

E.S. NWAUCHE

Visiting Professor of Law, University of the North-West, South Africa and Associate Professor of Law, Rivers State University of Science and Technology, Nigeria.

J.C. NWOBIKE

Lecturer, Faculty of Law, Rivers State University of Science & Technology, Port Harcourt, Nigeria and Doctoral Student, Human Rights Centre, University of Essex, Colchester, United Kingdom.

#### ABSTRACT

The 1986 UN Declaration on the Right to Development rather than resolve the question of whether there is a Right to Development further polarized the membership of the United Nations. The southern governments contend for a right to development while the rich countries of the North oppose the existence of such a right. In order to resolve this impasse and implement the Declaration, the UN appointed an Independent Expert on the Right to Development, Professor Arjun Sengupta, called for the establishment of a development compact between developed and developing countries. A development cooperation relationship already exists in the form of the Cotonou Partnership Agreement between the European Union and Africa Caribbean and Pacific Countries. This paper will conduct a comparative analysis of Sengupta's development compact and the Cotonou agreement and will argue that while both share common features such as equality, non-discrimination and participation, their convergence ends with regard to the principle of accountability. [Original article in English.]

## IMPLEMENTING THE RIGHT TO DEVELOPMENT

E.S. Nwauche and J.C. Nwobike



The Declaration on the Right to Development has been trailed with controversy since its adoption by the United Nations in 1986.<sup>1</sup> While the developing nations in the South argued for resource transfer as the basis of the right to development, the developed countries representing the North denied the existence of such a right. However, the reaffirmation of the right to development at the 1993 Vienna World Conference on Human Rights<sup>2</sup> provided an opportunity for the debate to move from rhetoric towards actual implementation. The Open Ended Working Group was established and the Independent Expert on the Right to Development, Professor Arjun Sengupta, was mandated to find a way of operationalising the right to development.<sup>3</sup> The Independent Expert has recommended a Development Compact<sup>4</sup> between a specific developing country and the international community and international financial institutions as a mechanism for implementing the right to development.

The purpose of this paper is to examine the practical application of the Development Compact through a comparative analysis of Sengupta's Development Compact and the Cotonou Partnership Agreement,<sup>5</sup> which is a trade, aid and development agreement between the European

---

See the notes to this text as from page 107.

---

Union<sup>6</sup> and 78 Africa, Caribbean and Pacific states (the ACP group).<sup>7</sup> The Agreement's main objectives are the reduction and eventual eradication of poverty and the gradual integration of ACP states into the global economy, whilst adhering to the aims of sustainable development.<sup>8</sup>

The significance of this inquiry should be seen in the light of the fact that the controversy surrounding the right to development is one that has deeply divided and continues to divide the northern and southern governments.<sup>9</sup> In furtherance of our objective we ask, what is the Development Compact Mechanism? Thereafter we examine the conceptual basis for Sengupta's Development Compact, which will provide us with the necessary background information for our comparative analysis.

### **The Development Compact mechanism**

According to Sengupta, a Development Compact would be a country specific-arrangement establishing reciprocal obligations between developing countries and the United Nations system, international financial institutions and bilateral donors. Developing countries would be under the obligation to realize the right to development and the international community under an obligation to cooperate to enable the implementation of the program. If the developing country fulfils its part of the bargain, the international community would need to take the corresponding measure, and provide resource transfers and technical assistance as previously agreed.<sup>10</sup>

How can this Development Compact be implemented? The Independent Expert says that any developing nation interested in a development compact must accept to design and implement their national development programs in a rights-based manner, including participation by civil society, national incorporation of human rights instruments and a monitoring role for national human rights institutions.<sup>11</sup> The compact could focus on a few core rights, or on the achievement of poverty reduction objectives.<sup>12</sup> Sengupta suggests that the Development Assistance Committee of the Organization for Economic Co-operation and Development (OECD) could organize a "support group" that would

scrutinize, review and approve the national development policies of the developing country; identify financial burden sharing and specific responsibilities and duties of the parties to the compact; and monitor the implementation of the compact. “Callable commitments” to a new financing facility, “the Fund for Financing Development Compacts”, would ensure that resources were available, and might increase total international development assistance.<sup>13</sup> The financing requirement of a particular compact would be a residual, after implementing other measure of international cooperation, such as bilateral programs.<sup>14</sup>

