

**COTONOU
ARTICLE 96**

Recent Cases of Article 96 Consultations

Lydie Mbangu

Discussion Paper No. 64C
August 2005



EUROPEAN CENTRE FOR DEVELOPMENT POLICY MANAGEMENT
CENTRE EUROPÉEN DE GESTION DES POLITIQUES DE DÉVELOPPEMENT

Recent Cases of Article 96 Consultations

Lydie Mbangu

August 2005

Acronyms

ACP	Africa, Caribbean and Pacific
APRM	African Peer Review Mechanism
BONUCA	United Nations Peace-building Support Office in the Central African Republic
CEMAC	Communauté Économique et Monétaire de l'Afrique Centrale (Central African Economic and Monetary Community)
CENI	Commission électorale nationale indépendante (Togo) (Independent national electoral commission)
CENSAD	Community of Sahel and Saharan States
CPLP	Comunidade dos Países de Língua Portuguesa (Community of Portuguese Language Countries)
ECOSOC	United Nations Economic and Social Council
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EU	European Union
IMF	International Monetary Fund
MINURCA	United Nations Mission in the Central African Republic (predecessor to BONUCA, April 1998 to February 2000)
MLC	Mouvement de Libération du Congo (Congolese Liberation Movement)
NEPAD	New Partnership for Africa's Development
PAIGC	Parti africain pour l'indépendance de la Guinée-Bissau et du Cap-Vert (African Party for the Independence of Guinea-Bissau and Cape Verde)
PRS	Parti de la rénovation sociale (Guinea-Bissau) (Social Renovation Party)
PUSD	Partido Unido Social Democrático (Guinea-Bissau) (United Social Democratic Party)
RPT	Rassemblement du peuple togolais (Rally of the Togolese People)
UFC	Union des Forces de Changement (Togo) (Union of Forces for Change)
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Programme
UNOGBIS	United Nations Peace-building Support Office in Guinea-Bissau
WAEMU	West African Economic and Monetary Union

Contents

1.	Introduction	1
2.	Hypotheses	1
3.	Methodology	1
4.	Case analysis	1
4.1.	Guinea-Bissau: a clear success	2
4.1.1	Political background	2
4.1.2	The reactions	2
4.1.3	The consultation procedure	3
4.1.4	Evaluation	3
4.1.5	Recent developments	5
4.2.	The Central African Republic: a mixed picture?	5
4.2.1	Political background	5
4.2.2	The reactions	5
4.2.3	The consultation procedure	7
4.2.4	Evaluation	8
4.2.5	Recent developments	9
4.3.	Togo: a new chance	10
4.3.1	Political background	11
4.3.2	The reactions	11
4.3.3	The consultation procedure	12
4.3.4	Evaluation	12
4.3.5	Recent developments	13
5.	Policy implications for the future	14
5.1.	Reinforced action by the ACP Group	14
5.2.	The role of neighbouring states	15
5.3.	Promoting a common understanding of the situation	15
5.4.	Article 96: a late reaction?	15
5.5.	The need to improve the follow-up phase	16
5.6.	The African Union and the African Peer Review Mechanism: a balancing factor?	16
6.	Conclusion	17

Editor's Note

This article was completed in October 2004. It therefore does not reflect events which have taken place since then, such as the developments in Togo since the death of President Gnassingbé Eyadema in February 2005, or the negotiations on the review of the Cotonou Agreement completed in February 2005. However, we have wherever possible added more recent information on the status of the Article 96 consultation procedures held with the countries concerned and their outcomes in a footnote to the main text.

1. Introduction

Over the past 15 years, the promotion of democracy and human rights has become one of the key debates shaping relations between the European Union and the countries of Africa, the Caribbean and Pacific (ACP). In its Article 9, the Cotonou Partnership Agreement, signed 23 June 2000, defines as the 'essential elements' of the ACP-EU partnership respect for human rights and adherence to democratic principles and the rule of law.

The political dimension of the Cotonou Partnership Agreement aims at fostering a continuous political dialogue on these issues, as stipulated in Article 8 of Title II of the Agreement. When flagrant violations of the essential elements occur, a consultation procedure, as foreseen under articles 96 and 97 of the Cotonou Agreement, can be initiated, aimed at finding a common solution to the political difficulties encountered by one of the parties.

This paper addresses the following key question: *'Under what conditions are Article 96 consultations initiated?'* Moreover, it identifies *the key conditions that determine the success or failure of the consultation procedure*. To that end, three recent cases of consultations between the EU and an ACP country are analysed: Guinea-Bissau, the Central African Republic and Togo.

2. Hypotheses

In analysing and assessing these cases, the paper puts forward three hypotheses:

- The consultation procedure is *initiated in cases of flagrant violations* of the essential elements, particularly in cases of a coup d'états.
- *Active involvement of the ACP Group, of neighbouring countries and of major regional organisations* is crucial for the success of the consultation procedure.
- *Active support of the rest of the international donor community* is a factor which in the longer term raises the chances of success of a consultation procedure.

3. Methodology

The three case studies were chosen for different reasons. The cases of Guinea-Bissau and the Central African Republic were included because they underscore the positive influence that the ACP Group can have on the outcome of a consultation procedure.

The case of Togo is interesting because - very unusually - this country, despite ten years of suspension of cooperation and lack of any significant movement towards democracy, *voluntarily* opted for the Article 96 procedure as a way of restoring a meaningful political dialogue with the EU. Togo is also interesting because it is a country that has experienced the application of both Article 96 and its predecessor Article 366(a) under the Lomé IV Convention.

Information for this paper came from a variety of sources. Interviews with EU and ACP officials involved in the consultations provided one key resource. These officials represent both dissenting views and agreement with the main policy standpoints on the issues addressed. Public policy documents provided a basis for identifying the specific elements and positions adopted by each of the stakeholders, particularly the EU, the ACP country concerned and the ACP countries as a group.

The key factors defining 'success' or 'failure' in each of the cases are assessed from a comparative perspective, with a view to drawing general recommendations for future applications of Article 96.

4. Case analyses

This section presents the three case studies. For each case, the political context prevailing in the country is first examined. Then a brief description is provided of the response of the EU, of the ACP Group, of neighbouring countries and of other international actors. This enables us to ascertain the level of involvement of each stakeholder. The case studies then go on to describe the consultation procedure and the benchmarks defined therein, which then serves as a basis for assessing the progress made by the country in fulfilling its commitments. The case studies conclude with a brief overview of recent developments.

4.1 Guinea-Bissau: A relative success

The consultations with Guinea-Bissau can be judged as a relative success due to several factors. First, the new government authorities of Guinea-Bissau were clearly committed to making concrete efforts to re-establish the rule of law. Second, the non-suspension of EU cooperation, reinforced by the additional support provided by the international donor community, contributed to the positive outcome of the consultations. Finally, the active involvement of neighbouring countries, as well as of the ACP Group, increased the ability of Article 96 to generate positive changes in the country.

4.1.1 Political background

Guinea-Bissau, a small West African nation with a population of 1.3 million, is a country that has never experienced long-term political stability. The former Portuguese colony gained independence in 1974, after a liberation war led by the *Parti africain pour l'indépendance de la Guinée-Bissau et du Cap-Vert* (PAIGC). In 1980, a first coup d'état overthrew the post-independence regime of Luis Cabral of the PAIGC, and Nino Viera, organiser of the coup, took power.

A process of democratisation was launched in 1994 with the official election of Viera as president, but was reversed by a major army rebellion in 1998. Under the monitoring of the Economic Community of West African States (ECOWAS), a peace agreement was signed in Abuja, Nigeria, in November 1998 and a government of national unity took office in February 1999. However, as a result of the army rebellion of 1998 President Viera was overthrown in May 1999.

In an effort to restore democracy, a transitional government organised presidential elections in November 1999, and a United Nations Peace-building Support Office in Guinea-Bissau (UNOGBIS) was set up. The initial mandate of UNOGBIS ran just until December 1999 (though since then it has been extended several times). A second round of presidential elections in January 2000 eventually confirmed Kumba Yala, founder of the *Parti de la rénovation sociale* (PRS), as president, elected with 72 percent of the vote.

