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## FORUM for ACTION

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### The Millenium Development Goals (MDGs) and Health

Health is a Human Right under international law, yet all governments have failed to fulfill their obligations regarding this right. In Africa millions of people lack the most basic healthcare. The MDGs can contribute to strengthening the health services that underlie universal access to health and the fulfillment of this Right.

In September 2000, 189 governments of the world adopted the UN Millennium Declaration. Its aim is that countries and development partners will work together to reduce poverty and hunger and tackle ill-health, gender inequality, lack of education, lack of access to clean water and environmental degradation. Eight Millennium Development Goals (MDGs) were established and targets were set for 2015.

Whilst only three goals relate directly to health (to reduce child mortality, improve maternal health and combat HIV and AIDS, malaria and other diseases) health is central to achieving all eight goals, especially those relating to eradicating extreme poverty and hunger and promoting gender equality. Despite this, progress towards meeting the health-related MDGs remains the slowest. Yet, the top priority must be to look after the mothers and children, because only if children reach 5 years of age will they need schools. All the MDGs are linked and the delay in the advance on Health will affect other MDGs.

Though substantial progress has been made globally in achieving the MDGs, Africa as a whole is lagging behind on each Goal, despite the rise in the rate of economic growth in recent years and a great effort to improve the macro-economy. Yet the MDGs are very important in Africa where most of the vulnerable countries are found, but which currently receives very little aid. Investments in basic health-care systems remain insufficient. Most African countries remain off track in achieving health-related targets by 2015, on reducing child mortality, improving maternal health and combating infectious diseases. This means that numerous women will still die while giving birth. Part of the problem is that in most African countries the basic health infrastructure, human resources, equipment and supplies are inadequate to provide essential maternal, child and reproductive health services and to control and treat infectious diseases. Malaria and other infectious diseases that can be controlled and treated continue to take millions of lives throughout the continent and are spreading due to rising temperatures caused by climate change. Progress in child mortality in Africa has reached 50% of the total aim, yet still 9 million children under 5 die every year in the world. The situation is very different regarding maternal mortality where only 9% of the goal has been met. This means that 91% of the goal has not been met yet. It is sad that of all of the MDG 5 - reducing maternal mortality is the slowest goal to be attained.

The countries making the least progress are those affected by high levels of HIV/AIDS, economic hardship or conflict. The lack of access to health services remains a key illustration of the social and economic inequities within and between countries. Progress towards achieving gender equality and environmental sustainability also remains inadequate. The MDGs need to be kept at the forefront of the global agenda to reduce the likelihood of slower increases or even reductions in the availability of finance for development on the continent.

The rise in food prices is putting great pressure on African economies and is threatening the progress in fighting hunger and malnutrition. The economic and social crises that Africa is suffering add to the challenge. However, the current crisis offers a window of opportunity to increase needed expenditures in agriculture and to remove obstacles to an open trading system in agricultural commodities to the benefit of African countries.

There is significant disparity in attaining the MDGs at the level of the countries, where the most vulnerable are furthest away from reaching the MDGs, and at the level of gender, where women have less access to health services. In Africa 75% of those infected by HIV between 16 and 24 years of age are women.

### **The MDGs and the strengthening of the national health systems**

The fulfillment of the right to health and the health MDGs require sustainable funding to develop strong and sustainable health systems. But this is not enough! The MDGs must ensure that all developing countries have access to health care, and are able to strengthen its national health systems. For that to be achieved donor and receiving governments, civil society, global fund and non-profit organizations must work towards the delivery of health services. To achieve this, sound public policies, investments and aid, are central. Yet it is the receiving countries that decide on the policies and that need to be careful to accept or to refuse certain aid. The strengthening of health systems is essential in addressing MDG-5 (improving maternal health). Countries have to be attentive to the fact that aid is directed to strengthen the bases of health systems and to support the universal coverage of health systems. African countries need to discern which kind of aid benefits their national health systems and their population.

