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COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

**Democratisation, the rule of law, respect for human rights and good
governance: the challenges of the partnership between the European
Union and the ACP States**

SUMMARY

1. This is the latest in a series of Commission communications on human rights, democratisation and the rule of law. It follows and complements the communication of May 1995 on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries, that of November 1995 on "The European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond" and that of March 1996 on "The European Union and the issue of conflicts in Africa: Peace-building, conflict prevention and beyond".

2. Its purpose is threefold:

- to explain to the ACP partners how the Community interprets the revised fourth Lomé Convention, of which Articles 5, 224(m) and 366a concern human rights, democracy, the rule of law and good governance;
- to help stimulate debate in the ACP countries to ensure that the essential elements of the Lomé Convention are complied with when those countries make the political and social choices incumbent on them;
- to prepare and facilitate discussions within the Council, and later with the ACP countries, on future ACP-EC relations.

The Lomé Convention was the first to refer to human rights.¹ This places it in the vanguard of efforts to take account of these fundamental principles in co-operation with non-member countries.

This is why the Commission considers it necessary to issue a specific Communication on ACP countries.

3. Within the general guidelines on human rights, this Communication:

- clarifies the concepts cited in Article 5 of the revised fourth Lomé Convention;
- proposes an action plan aimed at:
 - establishing a systematic dialogue with the ACP countries and stimulating debate on such questions within those countries with a view to helping them to take responsibility themselves for these issues.
 - highlighting a number of practical measures and priorities for strengthening a culture of democracy and an institutional climate more conducive to good governance, including guidelines for preventing and tackling corruption.

4. These elements will not only provide a concrete operational framework for the dialogue between the EC and the ACP countries and the programming and implementation of the associated funding: they will also influence the implementation of EDF programmes by establishing an efficient, transparent and equitable institutional environment.

¹ See Lomé III: the Preamble, Article 4(t) and the joint declaration on Article 4

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Democratisation, the rule of law, respect for human rights and good governance: the political issues of the partnership between the European Union and the ACP States

I. INTRODUCTION

(i) General background

1. Over the last decade human rights, the rule of law and democratic principles have become increasingly important in the Union's policy generally, and its external relations in particular.

2. The latter aspect was dealt with in the communication of November 1995 to the Council and Parliament entitled "The European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond".² Besides recapitulating the *acquis*, principles and priorities of action by the Community and its Member States - the key stages in which are set out in Annex 1 - the communication lays out future strategies to be implemented within a consistent and co-ordinated framework. Asserting the principles of universality, indivisibility and interdependence that are the cornerstone of the international system for the protection of human rights, the communication identifies priorities for a proactive, practical and constructive approach, among them:

- supporting democratisation as a long-term process involving developing civil society, institutional reforms and the consolidation of change;
- promoting and strengthening the rule of law;
- supporting local and regional institutions;
- promoting pluralist civil society in a context of sustainable social and human development.

The Communication recognises the need to take the debate on these issues further, dispose of a range of instruments for use according to a country's circumstances and build analytical and technical capacities in these fields to tailor operations to different situations.

This Communication seeks to address these issues in greater depth in the specific context of the Lomé Convention, while maintaining a consistent approach to the developing countries as a whole.

(ii) The fourth Lomé Convention

3. Articles 5, 224(m) and 366a of the fourth Lomé Convention as revised by the Agreement signed in Mauritius on 4 November 1995 confirm these general guidelines. Article 5 states that "development policy and co-operation shall be closely linked to respect for and enjoyment of fundamental human rights and to the recognition and application of democratic principles, the consolidation of the rule of law and good governance". The same article makes respect for human rights, democratic principles and the rule of law an essential element of the Convention. These new provisions give the economic, social and commercial content of the Lomé Convention an added institutional

² COM(95) 567 final, 22 November 1995.

and political dimension: human rights, democratic principles, the rule of law and good governance are now areas of common interest and fundamental elements of the dialogue between the parties, and, as such, an integral part of co-operation policy.

4. In order to take account of these provisions, Article 3(2) of the Financial Protocol to the 8th EDF earmarks incentive financing of ECU 80 million from the regional allocation. This amount is intended to finance "institutional and administrative reform measures, with a view to democratisation and the rule of law" (Article 224(m)) programmed by the ACP States and financed from their National Indicative Programme (NIP) or the Regional Indicative Programme (RIP). This incentive financing is in addition to the appropriations in the general budget of the European Communities for positive measures in support of human rights and democracy in the developing countries. Of ECU 526 million spent under this heading since 1992, ECU 214 million has financed schemes for ACP countries.

5. In tandem with this positive approach, Article 366a of the Convention, in line with the Council's decision of May 1995,³ provides for appropriate steps to be taken in the event of serious and persistent human rights violations or interruptions in the democratic process. It introduces a "non-fulfilment clause" and a special procedure for consultations between the parties in a joint forum. Dialogue takes precedence over negative measures in the quest for a solution, except in cases of special urgency. It is emphasised that the suspension of co-operation is a measure of last resort.