President Yala's regime was characterised by numerous changes of government, which were in fact a main cause of the country's increasing political insta-

bility. In November 2002, President Yala unilaterally dismissed the National Assembly and other government officials. Moreover, repeated postponement of elections and Yala's failure to promulgate a revised constitution that the Assembly had approved exacerbated existing tensions and undermined Yala's popularity.

After two aborted coup attempts in 2001 and 2002, President Yala was finally ousted on 14 September 2003 by General Verissimo Correia Sedra. Contrary to expectations, the coup d'état did not lead to a new civil war, and events proceeded in a relatively peaceful way. The peaceful progression of events can be partly explained by the involvement of key regional actors. Indeed, it was a delegation of six West African countries, represented by the presidents of Ghana, Senegal and Nigeria, that finally convinced Yala to resign without further opposition.¹ A transition government composed of civilians (the TransNational Council, TNC) and led by Henrique Rosa was then installed, again with a view to organising general elections.

4.1.2 The reactions

The EU

Already in June 2003, the EU expressed serious concerns about the '*weakening of the rule of law*' in Guinea-Bissau.² The fact that elections had been postponed indefinitely led the EU to urge Guinea Bissau to show more respect for democratic criteria, such as freedom of expression and assembly for political parties and the media and impartiality of elections.

The repeated postponement of elections and finally the coup d'état in September, compelled the EU to adopt a stronger position. On 19 December 2003, the EU decided to open consultations with Guinea-Bissau under Article 96 of the Cotonou Partnership Agreement.

The ACP Group

Despite consultation of various sources, including the press release database maintained by the ACP Secretariat, no official statement by the ACP Group regarding the coup d'état in Guinea Bissau could be found.

The international community

The UN Security Council clearly condemned the coup d'état in Guinea-Bissau. In a press statement on 15 September 2003, '*the Council Members called for the*

Notes

- 1 The delegation of West African countries was composed of Cape Verde, Gambia, Ghana, Guinea, Nigeria and Senegal.
- 2 Declaration by the Presidency on behalf of the EU on Guinea-Bissau, Europe press release, 18 June 2003, ref: PESC/03/69.

*speedy restoration of constitutional order and the holding of legislative elections as soon as possible*³

4.1.3 The consultation procedure

The consultations took place in Brussels starting 19 January 2004. The proceedings produced a 'roadmap', in which Guinea-Bissau undertook four key commitments:

1. *to confirm the transition programme, and in particular those aspects related to the organisation of legislative elections;*
2. *to adopt measures aimed at improving governance in the management of public finances;*
3. *to re-establish a progressive legal system and an independent justice system;*
4. *to re-establish civil control of the armed forces.*

In contrast to most Article 96 cases, the EU decided not to suspend its cooperation with the country, not even partially. Cooperation activities financed under the 6th, 7th, 8th and 9th European Development Fund (EDF) continued, according to the conditions stipulated in each financing agreement. It was agreed that as a follow-up to the roadmap, monthly assessments of Guinea-Bissau's progress towards fulfilling its commitments would be undertaken.

An observer mission dispatched by the European Commission from 10 to 13 February 2004 concluded that preparations for elections were in progress, and that the proposed schedule could be respected. The mission also observed progress in the re-establishment of the judicial system. The mission's main recommendations related to improvements in governance of public finances.

In April, the authorities of Guinea-Bissau presented to the European Commission a second report on their political situation. As foreseen, the transition government had held legislative elections from 28 to 30 March 2004. Of the 102 seats, the PAIGC won 45 seats, the PRS (the party of former president Yala) won 35 seats and the Partido Unido Social Democrático (PUSD) won 17. The remaining 5 seats were distributed among coalitions of two small parties, the *União Eleitoral* (Electoral Union) and the *Aliança Popular Unida* (United Popular Alliance).

Despite some allegations of fraud, the legislative elections constituted a positive step. Many observers,

amongst them the United States, characterised the electoral process as relatively free and fair.

4.1.4 Evaluation

A number of features lead us to characterise the outcome of the consultation procedure with Guinea-Bissau as positive. These are reviewed below.

Guinea-Bissau's cooperative attitude

Many officials who took part in the consultations emphasise the positive attitude shown by Guinea-Bissau throughout the consultation procedure. Some explain this by the fact that the coup d'état was actually a "good" coup d'état, aimed at stopping the autocratic regime of President Yala rather than causing general chaos. The new forces in power admitted that their coup was a clear violation of Article 9 of the Cotonou Partnership Agreement and therefore was bound to have negative repercussions. However, they justified their actions with the argument that not undertaking such a strong initiative would have been even worse for the country, which was collapsing under Yala's rule.

The members of the army and of the civilian transition government were prepared to relinquish power once a democratic system was re-established; and this did in fact occur after the elections of March 2004. Thus, for Guinea-Bissau, the consultation procedure took place in a fully cooperative atmosphere, which certainly contributed to its success.

Organisation of free and fair elections

Guinea-Bissau not only succeeded in fulfilling the key commitment to hold free and fair elections, but it also managed to do so within the timeframe set by the roadmap. The issue of non-respect of deadlines and of uncertainties in timeframes, which is often identified by EU officials as a problem in countries experiencing political turmoil, thus did not arise in Guinea-Bissau.

Moreover, the elections were relatively transparent, with the rate of participation reaching an estimated 76 percent. The Military Committee run by General Sedra (the main author of the 14 September 2003 coup), seeking to reaffirm the neutrality of the army, stayed out of the election process.⁴

Notes

³ From ReliefWeb, *Following Guinea-Bissau coup d'état, transitional arrangements created aimed at elected government within 18 months Security Council told*, press release dated 29 September 2003. Available on the Internet at <http://www.reliefweb.int>.

⁴ Agence France-Presse press release dated 6 April 2004.

Non-suspension of cooperation and reinforced EU support

The strong and continued support provided by the EU to Guinea-Bissau proved to be another key factor in the success of the Article 96 consultation process. Not only did the EU refrain from suspending its cooperation with the country. In fact, the EU released additional funds to support the transition. On top of that, some EU Member States made individual contributions to strengthen Guinea-Bissau's return to the rule of law. The Netherlands, for instance, granted €1.8 million to a trust fund dedicated to the transition and managed by the United Nations Development Programme (UNDP). Sweden and France donated €1 million and €500,000, respectively.⁵ Portugal supported Guinea-Bissau in a bilateral context, and in December 2003 pledged US \$500,000 for the same purpose.⁶

This strong support is explained by the fact that the EU, in its analysis of the situation, took into consideration the fact that this extremely poor country was just emerging from conflict. Suspension of cooperation would clearly have been counterproductive in light of the needs faced by the transition government and population.

Additional support from the international community

Guinea-Bissau also benefited from assistance from other multilateral donors. Already in October 2002, the UN Economic and Social Council (ECOSOC) had set up an ad hoc advisory group aimed at supporting Guinea-Bissau's reconstruction efforts following the 1998 civil war. After the coup of 14 September 2003, this advisory group redirected its efforts towards initiating a dialogue between the transition government and the UN agencies, the main purpose being to provide emergency support to the interim government.

As mentioned, the UNDP also managed a special fund for Guinea-Bissau's elections. It also coordinated the UN-provided electoral assistance, while UNOGBIS was responsible for monitoring the elections.

The *Comunidade dos Países de Língua Portuguesa* (CPLP) set up a special fund for use by Guinea-Bissau and countries such as Angola and Brazil, which is funded in part by Portugal.

To help improve governance of public finances, the International Monetary Fund (IMF) and the World

Bank provided technical assistance to Guinea-Bissau for the drafting of both an Emergency Economic Management Plan and the budget for 2004.⁷

Taken together, this additional support leads us to the conclusion that many international actors viewed the situation in Guinea-Bissau in a similar light as did the EU.

Involvement of the ACP Group and individual ACP countries

It is interesting to note that the involvement of some key neighbouring countries increased the effectiveness of the Article 96 procedure. As an EU official emphasised, the mediation of the five countries that *sur place* arranged for the peaceful departure of the deposed President Yala enabled the EU to avoid having to deal with a problem that could have been politically sensitive for an external actor.