The Global Fund to Fight AIDS, TB and Malaria ('the Global Fund') has mobilized billions of dollars and produced remarkable results across Africa. Many organizations direct their aid to a limited number of diseases, and this weakens the national health systems by fragmenting them. The extreme case is Rwanda where 82% of the cooperation budget received focuses on three diseases, and only 1% of the cooperation budget is directed to the rest of the health system. The 600 donors, while believing to be helpful, are contributing to the fragmentation of the health system. The way aid is given has a great influence on whether or not the MDGs will be achieved. In Zambia, the EU directs its health aid to sector budget support, to strengthen the health system and human resources; this results in about 18.000 children's lives being saved every year.

Another factor that weakens the public health service is the presence of donor or service provider organizations working on their own, outside the system. In addition, the bad and difficult working conditions favour the brain-drain, and the export of health professionals weakens the national health services.

Privatisation is the other danger threatening the national health systems. The World Bank and many other donors and international bodies are pushing the privatisation of the health systems, presenting them as the salvation for health care on the continent. The reality is very different; the privatisation of hospitals and health centres is taking away the human resources from the public health system (professionals, doctors, nurses, health workers in general), thus weakening it. Without being aware of it, some NGOs act as "intermediaries" between the public and the private sector. The ministry of health accepts them as non-profit organizations, but when they leave, the services pass in most cases to the private sector, without their being conscious of the slip that has taken place from public to private.

### **Access to medicines and funding the health systems**

Access to medicines is a pillar of any health system. One third of the overall health bill in Africa, public and private, goes on medicines which are more than 4 times the price of medicines in rich countries. If access to affordable medicines of quality is not improved, the national health systems will not be strengthened as they will have to allocate much of their resources to medicines.

The work of AEFJN towards "access to quality medicines" - trying to improve the quality and to make them affordable to ordinary people and health systems in Africa - contributes to strengthening the health systems.

One of the solutions being discussed for funding health systems in low-income countries could be a tax for health and development. One possibility is a Financial Transaction Tax (FTT) that would fund health systems. This tax would cost very little to those doing the currency transaction and would have a lot of benefit for those at the receiving

end. The Tobin Tax and the Robin Hood Tax are an example. The UN proposal of a voluntary tax for air transport is not a real solution, as it will be addressed to a few sicknesses.

Begoña Iñarra

## Oil - Black Gold or curse?

The main EU-based oil companies are Shell, BP, Total and Eni. In 2006 their revenues together totalled \$870 billion and their profits \$74 billion. In terms of revenue Shell ranks 3<sup>rd</sup>, BP 4<sup>th</sup>, Total 10<sup>th</sup> and Eni 26<sup>th</sup> amongst the biggest companies in the world. Unfortunately, the activities of these and other oil companies are often not to the benefit of people in Africa. This article will review some of the most dubious actions of oil companies and their impact on Africans.

### Gas flaring

Gas flaring is a practice that oil companies use when oil deposits are mixed with gas and it is judged more profitable simply to burn off the associated gas rather than to capture it for utilisation or re-injection. The practice is highly controversial due to its detrimental impact on the environment and its emission of high levels of greenhouse gases. In the West 99 % of the gas is either used or re-injected into the ground, but in Nigeria for instance more than half of the gas is flared. In Nigeria almost all gas flaring is carried out by local subsidiaries of five transnational corporations (TNCs) operating in joint ventures with the Nigerian National Petroleum Corporation (NNPC). Of the five TNCs, Shell plays the greatest role. Its subsidiary Shell Nigeria operates in a joint venture, which accounts for about 40% of Nigerian oil production. The others are Eni, Total, Exxon and Chevron.