Article 366a also stipulates that any measure "shall be revoked as soon as the reasons for taking it have disappeared." For this article, and in particular the process for adopting and revoking sanctions, to be understood and applied correctly, not only must account be taken of the overall situation in the country and the nature of the violations reported, but also the minimum requirements for remedying violations must be studied carefully. A Commission proposal for a decision on a framework procedure for implementing Article 366a of the fourth Lomé Convention was presented to the Council on 21 February 1996.⁴

(iii) **Developments in the ACP countries**

6. In the space of a few years a large number of ACP countries have made appreciable progress with reforms involving a radical reorganisation of the means of delegating and exercising political power and relations between government and citizens. These reforms have completely changed the institutional set-up and political practice by increasing public participation in the management of public affairs and the exercise of fundamental civil liberties. This progress has in many cases been achieved at a time of social and economic difficulty, often coinciding with the implementation of structural adjustment programmes. These processes have produced a great variety of outcomes, taking each country down a different road.

Though the reforms share a common inspiration and pursue identical objectives, their sequence, content and pace will inevitably be modulated by a country's history and present circumstances. It is for the EU and its ACP partners to find appropriate responses to a multifaceted trend. The EU and the ACP countries will share the burden of this new political responsibility. This commitment calls for a shared, practical and operational understanding of such concepts as human rights, democracy, the rule of law

³ COM(95) 216 final, 23 May 1995.

⁴ COM(96) 69 final, 21 February 1996.

and good governance. This understanding would help deepen the dialogue and strengthen the current partnership on these issues.

7. The EU is increasingly focusing on preventing conflict and consolidating peace, especially in Africa. The Commission communication of 6 March 1996 on this subject⁵ and the joint action decided by the Council on 2 June 1997 on conflict prevention in Africa⁶ recognise the importance of a democratic government for developing a country's capacity to prevent and settle conflicts. In this context, a government's legitimacy and capacity to formulate and implement policies in an institutional framework, which respects human rights, democratic principles and the rule of law are a key factor in structural stability. A democratic system permits the establishment of mechanisms by which competing interest groups can peacefully resolve their differences.

(iv) Objectives of this communication

8. Support for democratisation processes, respect for human rights, the rule of law and good governance cannot be dissociated from co-operation in the wider context. It must act as both framework and component part of co-operation policy.

If significant results are to be attained, not only must these concepts be defined and instruments and operating procedures proposed but sufficient funding must also be made available. Action must tie in with that taken by the Member States and other donors under a coherent strategy where the different partners co-ordinate their operations in pursuit of a common objective.

9. The need for reflection is made all the greater by the draft negotiating directives on future relations between the EC and the ACP countries, which look at these issues in greater depth. This is one reason for focusing this communication on the geographical area covered by the Lomé Convention. This Convention, moreover, establishes strong links between political dialogue, the mobilisation of considerable financial resources and development.

The nature of the Lomé framework, which enables the 71 ACP countries and the EC to exchange views and reach agreement on a footing of partnership, offers an exceptional forum for the first concrete proposals. As long ago as the third Lomé Convention, this framework broke new ground by affirming the contracting parties' commitment to the principles of the United Nations Charter and their faith in fundamental human rights and human dignity.

10. To help implement and sustain institutional reforms relating to human rights, democratic principles, the rule of law and good governance with due regard for the specific requirements of each case, and enhance the visibility of the Union's action, this communication is intended to:

- clarify the concepts cited in Article 5 of the revised fourth Lomé Convention;
- set out an action plan aimed at:
 - fixing the objectives and criteria for dialogue with the ACP countries and stimulating debate on such questions in those countries with a view to helping them take responsibility themselves for these issues;
 - tabling a number of practical measures and priorities for strengthening a culture of democracy and an institutional climate more conducive to good governance, including guidelines for preventing and tackling corruption.

⁵ SEC(96) 332 final, 6 March 1996.

⁶ OJ No L 153, 11.6.1997, p.1.

II. STRENGTHENED AIMS OF COOPERATION AND PARTNERSHIP

1. Article 5 of the revised fourth Lomé Convention states that “respect for human rights, democratic principles and the rule of law, which underpins relations between the ACP States and the Community and all provisions of the Convention, and governs the domestic and international policies of the Contracting Parties, shall constitute an essential element of the Convention.”

The same article cites good governance as an objective of co-operation, though not an essential element of the Convention.

2. History shows the objectives of Article 5 to be a prerequisite for sustainable economic and social development. It has become clear in recent decades that sustainable human development demands an institutional and political environment that respects human rights, democratic principles and the rule of law. The connection between development and human rights is expressly recognised in the UN Declaration on the Right to Development.

Thus, though each country is free to choose the political and economic model for its society, such models must be consistent with the universal principles in the matter of human rights and comply with the relevant international and regional conventions and legal acts.