In addition, regional organisations such as ECOWAS supported Guinea-Bissau's efforts towards a genuine transition. It was thanks to the intervention of President Wade of Senegal, on behalf of ECOWAS, that following the contestation of the elections of March 2004, Guinea-Bissau's electoral commission finally accepted the results of the voting.⁸

The ACP Group mission

The ACP countries as a group were very present in the dialogue between the EU and Guinea-Bissau. As noted by some officials who represented the ACP Group during the consultations, the ACP countries would like to be more involved in such proceedings, not only in the preparation of consultations with one of their peers, but also in the consultations and afterwards, in the follow-up phase. Currently a political dialogue is ongoing within the ACP on how the group should react to a violation of the Cotonou Agreement's essential elements in an ACP member country.

Some EU officials support the ACP's growing insistence on being more involved in all phases of consultations with peers. As the case of Guinea-Bissau illustrates, reinforced ACP action can contribute to the success of consultations. Beyond that, peer involvement could provide a means of reducing the negative perception of Article 96 that is currently held by some ACP countries. Rather than viewing the consultation

Notes

5 United Nations Economic and Social Council (ECOSOC), *Report of the Ad Hoc Advisory Group on Guinea-Bissau*, E/2004/10, 6 February 2004, p.2.

6 Agence France-Presse press release, 9 December 2003.

7 United Nations Economic and Social Council (ECOSOC), *Report of the Ad Hoc Advisory Group on Guinea-Bissau*, E/2004/10, 6 February 2004, p.2.

8 From *Jeune Afrique l'Intelligent*, weekly edition 11-17 April 2004.

procedure as a last-chance effort to uphold a dialogue built on the spirit of partnership, some ACP countries consider Article 96 to be a trial leading to the unilateral adoption of "appropriate measures" by the EU.

4.1.5 Recent developments

A number of significant events since Guinea-Bissau's last report to the EU deserve mentioning. Following the results of the 28-30 March 2004 legislative elections, a National Assembly was appointed on 7 May 2004. This marked the end of the TransNational Council, which had acted as a parliament during the transition process.

Despite the significant international assistance made available to Guinea-Bissau in its bid to restore democracy and the rule of law, the country is still in need of additional financial support to accomplish the reforms set out in the roadmap. Guinea-Bissau still depends on budget support, for instance, to pay the salaries of its civil servants, who went unpaid for months. Additional contributions will therefore remain key to ensure the consolidation of democracy in the country.

4.2 Central African Republic: A mixed picture

The Central African Republic is another case in which the EU waited for an irrefutable violation of the essential elements of the Cotonou Agreement before invoking Article 96. The case of the Central African Republic, moreover, confirms the growing role of the ACP Group and of the African Union in promoting democracy and human rights on the continent. However, it also reveals the low level of coordination between the ACP, the African Union and African regional organisations in the positions they adopt when an African country is accused of violating democratic principles.

4.2.1 Political background

Ranked 168 out of 175 in the UNDP Human Development Index, the Central African Republic is one of the poorest countries in the world.⁹ Its history and present situation are marked by incessant political instability. Since its declaration of independence in 1960, the country has experienced many coups, and even a period under a self-declared emperor, Jean

Bedel Bokassa, who ruled for six years, between 1969 and 1975.

In 1993, Ange-Felix Patassé won the presidency in an election, ending 12 years of military rule, and declared his intention to start a democratisation process. In reality, however, political instability and human rights abuses persisted under his regime. Nevertheless, Patassé was re-elected in 1999 with 52 percent of the vote.

After two abortive coup attempts in May 2001 and October 2002, some 1,000 rebel troops led by dismissed army chief General François Bozizé entered the capital Bangui and seized control over the city on 15 March 2003. They did so with little opposition from the observation forces sent by the *Communauté Économique et Monétaire de l'Afrique Centrale* (CEMAC)¹⁰ or from the loyalist army, and only 13 deaths were reported. Justifying the coup by referring to the mismanagement and spoliation of the country, General Bozizé proclaimed himself president. He suspended the constitution, dissolved the parliament and announced that democratic presidential elections would be held in early 2005.

In contrast to events in Guinea-Bissau, the overthrow of President Patassé in March 2003 - the first successful coup following six takeover attempts since his 1993 election - was accompanied by serious violence against the population. Rape and systematic looting were among the numerous human rights violations reported.

4.2.2 The reactions

The EU

The EU condemned General's Bozizé coup. In a declaration dated 21 March 2003, the Union clearly rejected the takeover of power as unconstitutional. It urged the rebel forces to stop the violence and looting and requested an immediate resumption of political dialogue with the new authorities.

On 22 May 2003, the EU decided to invite the Central African Republic to an Article 96 consultation procedure. This process began less than a month later, on 12 June 2003, and closed on 24 November 2003. France showed a particular interest in the proceedings. The former colonial power also dispatched a force of 300 military personnel to Bangui with a mandate to protect foreign nationals wishing to leave and to assist in restoring peace.

Notes

⁹ The United Nations Development Fund (UNDP), *Human Development Report 2003. Millennium Development Goals: A Compact among Nations to End Human Poverty*, Oxford University Press, 2003.

¹⁰ Following the October 2002 coup attempt launched by General Bozizé, 300 CEMAC troops arrived in Bangui in November 2002 to ensure President's Patassé security and to patrol on the Chadian border where mercenaries were found supporting Bozizé.

The ACP Group

In a declaration dated 18 March 2003, the ACP Group vigorously condemned the coup d'état. Reaffirming the importance it attached to the rule of law and democratic principles, the ACP encouraged national and regional initiatives to help resolve the situation and declared its willingness to contribute to these efforts.¹¹

The ACP-EU Joint Parliamentary Assembly held in Brazzaville, Congo, from 31 March to 1 April 2003, provided another opportunity for ACP politicians to condemn General Bozizé's coup. In its resolution on the situation, the Joint Parliamentary Assembly '[c]ondemn[ed] the coup d'état of 15 March 2003, which enabled General Bozizé to seize power in the CAR [Central African Republic]' and called for 'a speedy return to constitutional order and for the human rights and fundamental freedoms of the civilian population to be respected and protected in the CAR'.¹² Further, the Assembly '[c]all[ed] for free presidential elections to be held as soon as possible, within an EU organizational framework and under UN supervision';¹³ and it requested international financial institutions, including the IMF and the World Bank, to support the Central African Republic and to 'provide the necessary funds to pay civil servants once constitutional order is respected'.¹⁴

In August 2003, the ACP Group sent a delegation to investigate the situation in the country.

Neighbouring countries

Unlike in Guinea-Bissau, there were few reactions by neighbouring countries to the coup d'état in the Central African Republic.

Overthrown president Patassé's presence was little appreciated in the region. One of the reasons for this can be found in his security policy, which was considered to be jeopardising the security of the region as a whole. Patassé's security forces emanated from his own presidential guard and excluded the national army. Apart from this, he had built up a set of alliances with unconventional forces, such as the Congolese rebel group *Mouvement de Libération du Congo* (MLC) led by Jean Pierre Bemba, and with Libya. This alienated leaders of most countries in the region, as well as the national military forces who had been passed over for roles in maintaining national security. Perhaps this explains why, when General Bozizé's forces entered Bangui, they encountered little resistance from the loyal army and CEMAC observation forces. It moreover indicates why, on 3 June 2003, CEMAC recognised the

self-declared president Francois Bozizé, and encouraged him to go ahead with his plans to restore democracy and peace in the country.¹⁵ This represented a significant about-face for CEMAC, which only months before had been sent to protect the president-elect, Ange-Felix Patassé.

Two regional political leaders clearly opposed the coup. These were Omar Bongo, President of Gabon, who since 1996 had been the coordinator of the crisis resolution process in the country, and Colonel Gaddafi, leader of the Community of Sahel and Saharan States (CENSAD)¹⁶ Initiative for Peace and Security, who was an ally of the overthrown president Patassé.