Gas flaring causes harm to the health, environment and livelihoods of communities living near to the flaring sites. Flares contain a cocktail of substances such as benzene and dioxin which contribute to acid rain. Local people exposed to flaring suffer from respiratory problems and an increased likelihood of contracting cancer. In Nigeria's Bayelsa state alone flaring is suspected to cause around 50 premature deaths, 5,000 child respiratory illnesses and 120,000 asthma attacks a year.<sup>1</sup> Moreover it has a detrimental effect on agricultural production and contributes to climate change. According to the World Bank, gas flaring in Nigeria emitted more greenhouse gases than all other sources of sub-Saharan Africa combined. Only in Russia is more gas flared than in Nigeria. Shell claims not to have enough financial resources to install the gas gathering equipment, which would make the flaring unnecessary, despite having made \$31 billion profits in 2008. Shell currently flares gas at 1,000 sites in Nigeria.

Total and Eni admit that in 2006 gas flaring was responsible of 28% of the greenhouse gases they emitted. In Congo-Brazzaville Gas flaring levels at the huge onshore M'Boundi oil field, now operated by Eni, are extremely high (currently over 1 billion cubic meters per year) and have been a health and environmental hazard for years.<sup>2</sup>

### Oil spills

According to available statistics, in the last 30 years more than 400,000 tons of oil have spilled into the creeks and soils of southern Nigeria. Some 70 per cent of the oil has not been recovered. Most of the 27 million people living in the Niger Delta depend on the water, fish and agricultural products of the Delta for their livelihood.

Oil spills significantly affect the health and food security of rural people living near oil facilities. In the period 1997 - 2006, according to its own annual reports, Shell Nigeria experienced about 250 oil spills each year. Others (Friends of the Earth Netherlands 2008)<sup>3</sup> fear that Shell is significantly underreporting the spills. A large number of the spills are caused by aging infrastructure and human errors on the part of the oil companies. Although Nigerian law clearly

<sup>1</sup> Stockman, L., Rowell, A., and Kretzmann, S., 2009, *Shell's Big Dirty Secret*.

<sup>2</sup> Heinrich Böll Stiftung, 2009, Energy Future? Eni's new investment in tar sands and agro-fuels in the Congo Basin

<sup>3</sup> Steiner, R., 2008 Double standards?: International Best Practice Standards to Prevent and Control Pipeline Oil Spills, Compared with Shell Practices in Nigeria

establishes the responsibility of oil companies in case of spills, hundreds of compensation claims brought before Nigerian courts, remained stuck in the Nigerian judiciary system. Shell does not invest enough money to meet international standards and to replace its aging infrastructure in Nigeria despite, as already mentioned above, having made \$31 billion profits in 2008.<sup>4</sup>

## **Oil sands**

Oil sands (also known as tar sands) are deposits of sand and clay saturated with bitumen. Bitumen is oil in a solid or semi solid state. Because it is in this less fluid state, the bitumen requires unconventional methods to get it to flow to the surface. Where oil sands are close to the surface the bitumen is excavated from the ground in open cast mines. More deeply buried bitumen requires the drilling of wells to pump it out. However, unlike conventional production, getting the bitumen to flow like oil requires injecting heat (usually steam) or solvents into the reservoir. This form of extraction requires power and steam generating plants, a large number of wells and extensive roads, pipelines and product collection tanks installed across a large area. A third way is to convert bitumen into synthetic crude oil, through a series of energy intensive processes before refining it into petroleum products. The production of a barrel of tar sands bitumen is 3-5 times more intensive in terms of Greenhouse Gas emissions than the production of a barrel of conventional oil. In Africa there are significant quantities of oil sands in Congo-Brazzaville and in Madagascar.

In 2008, Eni signed agreements to spend \$3 billion on developing oil sands, located in the Congo Basin in the Republic of Congo, the second largest area of tropical forest left in the world and a vital carbon sink. Eni's own studies reveal that the oil sands exploration zone comprises up to 70% primary forest and other highly bio-diverse areas. It also includes human settlements. There has been no meaningful engagement at local or national level by Eni or the government with Congolese citizens about the projects' potential fiscal, social and environmental impacts.

## **Shady business with corrupt governments**

In Africa, oil still tends to be a private financial reserve for the ruling governments and strongmen and not a source of economic and social well-being of the citizens. In Nigeria for instance, local communities have no legal rights to oil and gas reserves in their territory. The Federal Government allocates permits, licences and leases to survey, prospect for and extract oil to the oil companies, who are then automatically granted access to the land covered by their permit.