A. Human rights, the rule of law and democratic principles

Human rights

3. Human rights are universal, indivisible and inter-dependent. They bind every government body and may not be restricted. Whether civil and political or economic, social and cultural in nature, they must be respected and promoted in their entirety. They are the subject of a series of international and regional agreements and legal acts constituting an international legal framework (the United Nations Charter, the Universal Declaration of Human Rights, the 1969 American Convention on Human Rights, the African Charter on Human and Peoples’ Rights adopted in June 1981 etc.). The commitments made in these instruments were reaffirmed by the participating countries in the conclusions to the 1993 Vienna Conference on Human Rights.

The rule of law

4. The primacy of the law is a fundamental principle of any democratic system seeking to foster and promote rights, whether civil and political or economic, social and cultural. This entails means of recourse enabling individual citizens to defend their rights. The principle of placing limitations on the power of the State is best served by a representative government drawing its authority from the sovereignty of the people. The principle must shape the structure of the State and the prerogatives of the various powers. It implies, for example:

- a legislature respecting and giving full effect to human rights and fundamental freedoms;
- an independent judiciary;
- effective and accessible means of legal recourse;
- a legal system guaranteeing equality before the law;
- a prison system respecting the human person;
- a police force at the service of the law;

- an effective executive enforcing the law and capable of establishing the social and economic conditions necessary for life in society.

Democratic principles

5. By opting for the phrase “democratic principles” rather than “democracy”, Article 5 of Lomé IV sought to emphasise the universally recognised principles that must underpin the organisation of the State and guarantee the enjoyment of rights and fundamental freedoms, while leaving each country and society free to choose and develop its own model. A democratic system enables human rights to flourish in a climate of respect and recognition of the different cultures making up the country by basing political power on the will of the people and every individual’s voluntary contribution to the life of the community.

A democratic State is therefore a precondition for the exercise of human rights. It is a defining characteristic of a democracy, whatever the system or model adopted, that it formalises a non-violent dialectic between the aspirations of the majority and those of a minority according to a body of rules accepted by all and based on respect for human rights and fundamental freedoms.

The strengthening of the democratic process and its assimilation by the countries concerned depend on the ongoing adaptation of these rules to each country’s history, cultures and particular ways of thinking.

The concept of “democratic principles” also serves to accentuate the dynamic process leading to democracy. Democratisation is a gradual and ongoing process which must take account of a country’s socio-economic and cultural context.

6. Democratic principles are inter-dependent and indivisible: each has potential applications that involve one or more others to some degree. The whole they form and their specific manifestations will be determined by each country’s democratic culture.

For example, the holding of elections, which is a fundamental step on the way to democratisation, must be a logical step in a country’s process, history and culture. As an end in themselves, elections alone will not necessarily make a country a democracy or give it the political stability necessary for it to flourish. They have to be part of a broader process, in which a series of factors come together to prepare and consolidate a movement towards democracy.

This means giving priority to a pluralist, evolving and interactive vision of democratic principles both as objectives to be attained and respected and components of development co-operation in their own right.

7. These principles can be defined in terms of three fundamental characteristics:

(i) legitimacy

(ii) legality

(iii) effective application.

These principles are both objectives to be attained on the way to a State where a genuine rule of law, applies, and spheres of intervention where available funds may be used.

(i) Legitimacy

8. The foundation of the authority of the State, this concept means that leaders at local and national level are freely appointed by systems recognised and accepted by the citizens. These systems should meet a number of criteria relating to non-discrimination and be employed regularly.

The election of a country's leaders by free universal suffrage in a secret ballot is a mechanism for legitimacy. The Community may continue providing specific help in this field, chiefly for the processes of consulting the people and appointing leaders and public officials (censuses, electoral registers, electoral commissions, local or national elections, observers, voter education etc.).

(ii) Legality

9. Legality means the existence of clear-cut rules that are applied to all citizens without discrimination. It is reflected in:

- an appropriate constitutional, legislative and regulatory system;
- recognition of the human rights and the fundamental and individual freedoms set out above in paragraph 3 of section II.A.

All support in this area will be aimed at drafting suitable rules and laws, including the incorporation into national law of the principles of the Universal Declaration of Human Rights.

(iii) Effective application

10. Effective application requires that the behaviour and practices of the authorities, institutions and legal persons be consistent with the rule of law and democratic principles.

It is against this background that the State's institutional set-up, transparent institutions and decision-making, institutional capacities and the existence of supervisory bodies acquire their full significance. This is a long-term process affecting both the structure of the State and its administration and the constitution of a democratic culture enabling the different social forces to interact and strengthen each other. A special emphasis must be placed on capacity building and public participation in the decision-making processes.

In the final analysis, it is effective application that gives a democratic system substance and spawns the machinery needed for reaching consensus and peacefully resolving differences between interest groups.