The African Union

The African Union denounced the coup d'état in a communiqué dated 17 March 2003, recalling its 'total rejection... of all unconstitutional changes of government'. The African Union also warned the new authorities of the Central African Republic that they would be 'held accountable for any violations of the human rights of the civilian population'.¹⁷

At the solemn launching of the Peace and Security Council at the 9th meeting of the African Union held on 25 May 2004 in Addis Ababa, Ethiopia, the African Union stressed 'the need for all the actors concerned, including General François Bozizé, to create the necessary conditions for the genuine restoration of constitutional order, through the organization of free and fair elections, in conformity with the principles of the African Union'.¹⁸

Notes

- 11 ACP condemns coup d'état in Central African Republic, ACP press release dated 18 March 2003. Available on the Internet at www.acpsec.org/en/.
- 12 ACP-EU Joint Parliamentary Assembly, *Resolution on the Situation in Central Africa* (ACP-EU 3553/03) *Official Journal* C 231, 26/09/2003 P. 0049-0053.
- 13 Same source as previous note.
- 14 Same source as previous note.
- 15 From an Integrated Regional Information Networks (IRIN) press release dated 24 March 2003.
- 16 The Community of Sahel and Saharan States, better known as CENSAD, is a regional organisation which brings together 22, mainly Muslim, countries from Northern, Western and Central Africa. Created in 1998, by the Libyan leader M. Gaddafi, CENSAD members are Egypt, Djibouti, Libya, Morocco, Somalia, Sudan, Tunisia, Senegal, Eritrea, Chad, Central Africa, Gambia, Mali, Niger, Burkina Faso, Nigeria, Togo and Benin. In May 2004, the regional organisation expanded with four West African countries: Côte d'Ivoire, Ghana, Guinea-Bissau and Liberia.
- 17 African Union, Communiqué on the Ninetieth Ordinary Session of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution at Ambassadorial Level, Addis Ababa, Ethiopia 17 March 2003.
- 18 Solemn launching of the Peace and Security Council, 9th meeting, press release from ReliefWeb dated 25 May 2004. Available on the Internet at <http://www.reliefweb.int>.

The international community

In June 2002, the UN Peace-building Office in the Central African Republic (BONUCA) replaced the previous UN peace mission in the country, MINURCA (United Nations Mission in the Central African Republic, 1998 to 1999). Initially mandated to consolidate peace after three mutinies in 1996 and 1997 and to support democratic institutions, BONUCA was supposed to end its operations in December 2003. However, following the coup in March 2003, the Security Council decided to prolong BONUCA's activities until December 2004.

The international donor community rapidly realised the need to organise humanitarian assistance for the civilians affected by the coup, most of whom were internally displaced people (IDPs). In April 2003, the UN Children's Fund (UNICEF) donated drugs and medical equipment worth US \$550,000 to be distributed among 890,000 people in six provinces.

Currently, the UNDP is coordinating the humanitarian efforts of the UN agencies in the country. Within this framework, the World Food Programme has distributed food to health centres in Bangui, Bouar, Bambari and Lobaye, constituting the first large-scale food distribution in the country since the seizure of power by Bozizé's forces.¹⁹

4.2.3 The consultation procedure

The Article 96 consultations between the Central African Republic and the EU opened on 12 June 2003 and closed on 24 November 2003. As local press releases and interviews attest, the new government made commitments in three key areas:

1. *to realise a democratic transition and a return to the rule of law;*

2. *to implement a plan to restore good governance in public finances;*
3. *to re-establish security in the nation.*

To ensure a smooth return to the rule of law, the government was to establish a National Transition Council. This transition government was to fix, within three months, a schedule for presidential, legislative and local elections.

In the area of good governance in public finances, the payment of salaries due to civil servants was to be a key step. In the same context, the new government was urged to respect the Kimberley Process²⁰ and the recommendations made by an EU mission in that framework. Finally, the new government committed itself to rigorously apply existing anti-corruption laws, and to work actively to combat corruption, particularly in the public sector.

To re-establish internal security, programmes for the reorganisation of the army and security forces and for disarmament were to be agreed, again within a three-month timeframe.

The transitional government's efforts to address some of these issues began even before the Article 96 consultations, starting from March 2003. Indeed, while the consultations with the EU were still under way, the Central African Republic's Council of Ministers on 11 September 2003 approved an action plan to improve public finances. The government also applied the EU recommendations on the Kimberley process. In return, the EU in October 2003 put a €4 million budget at the disposal of the National Transition Council to support the transition and the elections.

On 27 October 2003, the national dialogue on reconciliation was officially concluded, with the adoption of 126 recommendations. This took place in the presence of the presidents of Gabon and the Republic of Congo, respectively, Omar Bongo and Denis Sassou Nguesso, both of whom had played an active role in resolving the crisis.²¹

Despite the progress made as the consultation procedure was ongoing, the status of the opposition in the Central African Republic remained uncertain, as did the timetable for the elections that had been announced for early 2005. The EU also considered that the measures for restructuring the army should be revised. Upon the conclusion of the consultation procedure, the EU therefore decided the following appropriate measures:²²

Notes

- 19 From an Integrated Regional Information Networks (IRIN) press release dated 28 October 2003.
- 20 The Kimberley Process is a joint government, international diamond industry and civil society initiative which intends to stem the flow of "conflict diamonds", that is rough diamonds used by rebel movements to finance wars against legitimate governments. Initiated in May 2000 in Kimberley, South Africa, and agreed in November 2002, the Kimberley Process has 43 participants, including the European Community, involved in the production, export and import of rough diamonds (See <http://www.kimberleyprocess.com>).
- 21 *Clôture du dialogue national à Bangui: Départ de Bongo et Sassou*, Agence France-Presse press release dated 28 October 2003.
- 22 As Andrew Bradley's table of cases in this same series of publications indicates, following the presidential and legislative elections held on 13 March and 8 May 2005 respectively the EU resumed full and complete cooperation with the Central African Republic on 1 July 2005. [Bradley, Andrew (2005) *An ACP Perspective and Overview of Article 96 Cases*. Maastricht: ECDPM, p. 15]

- Macro-economic support would resume only once a clear electoral plan was in place. This support would also depend on a clearer definition of public finance improvement.
- The complete resumption of cooperation was to be delayed until after the return to democracy and rule of law, following the elections that were to be held in early 2005 at the latest.

4.2.4 Evaluation

The 15 March 2003 coup d'état in the Central African Republic and the EU's response to it show that although the main objective of Article 96 is to tackle a deterioration of respect for democracy and human rights, the consultation procedure under Article 96, as it is currently implemented, also addresses issues related to economic governance. This leads one to wonder whether, progressively, the EU might invoke Article 97 jointly with Article 96. This would allow the Union to take a more comprehensive stance in addressing political crises which have erupted in the context of public finance mismanagement and corruption.²³

Moreover, the contradictory attitude of the CEMAC states towards the coup d'état in the Central African Republic, compared to the reaction of the ACP Group and of the African Union suggests a need for the ACP Group of countries to further promote a political dialogue with regional organisations.

On a more positive note, the Article 96 consultations with the Central African Republic served to bring more visibility to the political and economic difficulties this country has faced since its independence.

A different coup d'état

Although the EU initiated the consultation process in the Central African Republic for the same reason as in Guinea-Bissau, a comparison of these two cases reveals differences in the nature of the coup d'états.

A political coup nourished by a severe economic and financial crisis

The 15 March 2003 coup d'état must be understood in light of the economic and financial crisis the country was experiencing at that time. Repeated periods of political instability (including coup attempts and military mutinies) had seriously undermined the economy, which was further weakened by the corrupt practices within the public administration. This unhealthy economic and political environment justi-

fied the EU's decision to encourage a programme of good economic and financial governance in its roadmap.

A coup that could have been avoided

In analysing the political context which led to the events of 15 March 2003, some EU officials feel that this coup could have been avoided if the ousted government had received budgetary support from the Bretton Woods institutions. The dire straights facing the country were noted on 4 March 2003, just eleven days before the coup d'état, by the UN Secretary General's representative in the country, Laminé Cissé, who had stated that *'the solution to the CAR problem resides in the signing of an accord with the International Monetary Fund. So long as this accord is not signed, we will be running around the bush. The country's security, stability and democracy depend on that accord.'*²⁴

In June 2003, the UN Secretary General, Kofi Annan, strongly criticised the Bretton Woods institutions. In a briefing to the Security Council, he said that, *'owing to a lack of cooperation of any kind with the Bretton Woods institutions, CAR had been without budgetary support since January 2001, with the exception of Chinese assistance.'*²⁵

This analysis reinforces the view that Article 96 of the Cotonou Agreement was in fact invoked too late in this case. After the flagrant violation of the Cotonou Agreement's essential elements (democracy, human rights and rule of law) the consultation procedure had little chance of bringing significant changes in *all* of the areas addressed by the roadmap. The problem of bad financial governance, for instance, which was clearly a destabilising factor in this case, could have been addressed by the EU before the situation deteriorated to the point reached in March 2003. As one EU official noted, in this case one could not expect too much from Article 96. The idea of the consultation procedure as a last chance cure-all for a plethora of problems was an illusion.