Oil makes up to 80% of Nigeria's budgetary revenues and 95% of its foreign exchange earnings. Nigeria is the eighth-largest oil producer in the world and accounts for the production of about 4% of the world's crude oil. Oil and gas operations are carried out on about 50% of the territory of the Niger delta. This oil richness has however not led to an increase in the living standards of the local population. The percentage of the population living in poverty grew from 28% in 1980 to 66% in 2000.

The people of the oil-producing areas of the Niger Delta have watched for more than half a century while oil companies, politicians and government officials get rich from the 'black gold' extracted from their land. Meanwhile they have seen few if any benefits. A lack of transparency in the award of compensation and clean-up contracts has fed inter- and intra- community tensions and conflict. Communities are often seen and treated as a 'risk' to be pacified rather than as stakeholders with critical concerns about the impact of oil operations. Some companies have effectively paid communities and youths off, hoping to prevent protests. Another strategy has been the deployment, by government, of heavily armed security forces. Protests by local communities about the oil industry are frequently met with reprisals characterized by excessive use of force and serious human rights violations.<sup>5</sup>

Oil accounts for around 90% of Congo's export earnings, about US\$4.4 billion in 2008. Yet after decades of conventional oil production, 70% of the population lives under the poverty line. In terms of energy access, barely a quarter of people enjoy secure access to electricity. Civil society activists have long campaigned to clean up the

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<sup>4</sup> For more information on oil spills also see *Holding Shell accountable*, 2010, at <http://www.aefjn.org/index.php/74/articles/holding-shell-accountable.html>

<sup>5</sup> Amnesty International, 2009, Nigeria: Petroleum, Pollution and Poverty in the Niger Delta

country's public finances and ensure that its natural resource wealth goes to poverty reduction. Mismanagement of this wealth by corrupt local elites, with the complicity of corporate interests, has been extensively documented.

The aforementioned agreements made between Eni and the Congolese government have not been disclosed due to a confidentiality clause in the contract. Research has revealed an almost total lack of public awareness of the investments in Congo.<sup>6</sup>

Uganda's recent oil discovery is already attracting major players like Eni, Exxon Mobil, Total and the China National Offshore Oil Company. Concerns have been raised by various government officials and civil society organisations (CSOs) over the fairness of the deal after details emerged that President Yoweri Museveni held direct talks with the companies without including government agencies. Extensive corruption and a lack of accountability in Uganda could turn the country's recently discovered oil reserves into a curse rather than a blessing, the World Bank warned. Earlier this year the government of Uganda signed a deal with the British company Tullow Oil, which contains a specific clause allowing the company to practise gas flaring.<sup>7</sup>

Thomas Lazzeri

## **Africa declares war on small arms proliferation**

With the end of war in different African countries: Angola, Sierra Leone, Liberia, Sudan, DR Congo, the proliferation of small arms increased in the regions. When a country signs for ceasefire or a peace agreement, it trades its weapons, but a good number of the weapons are circulated and dumped in neighbouring countries posing problems for the region. Millions of illegal small arms fall into the wrong hands and find their way into criminal bands. Not only have these weapons prolonged several violent conflicts, but their uncontrolled spread within the continent poses a grave danger to domestic and regional security creating social instability. This results in escalating crime rates. Increasingly, criminal groups are operating across borders. This shows the importance of cooperation and program coordination within neighbouring states.

In most African countries in the last decade there has been an increase in the number of reported cases involving illegal use of firearms. The rise in armed robberies and homicide can, in part, be attributed to a proliferation of illegal guns coming from across the borders. Lack of security and long-term social instability has a negative impact on the economy and on investors. This makes the progress in development and employment very difficult, a further cause of social unrest.