The rationale for the Independent Expert’s Development Compact is that existing programs to implement the right to development set conditionalities on developing countries which are not matched by reciprocal obligations of the international community. According to Sengupta “a successful program is thus as much dependent upon the appropriate design of the program, the detailed specification of responsibilities and a fixing of the accountabilities, as on recognizing the mutuality of the obligations and the reciprocity of the conditionalities”.<sup>15</sup>

It is this “mutuality of obligations” and “reciprocity of the conditionalities” that has made the concept of a Development Compact very controversial.<sup>16</sup> Developed countries are uncomfortable with the Development Compact as it seeks to impose some form of conditionality on them. Consequently, the proposal to establish development compacts has neither being fully endorsed or clearly rejected despite it having been discussed at the meetings of the Open Ended Working group on the Right to Development, of the Commission on Human Rights, the General Assembly.<sup>17</sup>

The controversy surrounding the Development Compact emanates from the how the rights-based approach to development should be understood. The Independent Expert’s view is that the rights-based approach to development is an empowerment approach as well as requiring the objectives of development to be realized as human rights. In other words, the goals of human and social development are to be regarded as entitlements or as rights that can be legitimately claimed by individuals as right holders against corresponding duty holders, such as the state and the international community. This

position is in sharp contrast with the rights-based approaches held by most development agencies, International Financial Institutions and bilateral donors. They hold that what may be described as an instrumentalist view of human rights. Poverty reduction is held to be the principal objective of development with human rights seen as a means to realize those goals, or principles which should be followed, but not in themselves the objective of development. Simply put, the objective of development assistance is to eradicate poverty, not principally to respect and promote human rights.

It is clear from the above that the dividing line between the contending parties on the rights-based approach is what is the role of human rights in development. In other words should the promotion and realization of human rights be the primary objective of development or should it be seen as a means to achieving development?<sup>18</sup> To better appreciate the positions of the parties above, it would be necessary to examine further the conceptual basis of the Development Compact. This turns on the meaning of the right to development, but specifically on whether there is an obligation of international assistance and cooperation in the light of Articles 55 and 56 of the UN Charter, Article 28 of the Universal Declaration of Human Rights and Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

### **The conceptual basis of development compacts<sup>19</sup>**

The Development Compact evolved from Sengupta's interpretation of the right to development as a right to a particular process of development which facilitates and enables all fundamental freedoms and rights to be realized, and which expands basic capabilities and the abilities of individuals to enjoy their rights. It cannot be equated with a right to the outcomes of development nor with the sum of existing human rights. It refers not to just the realization of individual rights but also to the way in which these rights are realized and development facilitated.<sup>20</sup>

Sengupta further argues that poverty reduction could be seen as the target of the right to development, and that national poverty reduction strategies when implemented in a rights-based manner will lead to economic growth with equity and

justice. He defines rights-based approach as “a manner that follows the procedures and norms of human rights laws, and which is transparent, accountable, participatory, non-discriminatory with equity in decision making and sharing of the fruits or outcomes of the process”.<sup>21</sup>

In short, a rights-based development program will regard the goals of human and social development as entitlements or as rights that can be claimed by individuals as right holders against corresponding duty holders, such as the nation-state and the international community.

Sengupta’s interpretation of the rights-based approach to development is based on his desire to draw a distinction between “recognizing the right to development as a human right ... and the creating of legally binding obligations relating to the right”.<sup>22</sup> In his view recognizing the right to development would be meaningless without the corresponding obligation relating to that right.<sup>23</sup> Consequently, the right to development creates a legal obligation on the developed countries to provide resource and technical assistance to developing countries when they lack the capacity to do so themselves. This interpretation turns on who are the right and duty holders of the right to development. On Sengupta’s interpretation, the holder of the right to development is the individual while the duty holders are the nation-state at national level and the developed countries at the international level.<sup>24</sup>

Developed countries deny that there is a legal duty to provide international assistance and cooperation. Rather they are only willing to own up to a moral and political obligation to provide assistance to poor countries. In their view the holder of the right to development is the individual but the holder of the duty is primarily the nation-state with voluntary contribution coming from the international community.<sup>25</sup>