In that same vein, much of the criticism addressed to the EU from political actors in the Central African Republic relates to the foreseeable nature of this coup d'état. Some have questioned the firmness of the stance taken by the EU - as illustrated by the applica-

Notes

- ²³ The concern about bad economic governance perhaps explains why the EU included in the "appropriate measures" the suspension of its financial support to a major project concerning the Bouar-Garoua Bouliia roads.
- ²⁴ From an Integrated Regional Information Networks (IRIN) press release on the Central African Republic dated 28 October 2003.
- ²⁵ From a UN Security Council briefing dated 20 June 2003. Available on the Internet at <http://www.un.org>.

tion of Article 96 - after the coup. Already before 15 March 2003, many violations of democratic principles had been observed in the country, and critics wonder why the EU did not then - *before* the coup - strongly show its attachment to the essential elements by taking "appropriate measures" against Patassé's regime. In short, the EU is accused of having applied Article 96 only because the coup d'état was too obvious a violation of the essential elements set out in Article 9, and therefore required a strong reaction.

The role of the UN in need of clarification

The UN Peace-building Mission in the Central African Republic, BONUCA, numbered only 51: 18 international civilian staff, 3 military personnel, 4 civilian police, 2 UN volunteers and 24 local civilians.²⁶ One could question what can be expected of such a small force.

In the current context, BONUCA is tasked to organise meetings between political parties, to educate people about human rights and to advise on administrative, military and civil police matters. However, its role in the transition process remains cautious, and it has yet to adapt its activities to the new situation in the country. In a meeting with President Bozizé on 27 March 2004, Laminé Cissé, the representative of the UN Secretary General in the country, stated that the National Transitional Council would have to be set up before BONUCA's role could be more clearly defined.

Complacency of neighbouring states

Compared to the West African states' opposition to the coup d'état in Guinea-Bissau, and in view of the African Union's clear condemnation of the overthrow of elected president Patassé, the reaction of the CEMAC countries to events in the Central African Republic could clearly be considered weak, given the coup's violation of essential democratic elements. This complacency led to the official recognition of Bozizé's regime by the CEMAC states, while the rest of the international community, including African peers, rejected it.

This shows that despite the pan-African discourse promulgated by the African Union, the positions adopted by some sub-regional organisations are as yet *inconsistent* with the commitment to democracy and human rights that the continent as a whole is striving to demonstrate internationally.²⁷

Increased visibility due to the consultation procedure

In March 2003, a World Food Programme spokesperson described the Central African Republic as '*the world's most silent crisis*'.²⁸ This illustrates a key characteristic of this country, which is that it is barely known to the international donor community.

Despite the collapsing economic and financial situation, the Central African Republic remains one of the least-funded developing countries. For 2004, the UN Consolidated Appeals Process²⁹ requested an amount of US \$16.8 million for the country. As of 27 October 2004, only 17.2 percent (US \$2.9 million) of the total requested had been covered.³⁰ In contrast to its neighbours, such as the Democratic Republic of Congo, the Central African Republic tends to be perceived as a small country with little political or economic importance.

In the view of one EU official, the Article 96 procedure at least increased the visibility of the country, both internationally and within the EU, which, except for France, had mostly ignored the repeated political crises and constant economic hardship experienced by this country since its independence.

4.2.5 Recent developments

Abel Goumba, a former prime minister who had been re-appointed as head of government in May 2003 was replaced in December 2003 by Celestin Gaombalet. Although Goumba, an old opponent of President

Notes

26 From the United Nations Department of Public Information, in consultation with the Department of Political Affairs and the Department of Peacekeeping Operations. DPI/2166/Rev.5.

27 For example, with the African Peer Review Mechanism, which is discussed later in this paper.

28 From *The Guardian*, 12 March 2003, p. 16.

29 The political and military crisis since October 2002 has greatly affected the population of the Central African Republic. The health care and education systems were almost destroyed, and some 200,000 people have become internally displaced, with 42,000 refugees taking shelter in neighbouring countries. To redress this humanitarian situation, the UN agencies and international non-governmental organisations have launched the Consolidated Appeals Process for the Central African Republic. This focuses on people affected by the crisis and aims to improve food security and ensure access to basic health services. It also covers activities related to post-conflict recovery, such as community rehabilitation. See *Consolidated Appeal Process (CAP): Humanitarian appeal 2004 for Central African Republic*, ReliefWeb press release dated 18 November 2003. Available on the Internet at www.reliefweb.int.

30 From the Consolidated Appeal for Central African Republic 2004 List of Contributions as of 27 October 2004. Available on the Internet at <http://www.reliefweb.int/fts>.

Bozizé, had benefited from substantial "moral" support, his government nonetheless had become increasingly criticised for its actions during the transition period.³¹ The newly appointed Prime Minister Gaombalet enjoyed more confidence, as he included personalities such as Guy Kolingba (son of former Central African Republic president André Kolingba) in his government.³² This was interpreted by some as a sign of his desire to consolidate the results of the national dialogue.

In January 2004, the National Transition Council published an electoral agenda which proposed the creation of a mixed and independent electoral committee (CEMI). In response to doubts expressed by the EU and other members of the international community regarding the organisation of the elections, the TNC divided the electoral process into eight intermediary steps, each with a clear deadline. From January to May 2004, for instance, the electoral code was to be revised, and from April to June 2004, an electoral census was to be organised. Thereafter, a next step was the revision of the constitution, and from September to October 2004, the establishment of a commission charged with monitoring the 2005 elections.

In practice, however, some delays in the application of this calendar were observed. Although the government signed and issued a new electoral code and a draft constitution on 20 August 2004,³³ the electoral census was started only two months later, in October 2004, and the referendum on the revision of the constitution was delayed until 28 November 2004.³⁴ Instability still characterised the transitional government, and on 2 October 2004, President Bozizé appointed a new government, retaining the same prime minister (Mr. Gaombalet) but only 16 of a total of 28 ministers from the former government.³⁵

In response to this situation, the head of the EU delegation in the Central African Republic, Joseph Loveras, in an interview aired on the state-owned radio in March 2004, declared that the EU would continue to support social and humanitarian projects during the transition period. He also stated, however, that the EU would intensify financial cooperation with the country only after '*transparent, fair and democratic elections were held*'.³⁶

Thus, the case of the Central African Republic offers a mixed picture of the potential of Article 96 to fos-

ter the re-establishment of the rule of law in a country. Various steps towards the return to democracy have been observed, but the repeated disregard for the fixed schedule for elections jeopardises the country's chances of succeeding in its democratic transition.³⁷

4.3 Togo: A new chance

The Article 96 consultations with Togo present two interesting particularities. First, unlike in Guinea-Bissau and the Central African Republic, the consultations with Togo were not held in reaction to a *sudden* serious breach of the essential elements of the Cotonou Agreement. Long before the entry into force of Cotonou, and with it the possibility to invoke the Article 96 procedure, the EU had already assessed the situation in Togo as severe and, in 1993, had suspended normal cooperation with the country. This decision was upheld in 1998 in a formal consultation procedure under Article 366a of the Lomé IV Convention.

A second particularity in the Togo case is the fact that the consultation procedure was initiated not only by the EU, but also by Togo and the ACP Group. All stakeholders in this case considered the Article 96 procedure as an instrument capable of rekindling an EU-Togo political dialogue with a view to resuming cooperation.