The personal perception of insecurity, subsistence, cultural aspects and criminality remain major drivers for the demand of small arms in Africa. Other problem is the management of stockpiled ammunition and the need for new policies and strategies to target the root causes of the illicit proliferation of small arms in the continent. In recent years constructive changes have been achieved, but there is still need for continued efforts in tackling the problem.

The illicit proliferation of small arms and light weapons (SALW) remains a pressing security challenge in Africa. The existence of uncontrolled arms is a multi-dimensional problem that is deeply intertwined with other broader security issues and has implications for development. Remotes areas near borders are breeding grounds for trade in illegal arms. In some countries even children below the age of 16 are involved in the smuggling of small arms and light weapons, due to poverty. Tackling the illicit proliferation of small arms and light weapons (SALW) remains a challenge for governments and regions.

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<sup>6</sup> Heinrich Böll Stiftung, 2009, Energy Future? Eni's new investment in tar sands and agro-fuels in the Congo Basin

<sup>7</sup> BBC News, 2010, Oil deal 'damaging for Uganda'

## African Regional Agreements to curb the proliferation of small arms

To answer the challenge of the proliferation of small arms in Africa, national governments, regional bodies and international organizations have mobilized. Countries are engaging in bilateral and multilateral efforts aimed at reducing proliferation and increasing controls on a regional level. A series of regional Protocols, Conventions and Agreements have been signed to prevent and combat the excessive and destabilising accumulation of SALW within the regions. Countries in the regions have agreed to strengthen efforts to curb the proliferation of arms, to amend regulations and adopt stricter regulations for the control of the weapons. The result is the cooperation between governments, police, army, security services and civil society.

These agreements have sought, amongst other objectives, to make the illicit production and possession of small arms a criminal offence, to ensure/promote the destruction of stocks of surplus weapons and to introduce tighter control measures over weapon stockpiles and arms transfers. Three prominent sub-regional agreements have been negotiated on the continent covering the majority of Sub-Saharan Africa.

In 1999, the OUA adopted the African common position on small arms and light weapons.

In 1988 the ECOWAS countries (Benin, Burkina Faso, Cabo Verde, Ivory coast, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo) declared a Moratorium on the import, export and manufacture of light weapons in member states for a renewable period of 3 years.

In 2006, the ECOWAS Convention on Small Arms and Light Weapons was adopted. This is a legally binding convention that grew out of the Moratorium.

To continue the fight against the proliferation of small arms that came to be with the ECOWAS Moratorium on small arms transfer signed in 1998, the member states signed the ECOWAS Convention on small arms in 2006. In 2009 the Convention became fully operational and in 2010 eleven member-states (Benin, Burkina Faso, Ghana, Guinea, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo) ratified it. The Convention provides for a ban of arms transfers by member states with possibility of exemption for the legitimate defence and security needs, law enforcement and participation in peace support operations. It provides for the prohibition, without exception, of arms transfer to non-state actors without the approval of the importing country.

In 2000, 10 countries of the **Great Lakes and of the Horn of Africa Regions** (Burundi, DR Congo, Djibouti; Ethiopia, Eritrea, Kenya, Rwanda; Sudan, Tanzania and Uganda) signed the "**Nairobi Declaration**" that in 2004 became the "**Nairobi Protocol**", signed by the 10 previous countries plus **Seychelles**. This was ***the first legally binding agreement on small arms in this gun-affected Eastern African region. Today 14 countries have signed the Nairobi Protocol.*** The Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA <http://www.recsasec.org/>) coordinates the activities of the Nairobi Protocol.

In 2004, the 14 countries (Angola, Botswana, DR Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe) of the Southern African Development Community signed the **SADC Firearms Control Protocol**. States in the region have engaged and successfully cooperated to coordinate several arms control initiatives, particularly in joint cross border arms and ammunition collection and destruction operations. Since 1994, a **secretariat** based in Harare, Zimbabwe, **SARPCCO** (the Southern African Regional Police Chiefs Co-operation Organization), part of SADC, has been coordinating the implementation of the SADC firearms protocol.

