectiveness of conditionality, specifically in a multi-donor environment:
  - As regards the positive objective of conditionality, namely the fact that it is an expression of the EU's pro-active policy to support human rights, we can consider if this changes at all because of other nations' actions and whether it should;
  - As regards negative conditionality the same question can be raised. However, the answer is likely to be more nuanced, as application is clearly inspired by economic and strategic motives. Especially in light of the potential downsides touched upon above, it is important to ask whether the positives do not outweigh the negatives, in particular when other countries' actions undermine the EU measures' effectiveness.

- On the other hand, one can wonder what the effects would be if the EU were to take a more principled approach to negative conditionality, applying it more systematically, which is something Parliament has long demanded. This could be combined with a more attractive, incremental positive conditionality scheme. Such an approach would give more programmatic substance to negative conditionality, making it part of a policy instead of a mere mechanism to react to violations in a haphazard way. In that case, it would be much harder to defend letting other nations' actions influence the EU's, as geopolitical considerations would play less of a role in the decision-making in the first place.
- Regardless, as indeed conditionality's effectiveness depends also on the partner country's attitude, which in turn is affected by the behaviour of its other donors, there is a clear need to coordinate human rights conditionality better. As regards donor nations with whom we share our belief in the universality of human rights and democratic values, we need to think about the establishment of consultation and coordination mechanisms, be they formal or informal. As regards those nations who take a less scrupulous approach to human rights in their foreign policy (in particular China), the discussion is more difficult; in any case we need to think about ways to engage and attempt to convince them that there are added dividends to an external relations approach which intends to promote and respect human rights and democratic values.