Notes

- 31 See *La nomination du nouveau premier ministre répond à des impératifs politiques et financiers*, Agence France-Presse press release dated 13 February 2004.
- 32 Former Central African Republic president André Kolingba was defeated in the 1993 elections by Ange-Félix Patassé.
- 33 *Code électoral promulgué, Constitution paraphée, pas de deuxième lecture*, Agence France-Presse press release dated 20 August 2004.
- 34 'Démarrage des opérations de recensement des électeurs', *Jeune Afrique L'intelligent*, weekly edition 11-16 October 2004.
- 35 *Le Président centrafricain Bozizé démet le gouvernement Gaombalet*, Agence France-Presse press release dated 2 October 2004.
- 36 From an Integrated Regional Information Networks (IRIN) press release dated 24 March 2004.
- 37 As Andrew Bradley's table of cases in this same series of publications indicates, presidential and legislative elections were finally held on 13 March and 8 May 2005 respectively, and the EU resumed full and complete cooperation with the Central African Republic on 1 July 2005. [Bradley, Andrew (2005) *An ACP Perspective and Overview of Article 96 Cases*. Maastricht: ECDPM, p. 15]

4.3.1 Political background

The Republic of Togo is ruled by President Gnassingbé Eyadema, who was elected in 1967 and is thereby Africa's longest ruling leader.³⁸ In 1993, after a flawed electoral process, the EU had partially suspended its cooperation with Togo, although funding of social and health projects and a decentralisation programme continued under the 7th EDF. The partial suspension of assistance, however, did not lead to an improvement of the political situation in the country, and in 1998, after another flawed presidential election, the EU, using Article 366a of the Lomé Convention, reconfirmed its decision to partially suspend cooperation with Togo.

In 1999, the opposition, mainly represented by the *Union des Forces de Changement* (UFC) and its leader Gilchrist Olympio, boycotted the legislative elections, denouncing them as a massive fraud. To resolve the persistent political tension between the ruling party, *Rassemblement du peuple togolais* (RPT), and the opposition, President Eyadema promised not to stand as a candidate in the 2003 presidential elections. On 29 July 1999 the Lomé Framework Agreement (*Accord Cadre de Lomé*) was signed, in which all parties agreed to respect the constitution and prepare legislative elections. In preparation for this, an independent national electoral commission (CENI) was set up on 30 June 2001.

However, early in 2002, President Eyadema's government decided to dissolve the CENI, and the parliamentary elections held on 30 October 2002 were once again boycotted by the opposition. Finally, disputed presidential elections held on 1 June 2003 confirmed President's Eyadema's regime, despite his earlier promise not to stand as a candidate.

4.3.2 The reactions

The EU

The EU had supported both the inter-Togolese dialogue in the context of the Lomé Framework Agreement and the setting up of the Independent National Electoral Commission.³⁹ However, it decided to stop its facilitation efforts following the government's decision to dissolve the CENI in early 2002.

The EU, and in fact much of the international community, viewed the parliamentary elections of 30 October 2002 as lacking credibility, since they were boycotted by the opposition and did not respect the Lomé Framework Agreement.⁴⁰

Following the presidential elections of 1 June 2003 which confirmed Eyadema as president, the EU once again expressed serious concern about the lack of freedom and transparency in the electoral process and its results.⁴¹ In a separate statement, the EU also addressed the lack of respect for human rights observed in the country.⁴²

Thus, it was a continuing political impasse which led the EU to formally notify Togo of its decision to open consultations under Article 96 of the ACP-EU Partnership Agreement on 31 March 2004.

The ACP Group

In response to developments in Togo and EU-Togolese relations, the ACP Group made efforts to convince the Togolese government of the relevance of a consultation procedure for the resumption of EU development cooperation with Togo.⁴³ This can be interpreted as a clear demonstration of the willingness of the group to search for solutions to unblock a political impasse that had remained practically unchanged despite ten years of suspended cooperation.

This reaction by the ACP Group reflects the positive role that the group increasingly seeks to play in promoting democracy and human rights through the instruments provided in the Cotonou Partnership Agreement.

The international community

No significant reactions from the larger international community to the political situation in Togo were observed in the period related here. This suggests that, like the EU, in many cases the international community reacts strongly only to sudden and serious breaches of democratic principles.

Notes

³⁸ Gnassingbé Eyadema died in February 2005.

³⁹ This support mainly took the form of facilitation and included a facilitation team composed of representatives of the EU, France, Germany and the francophone community.

⁴⁰ Declaration by the presidency on behalf of the EU on the parliamentary elections in Togo, 5 November 2002, PESC/02/163.

⁴¹ From *Présidentielle: Pas de reprise de la coopération de l'UE pour le moment*, Agence France-Presse press release dated 4 July 2003.

⁴² Declaration by the presidency on behalf of the EU on the conditions for presidential elections in Togo, 15 October 2003, PESC/03/60.

⁴³ From *Compromise Motion for a Resolution on the Situation in West Africa*, EU-ACP Joint Parliamentary press release, Rome, 15 October 2003. Available on the Internet at <http://www.europarl.eu.int>.

4.3.3 The consultation procedure

During the consultations with Togo which opened in Brussels on 14 April 2004,⁴⁴ the parties agreed on a set of 22 commitments, which can be grouped into four main areas:

1. to establish democracy and the rule of law;
2. to secure respect for human rights;
3. to institute a free press and civil society;
4. to ensure sufficient follow-up to the commitments and timetables.

In the first area, covering democracy and the rule of law, seven benchmarks were agreed. Amongst these, Togo was mainly asked:

- to guarantee without delay freedom for all political parties.
- to hold new legislative elections as soon as possible
- and to hold local elections within 12 months.

The second group of commitments dealt with the human rights situation. In this area, Togo committed itself:

- to stop extra-judicial executions, torture and other inhuman treatment
- and to free all political prisoners.

Regarding the freedom of the press and of civil society, Togo mainly committed itself to make efforts:

- to guarantee without delay freedom of speech and of circulation and free access to information for all political actors and members of civil society.

In the final area of commitments aimed at ensuring effective follow-up to the EU-Togo dialogue under Article 96, the Togolese government committed itself:

- to deliver regular reports to the EU on the progress achieved, and to facilitate in-country missions by the Commission

4.3.4 Evaluation

The voluntary request from Togo

One of the most striking elements of the case of Togo is that, very unusually, the ACP country itself urged the EU to initiate the Article 96 procedure. Indeed, although the formal invitation to start consultations was sent by the EU, various formal demarches undertaken by the Togolese government signalled its willingness to open a consultation procedure. In October 2003, for instance, Togolese Prime Minister Koffi Sama made an official visit to Brussels. During his visit Prime Minister Sama, addressing the Development

Committee of the European Parliament, committed his government to organising local elections and to doing its best to normalise political life in the country.

The positive influence of the ACP Group and the African Union

Behind this positive move by the Togolese government was, once again, the pressure exerted by the ACP Group. The group took the clear position that it was in Togo's best interest to use the Article 96 procedure as a serious sign of its willingness to start a constructive dialogue with the EU, with a view to resuming the cooperation which had been partially suspended for ten years. To further underline the importance of EU-Togolese consultations, the ACP Group emphasised the potential impact of a positive outcome of the consultations on the negotiation of the Economic Partnership Agreements (EPAs) in the region.

The involvement of the African Union in the consultations, represented by its executive secretary in Brussels, is also noteworthy. The African Union's presence was appreciated not only by the ACP side, which had invited the AU to participate alongside ECOWAS and the West African Economic and Monetary Union (WAEMU), but also by the EU. According to some EU officials, the presence of the African Union and of African regional organisations reduced the impression of a unilateral EU action which some observers have of the Article 96 procedure.

Relative flexibility of the EU

As mentioned above, the holding of free and fair legislative elections was one of the priorities identified as a key step towards building a democratic political environment in Togo, given that the electoral process-

Notes

44 As Andrew Bradley's table of cases in this same series of publications indicates, the consultations with Togo were concluded on 16 November 2004, with the adoption of the following appropriate measures:

- Continued implementation of projects financed with the unexpended balances of the 6th and 7th EDF;
- Linkage of the notification of the 9th EDF allocation with the adoption of electoral arrangements that will ensure transparent and democratic elections accepted by all parties, and the setting of a date for the holding of Parliamentary elections in Togo
- Consideration of regional projects on a case-by-case basis;
- Once free and fair parliamentary elections have been held, the EU will resume full cooperation with Togo;
- Continuation of humanitarian operations, trade cooperation and trade-linked preferences; and
- Regular joint reviews by the EU Presidency and European Commission, and monitoring over a period of 24 months.