One of the means used by many countries to determine the magnitude of small arms and light weapons proliferation in the country and to fight against it is the establishment National Focal Points, where police, government departments, army, security bodies and civil society collaborate and are responsible for implementation of the national plans on arms reduction. Rural and urban communities are often involved in the Focal Point regarding security issues.

The Secretariats of these Conventions and Protocols in different African countries and regions organize national and regional workshops to form mid- to senior-level civilian, security, police and military officers, and government officials to focus on practical steps and measures to enhance regional and national capacity to tackle the illicit proliferation of

small arms and light weapons. Countries and regions have undertaken mapping and studies on the current situation of weapons and people's responses to the problem.

### **The EU and the AU collaborate on strengthening peace and security in Africa**

The Joint Africa-European Union (EU) Strategy was adopted at the EU-Africa Lisbon Summit in 2007. A chapter of this strategy is dedicated to Peace and Security, specifically in the fight against illicit accumulation and trafficking of firearms and explosive materials.

Under this strategy, the European Union (EU) is financing a project "*Fight against the Illicit Accumulation and Trafficking of Firearms in Africa*" that will last three years. The Project is to be implemented on the African Continent with the Regional Economic Communities (RECs), the Regional Bodies fighting the proliferation of Small Arms and Light Weapons (SALW) and Regional Police Chiefs Organizations (RPCOs). The project seeks to enhance synergies amongst governments, police and regions and to strengthen relevant institutional and civil society actors, including African Regional Police Chief's Organizations and Law Enforcement Agencies through enhanced cooperation, information exchange and implementing capacity within and among the different African regions.

### **AEFJN and arms control**

AEFJN supports the regional agreements in Africa for a greater control of firearms and collaborates with the secretariats. AEFJN is also a member of IANSA (the International Action Network on Small Arms), a global movement against gun violence present in all African countries and regions, to stop the proliferation and misuse of small arms by securing stronger regulation on guns in society and better controls on arms exports. If you are ready to collaborate write to AEFJN or to <http://www.iansa.org/regions/index.htm>

Begoña Iñarra

### **The negotiations of the Anti Counterfeiting Trade Agreement (ACTA) and its risks for Africa**

The European Union has been negotiating an Anti Counterfeiting Trade Agreement (ACTA) with Australia, Canada, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States since 2007. ACTA was conceived as a plurilateral agreement that would be created outside of multilateral institutions such as the World Intellectual Property Organization (WIPO) or the World Trade Organization (WTO), where international Intellectual Property (IP) norm-setting takes place. Seven rounds of negotiation have taken place so far and an eighth is foreseen in New Zealand in April. The Commission's wish is to conclude the negotiations by the end of 2010. Business lobbies in Europe are strongly supporting the ACTA negotiations.

ACTA is being negotiated with unprecedented secrecy and in a manner seemingly designed to evade public review. The negotiating parties have jointly agreed on a confidentiality clause to keep negotiations secret. All the European Commission has provided civil society with are generic briefs which do not allow for a detailed assessment of the implications of the agreement. The purpose of the agreement is to establish international standards on intellectual property rights enforcement throughout the participating countries. Africa has no place at the negotiating table and the agreement is directly applicable only to those countries signing it. At first glance, therefore, there might appear to be no reason to discuss ACTA here. However, if ACTA becomes a reality, it risks having far-reaching and dramatic consequences for Africa as well. This article intends to flash a warning about the potential dangers of ACTA.

## The content of ACTA

As mentioned before, the details of the ACTA negotiations are held confidentially. According to the briefings made public by the Commission the following aspects will be covered.

International Cooperation among the parties including sharing of information and cooperation between our law enforcement authorities, e.g. Customs and other relevant agencies.

Enforcement Practices that promote strong intellectual property protection in coordination with right holders and trading partners. Such "best practices" should support the application of the relevant legal tools. Areas for possible provisions include formal or informal public/private advisory groups; fostering of specialized intellectual property expertise within law enforcement structures to ensure effective handling of Intellectual Property Rights (IPR) cases.