The developed countries’ view is predicated on their concern that should they accept an obligation to provide international assistance to developing countries, that acceptance may be regarded as *fait accompli* by the developing countries to neglect their primary responsibility for development. Against this background, one is sympathetic towards their resistance. But the duty to provide assistance could be seen differently. As Sengupta points out in his analysis of the duty holders of the right to development the

responsibility for development should be seen to lie at two levels, one national and the other international. This distinction was also emphasized upon by the Committee on Economic Social and Cultural Rights (CESCR) in its General Comment on the nature of states parties' obligation under article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>26</sup>

If there is a consensus that nation-states have the primary responsibility for development at the national level and the international donor community at the international level then efforts could be devoted to working out criteria, such as human rights indicators and bench marks, for determining when the nation-state has accomplished its primary duty, consequently imposing a duty on the international community to provide necessary assistance.<sup>27</sup> Until these human rights bench marks and indicators are established there will continue to be controversy and suspicion on the obligation of international cooperation and assistance.

To conclude this issue, we note that the Development Compact is controversial in that it is based on the premise that duty-holders can be monitored, their culpability for not facilitating a process of development identified, and their commitments enforced. This point was aptly made by Sengupta when he says that the difference in approach between the IMF/World Bank's Poverty Reduction Strategy and the Comprehensive Development Framework as well as approaches of the major bilateral donors, and the implementation of the right to Development as a human right, is the explicit recognition of the obligations of the stakeholders, including those of the international community.<sup>28</sup>

In the light of the above observations we turn to the comparative Analysis of the Cotonou Agreement to see if it meets the rights-based approach of the Development Compact.

### **Comparative analysis of the Development Compact and the Cotonou Agreement**

The Development Compact and the Cotonou Partnership Agreement share some fundamental similarities. One, they are both development agreements between the North and the South, second, they are contractual in nature and third, their

objectives include poverty reduction and eradication. However, to determine whether the Cotonou Agreement meets the rights-based approach of the Development Compact we need to emphasize on the salient features of the right to development approach. A development approach policy that is rights-based implies a process that is equitable, non-discriminatory, participatory, transparent and accountable. Accordingly, our analysis of the Cotonou Agreement will utilize these rights-based norms.

### *Equity*

The concept of equity derives from the principle of equality of all human beings. The principle of equality is essential to any program aimed at implementing the right to development. Accordingly, a rights based approach in the Development Compact seeks to address the need for equality in the level or amount of benefits accruing from the exercise of the rights. As a result, microeconomic policies and programs must be based on a development framework that reduces income disparities or, at least, does not allow these disparities to increase.<sup>29</sup> This involves putting the human person at the centre of the development framework as well as making her the beneficiary of development. This point is recognized in the Cotonou Agreement. It provides that “cooperation shall be directed towards sustainable development centered on the human person, who is the main protagonist and beneficiary of development”.<sup>30</sup> But whether the microeconomic policies and programs to be implemented under the Cotonou Agreement will meet the requirement of equality for all remains to be seen. This is because the agreement places emphasis on economic growth through microeconomic structural reforms, privatization and trade liberalization. These are economic policies that have been criticized in the past for having increased poverty and disparities among populations in the third world.<sup>31</sup>

While these economic policies may be helpful in promoting efficiency and high economic growth they often compromise the ability of a country to meet the basic needs and rights of its people. This point has been emphasized in the Human Development Report 2003. The Report suggests that Goals 1-7 of the Millennium Development Goals dealing



with poverty eradication and environmental stability cannot be achieved without policy changes from rich countries as reflected in Goal 8.<sup>32</sup> The policies in question are rich country tariffs and subsidies that restrict market access for developing country exports, patents that restrict access to technology that can save lives and unsustainable debt owed to rich country governments and multilateral institutions. Unless there is some movement by the developed nations in this front, the imbalance that currently pervades the world economic system will remain.