Bradley, Andrew (2005) An ACP Perspective and Overview of Article 96 Cases. Maastricht: ECDPM, p. 5.

es of 1999 and 2002 had been flawed. Various interviews conducted for this research underscored the EU's intention to be firm on the issue of elections. The Union's initial goal was to obtain a fixed schedule for elections, just as it had done in the Central African Republic and in Guinea-Bissau.

However, during the consultations, Togo indicated its inability to meet specific deadlines for the legislative elections. The main reasons invoked were the slow pace of government administration due to weak capacities, and the numerous institutional changes that holding free and fair elections would require. The EU finally accepted Togo's argumentation, agreeing that legislative elections would be held '*as soon as possible*' in the context of a new electoral code, which was to be set up within six months.

A second lesson learned from the consultation procedure with Togo is also worth highlighting. Already during the period when Togo was considering whether to accept the invitation to the Article 96 consultation procedure, the EU began sending positive signals to encourage the country to choose this option. Indeed, although it clearly considered the presidential elections of June 2003 to be undemocratic, only four months later, in October 2003, the EU released €9.5 million⁴⁵ for a national action plan for the environment, which had been launched by the Togolese government. This support was made available as a sign of good faith in response to Prime Minister Sama's visit to Brussels. It showed that the EU tried, as much as possible, to initiate the opening of consultations without preconceived ideas about the good or bad will of the country concerned, despite its past lack of cooperation. Any positive step taken by the country was accompanied, wherever possible, by concrete signs of EU encouragement.

The importance of a shared analysis and of realistic expectations

Despite the fact that Togo, in its discourse, expressed a clear wish to open consultations under Article 96, its concrete willingness to implement significant changes in all areas of concern is questionable. While on the issue of respect for democratic principles (the first set of commitments) Togo and the EU agreed on the reforms that would need to be implemented, their assessment seemed to differ regarding the respect for human rights and freedom of the press

and civil liberties (the second and third sets of commitments). In response to the EU's request to improve the respect for human rights and fundamental freedoms in Togo, Togolese Prime Minister Sama listed a number of achievements⁴⁶ he felt his country could be proud of in terms of human rights.

Here, we see the importance of a *common analysis* of the problems to be solved. In Guinea-Bissau, all parties rapidly agreed on the extent of changes needed, and all of the areas to be addressed were of concern to both sides. The case of Togo, in contrast, shows how a differing analysis of the situation can reduce the success of the procedure at an early stage.

The example of Togo highlights another issue. It could be argued that the EU too often adopts an "all-inclusive" formula, which is perhaps too ambitious. As one EU official noted, the potential for change which Article 96 can have should not be overestimated. It is not only unrealistic to expect the procedure to bring about changes in all areas desired, but it is even more improbable to expect radical change in situations that the EU has witnessed deteriorate for years without taking action, as in the Central African Republic and, to a lesser extent, Togo. This echoes a point made earlier, namely criticism of the fact that Article 96 is often initiated late, only after flagrant breaches of the essential elements have taken place.

4.3.5 Recent developments

Togo has undertaken some new steps since the opening of negotiations. One of these is the start of a political dialogue with the opposition, corresponding with one of the key commitments made by the government during the consultations in April. Initiated in May 2004, this national dialogue assembles various non-state actors with the aim of building a transparent political framework.

Between 1 and 5 June 2004 the EU organised an evaluation mission to the country. This delegation met successively with members of the government, of the opposition and of civil society in order to assess the level of implementation of the 22 commitments. Upon completion of the visit, the Head of Mission said that although the government had shown good will to achieve the commitments, it was too early to make a conclusive evaluation less than 2 months after the opening of the consultations.

Notes

⁴⁵ These funds were released from the 6th EDF.

⁴⁶ Sama, for instance, stressed the fact that Togo was the first country in Africa to have allowed, in 1987, the creation of a Human Rights Commission. The freedom of religion, the multiplicity of political parties and of trade unions, and even the holding of regular elections were other arguments put forward by Togo.

Subsequently, on 31 August 2004, the Commission proposed a roadmap towards the full resumption of EU aid to Togo, which awaits adoption by the Council of Ministers. This proposal accepts that the Togolese government has taken a number of significant measures to improve respect for human rights and fundamental freedoms in the country, but nevertheless finds that serious concerns remain regarding the full restoration of democracy. Accordingly, the proposal links the full resumption of aid to the holding of free and fair elections, and proposes incentives to encourage a return to a democratic process. It also foresees close monitoring of events in Togo by the EU over a 24-month period.⁴⁷

In the context of the national dialogue, a first draft of a new electoral code was adopted on 14 October 2004. This step was one of the 22 commitments that Togo undertook to fulfil in the framework of the consultations with the EU.⁴⁸

Thus, the early evaluation of progress since the consultations with Togo and the various issues highlighted by the analysis of this case do not yet allow us to qualify the Article 96 procedure with the country as a clear success. Further time and evaluation is needed to assess the progress made by the country towards a genuinely democratic environment.

5. Policy implications for the future

The discussion of the three case studies points to a series of recommendations for the future application of Article 96 of the Cotonou Partnership Agreement. These relate primarily to the coordination of actions by the ACP Group, the role of neighbouring states, the commonality of understanding of a situation, the timeliness of response, the need for follow-up and the role of the African Union.

5.1 Reinforced action by the ACP Group

The positive role that the ACP played in the three cases described is unquestionable. This is no doubt one of the main lessons that stakeholders can draw from the analysis presented. Discussions are ongoing amongst the ACP countries on how to reinforce the group's participation when one of its members faces an Article 96 procedure. One aspect identified as essential for strengthening the ACP's ability to act is to further develop intra-ACP political dialogue. The ACP Group is currently pushing for more involvement in all the steps of the consultation procedure. Here, institutionalisation of the high level of involvement of the group, as in the case of Guinea-Bissau, should be considered.

However, some EU policymakers warn of the dangers of further institutionalisation of the procedure and of official recognition of the growing positive role played by the ACP countries. They stress the procedural difficulties already faced by both EU and ACP stakeholders when applying Article 96, and fear that the institutional introduction of additional steps, such as an ACP fact-finding mission, would overburden the system. They emphasise that, at present, the ACP countries are already formally involved in the procedure in that they can be invited to participate in a consultation as "friends" of the ACP country concerned.

In view of the potential difficulties, it is important to note that further institutionalisation of the ACP role is not required to enable the ACP countries to have a positive influence on the outcome of consultations. An alternative to more systematically involve the ACP

Notes

⁴⁷ *Togo: Commission Proposes 'Roadmap' Towards the Full Resumption of EU Aid*, European Commission, 31 August 2004, IP/04/1054.

⁴⁸ *Adoption d'un projet du code électoral, boycotté par trois partis d'opposition*, Agence France-Presse press release dated 14 October 2004.

in consultation procedures can be found in a step the ACP Group could take itself: ACP members could agree internally on the necessity of formally involving the whole group in the different steps of Article 96 consultations, for instance, drawing up an internal agreement that foresees the automatic sending of an ACP fact-finding mission to the country concerned. Such a move, as an internal ACP provision, would have the advantage of not requiring EU approval.

5.2 Role of neighbouring states

The cases of Guinea-Bissau and the Central African Republic reveal the important positive - or less positive - influence that neighbouring countries can have on promoting democratic principles in an ACP state.

The case of Guinea-Bissau shows that neighbouring countries might feel compelled to contribute to efforts to restore political stability. This seems to be particularly true in cases of a coup d'état. Given their geographical, political, economic and social proximity, neighbouring countries can more easily assess any risks of regional destabilisation which a coup may have. This helps us to understand why Senegal, Ghana, Nigeria and other countries of the region intervened during the coup in Guinea-Bissau to avoid clashes between the rebels and the president's troops.

Yet the case of the Central African Republic illustrates that positive reactions of neighbouring states do have limitations. A neighbour's closeness to a country "in trouble" can turn out to be a biasing factor leading it to adopt a partial position. The rapid recognition by CEMAC of General Bozizé's government, despite the undemocratic nature of the take-over of power and despite persistent violations of human rights by the new regime, illustrates such limitations.