11. Effective application involves:

- the promotion and protection of fundamental freedoms, which are the very purpose of any democratic system, since that system exists to uphold the freedoms of individuals and groups against the power of the State;
- the separation of powers, which curbs the powers of the State and relates specifically to:
 - the independence of the legislative and judicial powers from the executive power;

- the effective exercise of the three powers;
- institutional arrangements for participation in decision-making and development choices at national, regional and local level;
- the existence of institutions for consultation and participation in decision-making;
- recognition of local democracy and the principle of the free administration of the people, which may lead to administrative decentralisation;
- recourse to “consultations” on certain major questions;
- political and institutional pluralism (the State and civil society, i.e. all institutions and social and economic associations in a country that are independent of the government), which ensures a balance of powers and is reflected by:
 - a free and open political system;
 - the recognition of the role and status of the opposition, including the effective right to engage in political activity;
 - representatives of civil society with the freedom to organise;
 - free and independent media;
- transparency and integrity of the institutions: democratic power is a mandate limited *inter alia* by the sovereignty of the people. Democratic institutions and those leading them are therefore accountable for their decisions and wholly responsible for their management. These principles are reflected by:
 - operational and independent control mechanisms;
 - the public nature of acts;
 - information and reporting on the activities of institutions;
 - citizens’ access to administrative services;
 - regulations conducive to fighting corruption.

B. Good governance

12. “Governance” generally describes the exercise of political, economic and administrative power in the management of public affairs. “Good governance” implies managing public affairs in a transparent, accountable, participative and equitable manner showing due regard for human rights and the rule of law. It encompasses every aspect of the State’s dealings with civil society, its role in establishing a climate conducive to economic and social development and its responsibility for the equitable division of resources.

Within this overall approach, good governance has two dimensions: the political dimension concerns strictly political action by the government and the institutional dimension the economic and social management of resources.

13. Article 5 of the revised fourth Lomé Convention introduces good governance as an objective of co-operation for equitable and sustainable development.

Good governance features alongside and complements the aims of respect for human rights, democratic principles and the rule of law. Unlike those aims, however, it is not an essential element of the Convention:

“Development policy and co-operation shall be closely linked to respect for and enjoyment of fundamental human rights and to the recognition and application of democratic principles, the consolidation of the rule of law and good governance.”⁷

(i) Definition

14. Under this approach, good governance refers to the transparent and accountable management of all a country’s resources for its equitable and sustainable economic and

⁷ Second subparagraph of Article 5(1) of the revised fourth Lomé Convention.

social development. The resources of a country include human resources (knowledge, know-how and skills), natural resources and internal and external economic and financial resources, including development aid.

The concept of good governance remains implicit in a political and institutional environment respecting human rights, democratic principles and the rule of law. But it takes specific account of the role of the authorities in managing resources, promoting a favourable climate for economic and social initiatives and deciding how to allocate resources.

Good governance therefore implies the existence of competent and effective institutions respecting democratic principles. The concept therefore extends the aims of democratisation into the sphere of resource management.

(ii) Aspects of good governance

15. Transparent and accountable resource management for equitable and sustainable development has four related and complementary aspects. These naturally overlap with democratic principles:

- Equity and the primacy of law in the management and allocation of resources call for an independent and accessible judicial system that guarantees all citizens basic access to resources by recognising their right to act against inequalities. In the specific context of governance, this involves establishing a legal and regulatory framework that encourages private enterprise and investment.
- The institutional capacity to manage a country's resources effectively in the interests of economic and social development implies an ability to draft, implement and supervise policies addressing the needs of the people. The government and civil society must be able to implement an equitable development model and guarantee the judicious use of all resources in the public interest. Building public and private institutional capacities is vital because it directly determines economic and social development, and especially the effectiveness of development co-operation.
- Transparency which entails being accountable and organising effective procedures and systems for monitoring the management and allocation of resources, implies that resource management is open to scrutiny and subject to controls. It is both a key factor in establishing trust between the various agents of development and a guarantee of institutional integrity.
- Public participation in the decision-making processes concerning the management and allocation of resources. Development without the participation of civil society is inconceivable. Participation calls for the various agents of development to exchange views on major decisions relating to the management and allocation of resources and development programming. This dimension also concerns the scope to be given to private initiative, enterprise and civil society in development.

(iii) Corruption - the main obstacle to good governance

16. Corruption, which can be defined as "any abuse of power or impropriety in the decision-making process brought about by some undue inducement or benefit,"⁸ is a major obstacle to development in general and good governance.

- In a climate of corruption the criteria governing the choice of development projects are not directly related to development objectives or the public interest but to vested

⁸ This definition of "corruption" is taken from the Communication from the Commission to the Council and the European Parliament on a Union policy against corruption (COM(97) 192 final, 21 May 1997).

interests. This leads to a commensurate decline in the quality of the performance of contracts, when it does not render projects completely unsuited to objectives. Corruption involves increased costs or the diversion of resources.