### *Non-discrimination*

The principle of non-discrimination is also a fundamental element in the rights-based Development Compact. It requires that in the designing and implementing of all policies and practices there should not be any discrimination on the grounds of race, color, sex, language, political or other opinion, religion, national or social origin, property, birth or other status, not only between the beneficiaries but also between stakeholders and beneficiaries.<sup>33</sup>

The principle of non-discrimination is captured in the Cotonou Agreement. Article 9(2) recognizes the equality between men and women. In Article 13(1) the parties reaffirm their existing obligations and commitments in international law to ensure respect for human rights and to eliminate all forms of discrimination based particularly on origin, sex, race, language and religion. Does this commitment to non-discrimination in the Cotonou Agreement meet the threshold of the rights-based Development Compact? We shall consider two examples in this regard: the rights of women and migrant workers.

On gender, the Cotonou Agreement states that systematic account shall be taken of the situation of women and gender issues in all areas – political, economic and social.<sup>34</sup> The agreement falls short of specifying how gender mainstreaming can be achieved in practice and does not address the issue of capacity building. A wide study on the gender aspects of the Cotonou Agreement found that “overall the Cotonou Agreement itself is unclear and apparently inconsistent on the role of gender and the implications of integrating gender aspects. The sections on economic and trade co-operation,

structural adjustment and debt, tourism, other 'hard' economic issues, and on instruments and management of the ACP-EU co-operation do not pay any attention to gender let alone show gender sensitivity".<sup>35</sup>

With respect to the rights of migrants, the agreement seeks to protect the only rights of migrant workers and their family who are legally resident within the territory of the contracting parties.<sup>36</sup> It refuses such protection to illegal migrants and their families. The only protection that illegal migrants get is in the course of the procedure initiated for their return to their country of origin. This is discrimination on ground of legal status. Indeed it is arguable that the principle of non-discrimination in the Cotonou Agreement does not meet the threshold of a rights-based approach in the Development Compact.

### *Participation*

According to the principle of participation, all beneficiaries and agents involved in the implementation of the right to development are entitled to participate in, contribute to and enjoy the results of the process of development.<sup>37</sup> In practice this means access to information and decision making and the exercise of power in the execution of projects which lead up to the program for development. The Cotonou Agreement contains provisions to promote participatory approach<sup>38</sup> and to ensure the involvement of civil society and economic and social players by providing them with information on the ACP-EU Partnership Agreement in particular within the ACP countries. It also ensures the consultation of civil society on the economic social and institutional reforms and policies to be supported by the EU, the facilitation of non-state actors in the implementation of programs and projects as well as providing non-state actors with adequate support for capacity building.<sup>39</sup>

The practical application of the participatory approach may prove problematic. The reason is that the effectiveness of participation within both the Development Compact and the Cotonou Agreement will ultimately depend on the relative power and status of the parties involved. In the light of the resource and technological gap between the developed and

developing countries, effective participation may be compromised.

This has been a major draw back on Sengupta's Development Compact. It requires the Development Assistance Committee of the OECD to organize a "support group" that would scrutinize, review and approve the national development policies of the developing country seeking the compact. This model according to Piron (2003) does not clearly articulate the participation of non state actors and may weaken country ownership of the development program.<sup>40</sup> The Cotonou Agreement suffers the same fate. While ACP states were given the responsibility for choosing, preparing the dossier, implementing and managing the various projects and programs to be funded under the Cotonou Agreement the EU retained the sole right for taking financing decisions on the said projects and programs.<sup>41</sup>

### *Transparency and accountability*

Accountability and transparency are two other principles associated with the rights-based Development Compact. It involves the specification of obligations for the different duty-holders who will be accountable for carrying out their obligations. In order to make that possible, the programs must be designed in a transparent manner, bringing out openly all the interrelations and linkages between different actions and actors.<sup>42</sup> The principles of transparency and accountability in this context seek to introduce "reciprocity of the conditionalities" into the development cooperation framework. As noted earlier, the rationale for this approach was the desire of the Independent Expert to move away from the one-sided conditionality imposed on a party (usually the developing country) that has characterized the experience of international cooperation. The Cotonou Agreement is also framed in this one-sided conditionality.