Nonetheless, debates on future applications of Article 96 should take into consideration the constructive role neighbouring states can play during consultations. Given their likely familiarity with political leaders and the political features of the ACP country concerned, neighbouring countries could be knowledgeable partners in an Article 96 process, playing a vital role in the positive outcome of a consultation procedure.

5.3 Promoting a common understanding of the situation

Our assessment of the consultations with Togo and Guinea-Bissau underlines the importance of having a common basis for dialogue in as far as this is possible. In cases such as Guinea-Bissau, where the government recognised that it needed to make progress on various political aspects which had also been identified by the international community, it is not surprising that the benchmarks adopted were easily agreed and that the government showed itself committed to fulfil them.

Equally, it comes as no surprise that in Togo, where notwithstanding the apparent good will the country showed some divergence of views with the EU on the issues to be addressed, the adoption of specific commitments required greater efforts from both sides, and that the implementation phase turned out to be more problematic.

5.4 Article 96: A late reaction?

The question of timing constitutes a key difficulty faced by EU policymakers considering making use of the Article 96 provision. Statistics show that a coup d'état is the most frequently invoked reason for the EU to open a consultation procedure. However, often such a flagrant violation of democratic principles means that it is very late to intervene. Some EU officials therefore propose the use of Article 96 earlier, not as a punitive measure, but to strongly draw attention to a deteriorating situation and to highlight proactive actions that could be undertaken.

The main argument against such a proactive attitude is that preventative action by the EU under Article 96 would eliminate the relevance of the political dialogue foreseen by Article 8 of the Cotonou Partnership Agreement.

A second argument for not invoking Article 96 too early and only after flagrant violations of the essential elements of Cotonou have occurred stems from the EU's desire to avoid being seen as resorting to "unilateral", "punitive" preventative action. Indeed, it could be argued that the negative perception that some ACP countries hold of the use of Article 96 reduces the EU's willingness to invoke this provision at an early stage. If Article 96 had a more positive

image among ACP countries, the EU might be less hesitant to apply it as an instrument of dialogue at an early stage.

5.5 Strengthening the follow-up phase

As Article 96 cases up to now attest, it is unlikely that all commitments made in a consultation procedure will be implemented within the same timeframe, and it is unrealistic to expect all commitments to be implemented accurately. This highlights the need to strengthen the follow-up phase of consultations under Article 96.

Many of the commitments made by an ACP country involved in an Article 96 procedure are not realised within six months or even a year or more after the consultations. Consequently, if a consultation procedure is to generate substantive outcomes and not only the reversal of the most flagrant violations of the essential elements a strong follow-up phase must be assured. In fact, the follow-up phase could be considered one of the biggest challenges to a successful consultation procedure. In this follow-up phase, other ACP countries and even the African Union could make valuable contributions. In this sense, neighbours' and regional and continental actors' knowledge of the local political situation and their diplomatic "comparative advantage" as peers should be further exploited.

5.6 The African Union and African Peer Review Mechanism: A balancing factor?

As we saw, both sides appreciated the African Union's involvement in the consultations between the EU and Togo. Such AU participation, even if only as an observer, shows just how seriously the African Union takes the objective of promoting a policy of democracy and human rights on the continent.

The AU's commitment to democratic principles is also evident in the African Peer Review Mechanism (APRM) that is being set up in the framework of NEPAD (the New Partnership for Africa's Development). This new system aims at measuring progress (or regression) in political, economic and corporate governance. The review mechanism, foresees that a group of experts monitor governance-related issues by collecting documentation and conducting interviews with members of government, opposition

and civil society. The idea is to screen the standards and policies which are applied in different countries and to assess them against political and economic good governance criteria.

The African Peer Review Mechanism could indirectly have a positive impact on consultation procedures under Article 96 of the Cotonou Agreement by helping to reduce the perception of Article 96 as a unilateral EU decision. Should the Peer Review Mechanism in fact have this positive effect, an African country experiencing problems regarding respect for democracy and human rights could be urged to reform, not only by the EU but also by its African peers.

However, in addition to the various elements identified elsewhere as crucial to give credibility to the African Peer Review Mechanism,⁴⁹ the voluntary membership approach could reduce the mechanism's scope of action. So far, 23⁵⁰ of the 53 Member States of the African Union have agreed to take part in the mechanism. It can be feared that the countries most in need of undertaking sound democratic reforms simply do not submit themselves to such an additional evaluation mechanism.

Nevertheless, the positive role that the African Union could play should not be underestimated. Its potential for lessening the perception of a unilateral EU position on the essential elements, which some African countries still hold, deserves further consideration.

Notes

49 Recent literature on this subject puts forward the criteria of integrity and professionalism as still to be developed if the peer review mechanism is to be effective and credible vis-à-vis the international community. See, for instance, Ravi Kanbur, *The African Peer Review Mechanism (APRM): An Assessment of Concept and Design*, January 2004. Available on the Internet at <http://www.arts.cornell.edu/kanbur>.

50 These countries are Algeria, Angola, Benin, Burkina Faso, Cameroon, Republic of Congo (Brazzaville), Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Mali, Malawi, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Tanzania and Uganda.

6. Conclusion

The success or failure of a consultation procedure under Article 96 of the Cotonou Partnership Agreement is difficult to evaluate. Each case must be judged on its own merits, according to the specific conditions of the country and the circumstances leading to the opening of the consultation procedure. Nevertheless, the three cases examined in this paper do allow us to draw some conclusions on elements that influence the potential of an EU-ACP consultation procedure to end in success or failure.

Regarding the research questions presented in the introduction of this paper (*'Under what conditions are Article 96 consultations initiated? and What are the key conditions that determine their success or failure?'*) and the three hypotheses formulated which guided the analysis, we can draw several main conclusions from the case studies.

First, consultation procedures are mostly initiated in cases of flagrant violations of the essential elements of the Cotonou Agreement, mainly coups d'état. The negative image of Article 96 that prevails in some ACP countries makes the EU reluctant to open consultations at an early stage, in situations of deteriorating respect for democracy and human rights.

Second, the active involvement of the ACP Group and of neighbouring countries during an Article 96 procedure clearly increases the positive results that can be drawn from it. However, the case of the Central African Republic also showed inconsistencies in the reactions of the ACP Group, the African Union and African regional organisations. Such a lack of consistency clearly jeopardises the positive potential of ACP or African initiatives.

Finally, the support of the international donor community proved to be a catalyst for democratic change. By addressing issues such as the payment of civil servants' salaries in Guinea-Bissau and the humanitarian crisis in the Central African Republic, international donors contributed to the removal of some key obstacles to democratic progress, which had been identified as elements at the root of trouble in the countries concerned. In other words, the involvement of the international donor community is essential if the achievements of an Article 96 consultation procedure are to be consolidated in the longer term.

The European Centre for Development Policy Management (ECDPM) aims to improve international cooperation between Europe and countries in Africa, the Caribbean, and the Pacific.

Created in 1986 as an independent foundation, the **Centre's objectives** are:

- to enhance the capacity of public and private actors in ACP and other low-income countries; and
- to improve cooperation between development partners in Europe and the ACP Region.

The Centre focuses on **four interconnected themes**:

- Development Policy and EU External Action
- ACP-EU Economic and Trade Cooperation
- Multi-Actor Partnerships and Governance
- Development Cooperation and Capacity

The Centre collaborates with other organisations and has a network of contributors in the European and the ACP countries. Knowledge, insight and experience gained from process facilitation, dialogue, networking, infield research and consultations are widely shared with targeted ACP and EU audiences through international conferences, focussed briefing sessions, electronic media and key publications.

ECDPM Discussion Papers

The ECDPM Discussion Papers report on work in progress at the European Centre for Development Policy Management. They are circulated among practitioners, researchers and policy-makers who are invited to contribute to and comment on the Discussion Papers. Comments, suggestions, and requests for further copies should be sent to the address below. Opinions expressed in this paper do not necessarily represent the views of ECDPM or its partners.

The European Centre for Development Policy Management

Jacquie Dias

Onze Lieve Vrouweplein 21

6221 HE Maastricht, The Netherlands

Tel +31 (0)43 350 29 00 Fax +31 (0)43 350 29 02

E-mail info@ecdpm.org www.ecdpm.org

(A pdf file of this paper is available on our website www.ecdpm.org/publications/article96)

ISSN 1571-7569