A legal framework that allows law enforcement agencies, the judiciary, and private citizens effectively to bring counterfeiters and pirates to justice. Areas for possible provisions include: border measures, civil enforcement, criminal enforcement.

The European Union as well as the other negotiating parties are unfortunately not willing to let the broader public know how all this will be regulated in detail in the agreement and how it should play out in practice.

## Africa and ACTA

The Commission's official position on countries which are not part of the agreement is that countries *which are not part of the negotiations and who will not sign the agreement will of course not be bound by the agreement. ACTA is not intended to isolate countries or point the finger at their enforcement efforts. The countries involved in this initiative share a particular vision of a path to stronger enforcement to deal with the challenges of piracy and counterfeiting today.*<sup>8</sup>

As mentioned before, Africa is not directly bound to accept the measures coming out of ACTA but is likely to feel its impact as well. The EU is currently pursuing an aggressive agenda for the inclusion of stringent IPR measures in the trade agreements it is negotiating with third parties, including the Economic Partnership Agreement (EPA) negotiations it is conducting with Africa. This push for the inclusion of IPR norms is an integral part of the EU's *Global Europe*<sup>9</sup> strategy. An article recently published by the *Yale Journal of International Law Online* warned that although not participating in negotiations, developing country governments will nevertheless find their domestic policy space reduced by ACTA as ACTA standards are likely to be a requirement of future bilateral agreements.<sup>10</sup> For Africa this would mean, inter alia, greater difficulty or impossibility to access life-saving medicines and increasing difficulty in accessing technology which is vital for the economic development.

According to the Commission, ACTA will respect the Declaration on TRIPS agreement and Public Health<sup>11</sup>, but it is impossible for independent sources to verify this. The enforcement measures foreseen in ACTA could lead to the customs authorities blocking the transport of generic medicines to Africa. OXFAM expressed its concern that ACTA could do great harm in developing countries and undermine the balance between the protection of intellectual property and the need to guarantee affordable medicines to everybody.

The EU is already engaging in worrisome activities in the field of access to medicines. It is funding the drafting of Uganda's controversial Counterfeit Goods Bill, a proposed law that threatens access to life-saving generic medicines

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<sup>8</sup> European Commission, 2008, *ACTA Factsheet*

<sup>9</sup> The *Global Europe* strategy is a European Commission document which sets out the trade policy agenda designed to reflect the EU's strategic priorities.

<sup>10</sup> E. Katz and G. Hinze, 2009, 'The Impact of the Anti-Counterfeiting Trade Agreement on the Knowledge Economy: The Accountability of the Office of the U.S. Trade Representative for the Creation of IP Enforcement Norms Through Executive Trade Agreements', in *The Yale Journal of International Law Online*, vol. 35.

<sup>11</sup> The declaration on TRIPS agreement and Public Health is a WTO declaration which affirms that rules on IP should be interpreted in a flexible way in order to guarantee the right to protect public health and explicitly recognizes the gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics.

in this low income East African country. Some 90 percent of medicines used in Uganda's health-care system are imported, of which about 93 percent are generics.

Harvey Rouse, head of the political and trade section of the EU delegation to Uganda, confirmed that part of the five million Euros financing agreement entered into with Uganda in July 2009 involves developing an anti-counterfeits law. The law defines counterfeiting so broadly as to criminalise the production and importation of generic medicines, thereby placing affordable and legitimate medicines outside the reach of millions of people in a country struggling with HIV, AIDS and malaria. The Ugandan law, like the recently adopted Kenyan law and the pending East African Community law, makes no distinction between legal generic medication and counterfeits.<sup>12</sup>

Another risk is that ACTA impedes Africans' access to technology which they could then develop and adapt to their own needs. An increase in IP norms risks strangulating creativity and innovation which are at the foundation of the development of poorer countries. As Nobel laureate Joseph Stiglitz has already warned, what developing countries need to evolve economically are less stringent IPRs, not even tougher IP measures.<sup>13</sup> It is therefore of paramount importance to follow the developments of the ACTA negotiations carefully and to exercise pressure on the European Commission to make the actual negotiation texts publicly available.