Respect for human rights, democratic principles and the rule of law, by the ACP states, are made essential elements of the Agreement, along with as good governance.<sup>43</sup> Subject to an agreed procedure the agreement may be terminated or suspended when any of these essential or fundamental elements are violated.<sup>44</sup> There is no corresponding obligation under the

Cotonou Agreement on the EU to fulfill its commitment to support the economic and social development of ACP.<sup>45</sup> This point was noted by Maxwell and Riddell (1998), when they doubted whether the concept of partnership under the Cotonou Agreement could be relied upon to sanction the European Union “for slow delivery” of its commitments to ACP states.<sup>46</sup>

The lack of “mutuality of obligations” and “reciprocity of the conditionalities” in the Cotonou Agreement was no doubt influenced by the position of the international financial institutions and donor countries on the right to development discourse. In the view of the developed countries under international law there is only a general duty to cooperate for development and any assistance offered is based on moral or humanitarian grounds.<sup>47</sup> This entails certain general duties to provide financial and other appropriate assistance to the South, but there is no specific duty of any particular state to assist another particular state, nor to make available a fixed amount of assistance.<sup>48</sup> Karin Arts makes this point clearly when she argues that within the Lome Context developing countries do not have a right to development assistance from a particular developed country but as yet can only refer to a general, essentially non-enforceable, notion of the right to development.<sup>49</sup>

The North’s position on the right to development had a far reaching consequence for the Cotonou Agreement. The preamble of the Agreement had urged all parties to have regard to the principles enshrined in the UN Charter, the International Bill of Rights as well as the various regional human rights instruments such as the European Convention on Human Rights, the African Charter on Human and Peoples’ Rights and the Inter American Convention. The 1986 Declaration on the Right to Development was left out entirely from the text of the Cotonou Agreement. The rationale no doubt was to exclude from the Cotonou regime the divisive debate on the right to development.<sup>50</sup>

In the light of the foregoing, it is arguable that the Cotonou Agreement, while it shares some common features with Sengupta’s Development Compact, it is not an example of the Compact. What then are the practical limitations of the Development Compact?

## Practical limitations of the Development Compact

The first limitation of Sengupta's Development Compact is how to achieve sufficient participation by all stakeholders, including civil society in the development process. If the compact is to be funded through "support groups" made up of DAC countries, it is likely that the national development programs will only be approved if they meet with donor objectives and international policy prescriptions. This will weaken the country ownership of the programs. This is exactly the finding of Sengupta in his fifth report, where he compares the development compact model to existing partnership approach to development such as the Poverty Reduction Strategy Papers, the World Bank's Comprehensive Development Frameworks and the UN's Common Country Assessments and Development Assistance Frameworks.<sup>51</sup>

Secondly, the developed countries' instrumental view of human rights will be another hurdle that the Development Compact will have to scale. The rights-based compact requires that development programs be established with the realization of human rights as their main objective. According to Piron (2003) the practicality of this approach is in doubt in view of the fact that developed countries regard the eradication of poverty as the principal objective of assistance and respect/promotion of human rights as incidental to the objective of poverty reduction.<sup>52</sup> Moreover, the developing countries are also likely to oppose the Compact because they "are still suspicious of linking international human rights obligations to national development process, and see it as a form of conditionality".<sup>53</sup>

The third difficulty is the issue of accountability. How can individuals in a developing country claim a right or make an entitlement against a donor country especially in the light of the unavailability of an accountability mechanism at the international level? This question is even more pertinent because in the view of most donor governments, they are only accountable to their home country parliaments. It is to these parliaments that they are expected to account for development policies and not to the citizens of the aid receiving nations.

However, the Committee on Economic Social and Cultural Rights has adopted a different approach. In considering country reports of developed countries, for instance Italy and Japan, it has started questioning delegations on the efforts they have made in the fulfillment of their obligations under Article 2(1) of ICESCR concerning international assistance and cooperation.<sup>54</sup> Moreover, as stated earlier, the Human Development Report 2003 makes it clear that policy changes by rich countries for aid, debt relief, trade and transfers of technology (Goal 8 of the Millennium Development Goals) are essential to achieving all the other seven Goals.<sup>55</sup>