- The significant increase (10-20%)⁹ in the cost of supplies and services is an unwarranted surcharge on a country's internal and external economic resources, leading to a commensurate increase in debt and reducing the effectiveness of co-operation. These unlawful costs are ultimately borne by the public (higher prices, loss or cutback of public services etc.).
- Corruption inevitably leads to an economic system favouring short-term gains, arbitrary decisions and private interests. It destroys all notions of transparency, equity, the rule of law and participation.
- Corruption also deters national and international private investors by creating high transaction costs and offering neither guarantees as to the safety of investments nor the possibility of supervising them.
- Corruption is a barrier to reforms and the opening-up and liberalisation of the economy since it serves interests opposed to economic deregulation and the abolition of monopolies.
- An underdeveloped civil service opens the way for corruption by organised crime.

Corruption is a "horizontal" problem for good governance. It undermines all its aspects and must therefore be addressed as a priority.

⁹ A figure calculated by Transparency International, an NGO working against international corruption.

III. ACTION PLAN

1. Democratisation is a long and complex process involving all forces in society. It calls not only for constitutional and legislative reform but also for reform of the apparatus of State and civil society.

Such a process cannot be properly launched or sustained without taking account of a country's social, economic, political and cultural circumstances. It also requires a genuine political resolve on the part of its leaders and the ownership of the process by its citizens or, at the very least, their substantial participation in it.

Taking account of the political and institutional dimension in development co-operation calls for a series of practical measures at various levels:

- a deeper dialogue with - and within - the ACP countries on human rights, democratic principles, the rule of law and good governance;
- greater support in priority areas, including the drafting and introduction of measures to prevent and combat corruption.

A. Deeper dialogue with the ACP countries

2. The dialogue between the Community and the ACP countries is the principal instrument and forum for developing the political and institutional dimension of co-operation in a manner respecting the sovereignty and specificity of the countries concerned.

There should be a permanent dialogue with the ACP countries. The procedures for this dialogue should, in particular, be established during the reshaping of the EC-ACP partnership.¹⁰ In that context, the Commission is proposing that procedures for political dialogue be as flexible as possible. Dialogue should take place at the time and level most relevant to the subjects to be discussed. It may, in particular, take the form of discussions and consultations in joint institutions or meetings between representatives of an ACP country or region and representatives of the EU.

This dialogue must help:

- to clarify the concepts involved and the means for analysing them;
- to define strategies for implementing co-operation in these areas, strengthening them as a vital adjunct of aid and economic co-operation;
- to identify support measures and priorities in this field;
- to stimulate deeper thought and debate on these issues between the authorities, politicians and citizens in the ACP countries.

(i) Developing a frame of reference

3. A frame of reference for such issues must be proposed to initiate the dialogue. This frame of reference will serve as a basis for dialogue. It will provide a profile for charting the progress of democratisation, the establishment of a state governed by the rule of law, the human rights situation and the quality of governance.

Its use should help a country and its partners:

- better identify the measures needed;
- evaluate activities already under way;
- assess more effectively any backward step or breach of an essential element of the Convention.

¹⁰ See Commission communication on directives for the negotiation of a new development partnership agreement with the ACP countries (SEC(98) 119, 28 January 1998).

Just as it is bound to help clarify this dimension of development policy, a frame of reference will itself be an opportunity and a subject for dialogue between the Community and the ACP countries. It would be difficult and pointless to embark on a purely theoretical dialogue. This dialogue must be rooted in the realities of a given country's process, albeit on the basis of universally accepted values. Initially, the frame of reference will provide the basis for dialogue between the Community and the ACP countries.

The frame of reference will be a methodological tool for tracking a country's progress toward democracy. It will be based on the principles of democracy and the rule of law and the dimensions of good governance as defined in this Communication and laid down as objectives to be pursued.

The frame of reference will show whether a country is making progress towards these objectives. It will also help assess, monitor and assist progress.

With due regard for the Copenhagen criteria, the starting point for the analysis must take account both of the relevant European Parliament and UN resolutions and reports by the UN's special and thematic rapporteurs.

To make it as objective as possible and avoid all preconceptions and value judgments on potentially sensitive issues, analysis will be governed by a number of strategic principles.

- Assessment will be based on observation of the dynamics of the process in a given country.
- A country's progress towards certain objectives will be assessed over time.
- Different countries' profiles are not comparable. Each country will be judged on its own performance. Comparison and analysis will be based on a country's profiles at different times.
- The exercise must be carried out with or by the countries concerned.
- The exercise must be repeated at regular intervals to permit comparison and analysis of change.
- The exercise must view all objectives as forming an indivisible whole.

(ii) Support for regional and national consultation networks

4. As a complement to its dialogue with the ACP countries, the EU should catalyse debate on such issues inside those countries. The partners need to be mobilised to stimulate such a debate. This can be done by helping create or reinforce regional or national networks. Such networks would be aimed at:

- complementing the approach proposed in this document for defining democratic principles;
- applying this approach to the specific circumstances of the regions concerned;
- validating the frame of reference, defining suitable assessment criteria and preparing the evaluation exercise in the various countries of the region;
- identifying priority measures for support;
- establishing procedures for developing regional support networks for democracy;
- establishing procedures for initiating and accelerating debate within the countries concerned.