The fourth limitation deals with the inability of the Development Compact to recognize the current realities in international relations. Most donor countries deploy development aid as a tool in their foreign policy. They use aid as a leverage to attain their foreign policy objectives. For instance during the debate at the UN Security Council for a second resolution authorizing the use of force against Iraq, it was said that the United States was offering aid to third world countries, such as Guinea, on the Security Council in exchange for their votes supporting the resolution for war. Also during the mid-term review of the Lome IV Convention, officials of the European Commission and member states revealed in interviews that they saw increases in aid as the European Union's bargaining chip in getting the ACP states to agree to the wide-ranging changes to Lome that were proposed.<sup>56</sup> Given this scenario, major players in world affairs, who are incidentally the donor countries, are unlikely to support the Development Compact not only because it imposes sanctionable obligations on them but it also reduces their ability to influence international affairs or negotiations through the instrument of aid.<sup>57</sup>

The Development Compact is based on the Independent Expert's conceptual interpretation of the Right to Development in the 1986 Declaration which the Committee on Economic, Social and Cultural Rights has said was not designed to be operational but a statement of broad principles.<sup>58</sup> Against this background one could appreciate the practical difficulties the Development Compact will encounter.

## Conclusion

The Cotonou Agreement is an operational document between the ACP states and the European Union, while the Development Compact is still on the drawing board as a proposal by the Independent Expert to implement the Right to Development. Their common features include such principles as equality, non-discrimination, and participation. Their convergence however ends with regard to the principle of accountability. Like most development cooperation agreements before it, the Cotonou Agreement imposes the conditionality of respect for the human rights, democratic principles, rule of law and principle of good governance on ACP states without a corresponding obligation on the EU to fulfill its commitment to provide resources for economic and social development.<sup>59</sup>

The lack of reciprocity in obligations is the major difference between the Cotonou and the Development Compact. The compact was designed to assure developing countries that if they fulfill their part of the bargain and carried out their obligations, the program will not be derailed because of the lack of international cooperation. This is achieved by ensuring that the obligation of the right holders and duty holders are clearly identified, their culpability identified and their commitments enforced.

The conceptual basis for the Development Compact is the Independent Expert's view that a rights-based approach to development is one that makes the realization of human rights as its main objective in addition to empowerment. This is radically different from the view of major donors, to wit: the objective of development is to eradicate poverty, not principally to respect and promote human rights. Both sides agree to a right-based approach but part company as to its interpretation, particularly with respect to the issue of accountability. This is the same "conceptual gridlock" that surrounded the adoption of the 1986 Declaration on the Right to Development. Until it is resolved no progress can be made and Sengupta's Development Compact will remain on the drawing board.

## NOTES

1. Adopted by General Assembly Resolution 41/128 on December 4, 1986, by a vote of 146 to one against (United States), with eight abstentions, including Germany, Japan, and the United Kingdom.

2. See The Vienna Declaration and Program of Action, June 1993, items 10, 11, 72 and 73.

3. Commission on Human Rights Resolution 1998/72, adopted without a vote on April 22, 1998. To date the Independent Expert has submitted six reports to the Open Ended Working Group.

4. The idea of a "compact" was first floated by the Norwegian Foreign Minister, T. Stoltenberg in the late 1980s and was elaborated upon by other development economists and in the Human Development Reports. See A. Sengupta, "On the Theory and Practice of the Right to Development", 24 *Human Rights Quarterly*, November 2002.

5. The Cotonou Partnership Agreement was signed on 23 June 2000. The full text of the Cotonou Agreement is available at [http://europa.eu.int/comm/development/body/cotonou/agreement\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/agreement_en.htm). Last access on 24 January 2005.

6. The EU Countries that were signatories to the Cotonou Partnership Agreement were: Austria, Belgium, Denmark, Germany, France, Spain, Ireland, Greece, Italy, Luxembourg, Netherlands, Portugal, Sweden, Finland and United Kingdom. From 1<sup>st</sup> May 2004, the European Union comprises 10 new member states: Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Czech Republic, Slovakia and Slovenia.

7. The ACP group was founded in 1975 with the signing of the Georgetown Agreement. The ACP group is made of the following Countries: Angola, Antigua and Barbuda, Bahamas, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Cook Islands, Democratic Republic of Congo, Djibouti, Dominican Republic, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Guinea, Guinea Bissau, Guyana, Haiti, Ivory Coast, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Madagascar, Malawi, Mali, Marshall Islands, Mauritania, Mauritius, Micronesia, Mozambique, Namibia, Nauru, Niger, Nigeria, Niue, Palau, Papua New Guinea, Rwanda, St Kitts and Namo, St Lucia, St Vincent and the Grenadines, Samoa, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, Sudan,



Suriname, Swaziland, Tanzania, Togo, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Zambia, Zimbabwe. It is worthy of note that Cuba is a member of the ACP Group but is not a signatory to the Cotonou Agreement.

**8.** Article 1 of the Cotonou Partnership Agreement.

**9.** See Stephen Marks, "Obstacles to the Right to Development", pp. 2-6. (Where he recounts the political posturing that goes on between the Northern and Southern governments at the United Nations in respect of the Right to Development.) Available at <[http://www.hsph.harvard.edu/fxbcenter/FXBC\\_WP17—Marks.pdf](http://www.hsph.harvard.edu/fxbcenter/FXBC_WP17—Marks.pdf)>. Last access on 15 March, 2005.

**10.** See Arjun Sengupta, "Fourth Report of the Independent Expert on the Right to Development E/CN.4/2002/WG.18/2 20. December 2001, paragraph 54.

**11.** *Id.*, paragraphs 59-61.

**12.** *Id.*, paragraph 57. See also A. Sengupta, "Second Report of the Independent Expert on the Right to Development", E/CN.4/2000/WG.18/CRP.1 (11 September 2000), wherein the Independent Expert argues that poverty reduction could be seen as the target of the right to development, and that national poverty reduction plans, when implemented in a rights-based manner, can be a way in which to realize the right.

**13.** See Sengupta, 2001, *op. cit.* (note 10), paragraphs 68-74.

**14.** *Id.*, paragraph 63.

**15.** *Id.*, paragraph 54.

**16.** For a critique of the Development Compact, see Laure-Hélène Piron, "Are Development Compacts Required to Realize the Right to Development?". In: Franciscans International (ed.), *Right to Development: Reflections on the First Four Reports of the Independent Expert on the Right to Development*, pp. 46-61. Geneva, 2003.

**17.** *Id.*, p. 46.

**18.** For an extensive discussion on the constitutive and instrumental role of human rights in development, see Amartya Sen, *Development as Freedom*. Oxford: Oxford University Press, 1999, Chapter 2.

**19.** For an overview of the Development Compact, see Sengupta, 2002, *op. cit.* (note 4), pp. 838-889.

**20.** *Id.*, pp. 848-852.

21. Id., *ibid.*
22. Id., at p. 842.
23. Sengupta, 2001, *op. cit.* (note 10), paragraph 53.
24. Sengupta, November 2002, *op. cit.* (note 4) pp. 876-880.
25. See L.-H. Piron, *The Right to Development: A Review of the Current State of the Debate for the Department of International Development*, April, 2002. Available at <[http://www.odi.org.uk/pppg/publications/papers\\_reports/dfid/issues/rights01/right\\_to\\_dev.pdf](http://www.odi.org.uk/pppg/publications/papers_reports/dfid/issues/rights01/right_to_dev.pdf)>. Last access on 25 January 2005.
26. See General Comment 3, paragraphs 11-14. See also the "Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights". 9 *Human Rights Quarterly*, 1987, pp. 122-135, paragraphs 25-29. Available at <<http://www2.law.uu.nl/english/sim/instr/limburg.asp>>. Last access on 24 January 2005.
27. See Paul Hunt, "Using Rights as a Shield". *Human Rights Law and Practice*, v. 6, n. 2, June 2002. (Where he states that the CESCR is working on human rights indicators and bench marks.)
28. Sengupta, 2001, *op. cit.* (note 10), paragraph 52. This point was also made in Sengupta, "Fifth Report on the Independent Expert on the Right to Development". E/CN.4/2002/WG.18/6. 18 September 2002, pp. 12-15.
29. Sengupta, 2001, *op. cit.* (note 10), paragraphs 26-28.
30. Article 9, paragraph 1 of Cotonou Agreement.
31. In its 1989 Annual Report the World Bank admitted that concerns about the effects of its adjustment policies has been raised: "Little is known about the overall effect of adjustment programs on poverty" (p. 81).
32. See the Human Development Report 2003, p. 11. Available at <<http://www.undp.org/hdr2003/>>. Last access on 25 January, 2005.
33. Sengupta, 2001, *op. cit.* (note 10), paragraph 29.
34. Article 31 of the Agreement.
35. Karin Arts & WIDE, "Gender Aspects of the Cotonou Agreement", WIDE, January 2001, pp. 11-12. Available at <<http://www.genderandtrade.net/Cotonou/WIDE%20Gender%20and%20Cotonou.pdf>>. Last access on 25 January 2005.