Meetings will bring together those with an interest in democratisation and good governance, i.e. representatives of the government and the judiciary, political parties and civil society (NGOs, socio-economic institutions, trade unions, women's movements, academics, customary chiefs, media chiefs etc.) and representatives of development partners.

Pilot projects may be launched to test the proposed approach.

B. Stepping up support in priority fields

5. Taking account of the new objectives of development co-operation also entails fixing the priorities. There can, however, be no blanket interpretation of what constitutes a priority. Each country is a different case and pursues democratisation in its own way. Just as there can be no single model for democracy, there can be no priority measures for application in every country. Each country has a unique political process based on its specific cultural, social and economic circumstances. When applying these criteria, the know-how of organisations working in these fields should be used to the full. That being said, certain types of action may be considered priorities on the way to democratisation and the rule of law. They appear to be essential components for making development policies more effective and improving governance. Such measures can be divided into four categories.

(i) Institutional and administrative reforms

6. Institutional reforms connected with democratisation and the rule of law are cited as a focal area of co-operation in Article 224(m) of the revised Lomé Convention. They are therefore a priority approved by both the European Community and the ACP countries.

Several reforms warrant a particular emphasis.

- Constitutional reforms aimed at ensuring that the State's foundations and structures respect human rights, fundamental freedoms, democratic principles and the rule of law.
- Judicial reform necessary for the independent and effective system of justice that is the basis and guarantee of the rule of law and an environment conducive to development. This priority warrants special attention, with the implementation of programmes to support and develop the system of justice. Care will be needed to ensure that measures taken under structural adjustment programmes remain compatible with the institutional reforms complementing those programmes. This concern is consistent with "second generation" structural adjustment programmes, which now include judicial reform among their objectives.
- Administrative decentralisation which helps local democracy develop and take root. There can be no real democratisation process without its assimilation at grassroots level. These reforms are fundamental in restoring citizens' responsibility for their own development, making them the government's partners rather than its dependants, and rethinking and reassigning their respective roles in a climate conducive to initiative and the exploitation of local know-how and cultures. These reforms must also tie in with a decentralised approach to co-operation.
- Support for legislative power, whose performance directly determines the democratic process and which must enable parliaments to perform their dual function of counterweight to the executive and lawmaker in an independent and constructive manner. Support for promoting the parliamentary system and regional co-operation between parliaments are just two ways of making national parliaments more effective and creating strong ties between parliaments in a given region, which could in the long term help ACP members of parliament play a more effective role in the ACP-EC Joint Assembly.
- Support for suitable budget supervision and monitoring which is vital for institutional transparency in particular and good governance in general, especially in public procurement.

- Support for regional systems to protect and monitor human rights (and in particular the African Commission on Human Rights, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights).

(ii) Education in human rights and civics

7. Presented in Article 26 of the Universal Declaration of Human Rights as a precondition for the development of the individual and a catalyst for democracy, education was reiterated as a priority in the conclusions of the Vienna Conference on Human Rights. Under the approach of the UN, which has made this the decade of human rights education, education must emphasise human rights and democratic principles. Civics education plays a direct role in a people's assimilation of the democratisation process.

It will involve:

- promoting a culture of democracy, especially through institutional programmes for those educating young people;
- making citizens aware of their basic rights and obligations;
- opening the debate on the procedures by which democratic principles are actually applied in the countries concerned.

(iii) Strengthening civil society and women's participation in the democratisation and development process

8. The tasks of government cannot be redefined in the course of democratisation unless civil society is reinforced accordingly. This presupposes institutional changes (a) to allow attitudes and mechanisms for limiting powers to exist and counterbalance - and indeed validate - the working of democracy, and (b) to guarantee the participation and equality of all groups in society: women, minorities etc.

Here, the following will be emphasised:

- Free and independent media which are both a crucial factor in the construction of a pluralist system respecting democratic principles and one of its main manifestations. Support should focus on certain key issues, such as defending the freedom of the press (support for national, regional or international organisations and protecting the victims of violations), professional ethics (training for journalists, improving the legal and regulatory framework), access to information (support for documentation centres, North-South and South-South exchanges between newspapers and radio stations, shared access for several publications to an international press or photo agency).
- Gender issues which are crucial to the achievement of all development objectives in the countries concerned. Taking account of the role of women in the democratic process for sustainable development entails respect for fundamental rights and human dignity and action against all forms of abuse or exploitation they might suffer in the family, at work, in the community and society in general. This presupposes the development of information on their rights and guaranteed access to legal redress. The democratisation processes under way or planned are also an opportunity to involve women, who make up more than 50% of the population in the countries concerned, in national and local political life. The aim is to prepare them to exercise their responsibilities as voters and potential candidates. The Council Resolution of 20 December 1995 on integrating gender issues in development co-operation advocates promoting political power sharing and women's full and equal participation in decision-making at every level. Efforts to strengthen civil society cannot but

include institutions or groups representing women, whose role in development is undeniable, and foster women's access to all areas of decision-making.