36. Article 13 of the Cotonou Agreement.
37. Sengupta, 2001, op. cit. (note 10), paragraph 30.
38. See Articles 2 and 9 of the Cotonou Agreement.
39. See Articles 4 and 5 of the Cotonou Agreement.
40. Piron, 2003, op. cit. (note 16), pp. 56-57.
41. Article 57 of the Cotonou Agreement.
42. Sengupta, 2001, op. cit. (note 10), paragraph 31.
43. See Article 9 of the Cotonou Agreement.
44. See Articles 96 and 97 of the Cotonou Agreement.
45. See generally Articles 25, 26 and 27 of the Cotonou Agreement.
46. See Simon Maxwell & Roger Riddell, "Conditionality or Contract: Perspectives on Partnership for Development". *Journal of International Development*, v. 10, pp. 256-261, 1998.
47. See for instance the United Kingdom's view in DFID, "Eliminating World Poverty: Making Globalization Work for the Poor". White Paper on International Development, December 2000, p. 14 [WP11].
48. See Philip Alston & Gerard Quinn, "The Nature and Scope of State Parties' Obligations under the International Covenant on Economic Social and Cultural Rights". 9 *Human Rights Quarterly*, 156, 1987. See also Mathew Craven, "The International Covenant on Economic, Social and Cultural Rights. A Perspective on its Development". Oxford: Clarendon Press, 1995. p. 49. Cf. Paul Hunt, Manfred Nowak and Saddiq Osmani, "Human Rights and Poverty Reduction Strategies", a discussion paper prepared for the UN office of the High Commissioner for Human Rights; February 2002, p. 18.
49. Karin Arts, "Integrating Human Rights into Development Cooperation: The Case of the Lome Convention". Kluwer Law International, 2000, p. 44.
50. The EU position on the Right to Development appears to be changing. In this regard, Ambassador Mary Whelan of Ireland recently declared: "On behalf of the European Union, I wish to reiterate our commitment to the Right to Development, as set out in the Vienna Declaration and Program of Action. It is also a commitment that is manifested in the development co-operation partnerships and agreements that we have with countries throughout the

world". See Address delivered by Ambassador Mary Whelan, Ambassador of Ireland to the United Nations, on the Right to Development at the 60<sup>th</sup> Session of the United Nations Commission on Human Rights on 23 March 2004.

51. See Sengupta, "Fifth Report on the Independent Expert on the Right to Development", E/CN.4/2002/WG.18/6. 18 September 2002.

52. See Piron, 2003, *op. cit.* (note 16), p. 56.

53. *Id.*

54. See Hunt, 2002, *op. cit.* (note 27) pp. 113-114.

55. Sengupta, 2002, *op. cit.* (note 28).

56. Interviews: Brussels, 26 and 27 May 1993, cited in William Brown, *The European Union and Africa*. London: I.B. Tauris, 2002, p. 134.

57. For the role human rights play in the foreign policy of developed countries see Peter Baehr, *The Role of Human Rights in Foreign Policy*. 2.ed. Macmillan Press Limited, 1996.

58. See "The Incorporation of Economic, Social and Cultural Rights into the United Nations Development Assistance Framework (UNDAF) Process". Comments adopted by the Committee on Economic Social and Cultural Rights, 15 May 1998, paragraph 5; cited in Anne Orford, "Globalization and the Right to Development". In: P. Alston (ed.), *Peoples' Rights*, pp. 127-172. Oxford: Oxford University Press, 2001.

59. This has been described as conditionality in its purest form. See Peter Hilpold, "EU Development Cooperation at a Crossroads: The Cotonou Agreement of 23 June 2000 and the Principle of Good Governance". 7 *European Foreign Affairs Review*, n. 1, pp. 53-72, 2002.