- The rights of ethnic, religious and cultural minorities have to be taken into account in the interests of a country's political and social stability. To that end the 1993 Vienna Conference on Human Rights stressed the importance of protecting and promoting the rights of members of minorities, among them the right to practice their own culture and religion and use their own language.

(iv) **Measures to prevent and combat fraud and corruption**

9. Good governance directly determines the effectiveness of aid and is intrinsic to compliance with certain essential elements.

In its communication to the Council on negotiating directives relating to the partnership agreement on development with ACP countries,¹¹ the Commission proposes that good governance be made an essential element of the new agreement.

Several of the measures cited under II in relation to the dimension of effectiveness and the rule of law and the priority measures identified above will have a considerable impact on improving governance: there is no need to go into them again.

However, in terms of the sound management of resources, including development aid, special attention must be given to fighting international corruption.

An agreement was signed to that effect in the OECD on 17 December 1997. The Commission has transmitted to the Council a communication on a Union policy against corruption.¹² There has been a succession of international discussions on the subject. It was, for instance, debated by the Global Coalition for Africa in Maputo on 1 and 2 November 1997.

In its efforts to tackle fraud and corruption, the Community has developed a strategy to deal with serious offences against Europe's finances. A new legal framework, including criminal law, has been established to protect the Community's financial interests.¹³ The Union's rules against fraud and corruption already apply to financial and technical co-operation with the ACP countries, and will be strengthened.

Tackling corruption entails both preventive measures and sanctions. Both active and passive corruption must be tackled together for measures to be effective.

The Commission communication on corruption identifies a number of principles and measures for an integrated Union policy. It addresses such issues as criminalising international corruption, abolishing tax deductibility for bribes, making public procurement procedures more transparent and the effectiveness of the accounting rules. The communication also covers preventing corruption in countries receiving Community aid.

These measures have the political backing of the European Council which in June 1997 approved an action plan against organised crime, which commits the Union to fighting corruption and practices fostering it at home and abroad.

Guidelines for combating corruption in the development policy sphere should take the following form.

Prevention

10. Preventive measures are basically aimed at establishing the transparency necessary for a culture of integrity. They may take a number of forms:

¹¹ See footnote 10.

¹² COM(97) 192 final, 21 May 1997.

¹³ Regulations, agreement and protocols on the protection of the Community's financial interests and an agreement on corruption.

- Measures relating to relevant regulations, involving principally support (technical assistance) for the drafting of appropriate legislation and rules which take account of the problem of corruption.
- Measures addressing means of control involving assistance so that countries establish effective and independent supervisory institutions and systems (courts of auditors, government inspectorates, public procurement institutions, internal and external audits etc.).
- Improvement of anti-corruption clauses in development-financing procedures (EDF) and co-ordination with the DAC and the World Bank on this matter.
- Financing of direct action against corruption through the provision of technical assistance, financing of projects (seminars etc.) and specialist institutions (e.g. the unit recently set up in Benin to promote ethical behaviour in public life) and NGOs working in the field.
- Raising awareness which is vital: no strategy against corruption can be effective unless the general and specific facts and effects are brought to light. This calls for all levels of the existing media to be used to inform the public: schemes with and concerning national and international media, training and information (seminars, including corruption as a topic in training programmes, etc.). These activities also concern the institutions most directly involved: customs services, finance ministries etc., which have to assimilate the communication strategies associated with domestic programmes against corruption. Such schemes have produced encouraging results, especially in Uganda.
- Incentives which can make corruption less tempting to public officials, e.g. linking part of their pay to merit and performance.
- EC support for “second generation” structural adjustment programmes, which give priority to improving the working of the administration and public institutions. One component of these programmes involves reforms of the civil service and supervisory systems, especially those for countering fraud, including a review of objectives, tasks and human resources.
- Like the ACP countries, the EU also needs to introduce machinery for preventing violations of the rule of law and economic dysfunctions caused by the influence and activities of groups linked to organised crime, especially through the corruption of officials or involvement in economic activities, and in particular those in the public and parastatal areas. The EU and the ACP countries must pledge to promote, ratify and enforce international agreements against corruption, illegal activities and international criminal organisations in general.

Sanctions

11. Though not the preferred approach, clear and effective penalties are crucial to any effective policy against corruption:

- Clear disciplinary procedures are needed for public employees, especially in the event of malpractice.
- The offences of fraud and corruption need to be clearly defined in national legislation and that legislation enforced.
- Whistle-blowers need protection. This must be the subject of a specific clause in the code of integrity intended for staff and institutions involved in development aid.
- The Commission must draw up, with due regard for Community law, and in particular the principles of the directives on the protection of personal data, a blacklist of the names, references and specific offences of firms, institutions and individuals found to have been directly involved in corrupt practices in connection with the award or

performance of contracts relating to development co-operation. The Commission is currently studying the criteria and procedures for drawing up such a list.

C. Non-execution clause

12. As in other spheres, the European Community in general adopts a positive approach. This approach is, however, backed up by the possibility of taking appropriate steps in the event of failure to fulfil an obligation relating to an essential element of the Lomé Convention.

Article 366a of the Lomé Convention sets out clearly the procedure to follow in such cases and specifies the timing and players involved in this procedure, providing for consultations between the parties before any action is taken, save in cases of special urgency.

Implementing such a procedure requires the capacity to assess the failure to fulfil an obligation in respect of human rights, democratic principles and the rule of law. The decision to initiate consultations with a country will depend on a political assessment of each given case but that assessment should take account of a detailed analysis of the country's situation.

13. Besides the resolutions and reports referred to in the second subparagraph of III(i), this assessment should take account of reports from the heads of the Member States' and the Commission's delegations. It must be based on a number of factors showing whether the country's progress is making headway on one or more essential elements: respect for human rights, the rule of law and democratisation. Such an assessment plays an important part in the consultations between the parties, which are held "with a view to assessing the situation in detail and, if necessary, remedying it."

It should also help identify the measures needed to remedy or improve the situation that led to the violation of an essential element.

14. If, in spite of all efforts, no solution is found, Article 366a provides for appropriate measures to be taken by the party which invoked the violation. This may include full or partial suspension of the Convention, it being understood that suspension is a "measure of last resort". Appropriate measures should aim to exert pressure in order to improve the situation that caused Article 366a to be invoked. This objective must be pursued with the least possible disruption to the working of the Convention. The decision on the measures to be adopted must, as far as possible, go hand in hand with positive measures of immediate interest to remedy and improve the situation.

Although it is difficult to lay down hard and fast rules on such measures outside the particular context in which they are to be applied, there are certain guiding principles.

- The measure will be proportional to the violation.
- The measures chosen must not penalise the population and should be accompanied by a stepping-up of operations in its favour: if, for instance, the measure provides for the suspension of co-operation, a case-by-case review should be conducted of projects under way to establish whether they directly benefit the poorest sectors of the population and should therefore be exempt.
- The decision on the appropriate measures must be co-ordinated and consistent with measures adopted by the Member States.

15. Lastly, the whole question of non-fulfilment or violation of one of the essential elements must be linked to prevention of these violations, which itself is connected with conflict prevention. A deterioration in respect for democratic principles, human rights and the rule of law threatens a system's legality and the scope for peaceful solutions to tensions and conflicts within a country.

D. Conclusion

16. Together, the above elements should not only help establish a concrete operational framework for EU-ACP dialogue and the programming and implementation of the associated funding, but influence positively the implementation of EDF programmes by creating an effective, transparent and equitable institutional environment.

Key stages in taking account of human rights, democratic principles and the rule of law in external relations

Treaty provisions

1. Article F.2 of the EU Treaty, which entered into force on 1 November 1993, for the very first time made respect for human rights, democratic principles and the rule of law an essential element for EU membership and a guiding principle for its activities. Article 130u of the EC Treaty closely links development policy to democratic principles, the rule of law and respect for human rights by specifying that "Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms." These provisions represent a turning point in the Community's history and reflect its development into a political entity aware of its international responsibilities in these matters.

Increasing account taken of human rights, democratic principles, the rule of law and good governance in external relations

2. In its resolution of 28 November 1991 on human rights, democracy and development, the Council noted that respect for human rights, the rule of law and the existence of effective, responsible political institutions enjoying democratic legitimacy are the foundation for equitable development; it also underlined its attachment to the principles of representative democracy, the rule of law, social justice and respect for human rights.

This resolution followed on from, and amplified, the declaration on human rights made by the Community's Foreign Ministers on 21 July 1986, which stated that respecting, promoting and guaranteeing human rights is a key factor in international relations and a cornerstone of European co-operation.

The same resolution introduced the concept of good governance by referring to a number of general management principles without which there can be no equitable, effective or sustainable development. Respect for such principles would, moreover, play a decisive role in relations between the Community, its Member States and the ACP countries in the sphere of development co-operation.

On 18 November 1992 a second resolution referred back to the 1991 resolution, clarifying certain aspects of its implementation for annual review by the Council. In November 1996 a further resolution on human and social development reaffirmed the importance of promoting good governance for human-centred development.

3. In the resolution on democracy, human rights and development in the ACP countries adopted in Gaborone on 31 March 1993, the ACP-EC Joint Assembly called on Parliament and the Commission to adopt positive flanking measures for ACP countries engaged in the democratic process and decide criteria and means for assessing respect for democracy and human rights.

4. In May 1995 the General Affairs Council took note of the Commission Communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries and approved a clause to that effect for inclusion in all such agreements.¹⁴ This decision is aimed at giving the EU a

¹⁴ COM(95) 216 final, 23 May 1995.

more uniform and coherent approach to human rights and democratic principles. Under it, all co-operation, association and free-trade agreements concluded by the Community with third countries now contain a clause on respect for human rights. This clause is inspired by the Universal Declaration on Human Rights adopted by the UN General Assembly on 10 December 1948 (Resolution 217A(II)).

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