### **The European Parliament and ACTA**

The good news is that the European Parliament is also unhappy about the way the ACTA negotiations are being conducted. It has received only a limited amount of information on the ACTA negotiations from the European Commission and has not been shown the draft negotiating text either. However, under the Lisbon Treaty, which came into force in December 2009, the Parliament has the right to be fully informed at each stage of the negotiations and once negotiations are concluded ACTA will have to be approved by the European Parliament in order to become law.

A hearing of the Commission in front of the Trade Committee of the Parliament in February 2010 did not satisfy the Parliamentarians who held a plenary debate on the subject in March and approved with a large majority a resolution stating that the Parliament *expresses its concern over the lack of a transparent process in the conduct of the ACTA negotiations, a state of affairs at odds with the letter and spirit of the TFEU; is deeply concerned that no legal base was established before the start of the ACTA negotiations and that parliamentary approval for the negotiating mandate was not sought.*

The resolution calls on the Commission and the Council to grant public and parliamentary access to ACTA negotiation texts and summaries and to engage proactively with ACTA negotiation partners to rule out any further negotiations which are confidential as a matter of course. In this sense the resolution expects the Commission to make proposals prior to the next negotiation round in New Zealand in April 2010, to demand that the issue of transparency is put on the agenda of that meeting and to refer the outcome of the negotiation round to Parliament immediately following its conclusion.

Moreover, the resolution deplores the calculated choice of the parties not to negotiate through well-established international bodies, such as WIPO and WTO which have established frameworks for public information and consultation.

The resolution goes so far as to threaten legal action by affirming that unless Parliament is immediately and fully informed at all stages of the negotiations, it reserves its right to take suitable action, including bringing a case before the Court of Justice in order to safeguard its prerogatives.<sup>14</sup>

Thomas Lazzeri

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<sup>12</sup> IPS, 2010, Uganda: EU supports law threatening access to medicines.

<sup>13</sup> Stiglitz, J., 2006, *Making Globalization Work*, W. W. Norton

<sup>14</sup> Joint Resolution RC7-0154/2010 European Parliament resolution of 10 March 2010 on the transparency and state of play of the ACTA negotiations

## LAND: Threats to agricultural land

[http://www.aefjn.org/tl\\_files/aejfn-files/publications/forum\\_fr/Presentation%20Forum%2051%20FR.doc](http://www.aefjn.org/tl_files/aejfn-files/publications/forum_fr/Presentation%20Forum%2051%20FR.doc)

Between 15 and 20 million hectares of land in Africa, nearly the equivalent of the total area of farmed land in Germany<sup>15</sup>, have been acquired by foreign investors. These investments, estimated to be worth between 15 and 20 billion Euro, involve areas of over 1000 hectares that are dedicated to the production of biofuels or foodstuffs for export to the investor's country or used for speculation following the financial crisis of 2008.

The lack of transparency around the negotiations is disquieting as it can be the forerunner of unpleasant surprises and makes it difficult to plan judiciously. Recent studies give an idea of the size of this phenomenon which is affecting Africa in particular: Ethiopia, Ghana, Madagascar, Mali, Uganda, Sudan... but also Asia and Eastern Europe (Ukraine).<sup>1</sup>

Additionally, there are dealings relating to smaller areas of land. Villagers who have moved away and 'nouveaux riches' in the capital city are selling their village plots or initiating procedures for securing land tenure for obtaining a land title (paper) unaware of how this land is to be used<sup>16</sup>. Moreover, land is being acquired for agricultural products and tourism.

The main problems include conflicts of interpretation as to the rights to usage of and access to land, the unequal negotiating power of the parties concerned – when there are negotiations – and the growing shortage of natural resources. Together, these contribute to food insecurity, especially for the small farmers and women on a continent where there is a significant growth in population and where climate change is already a reality.

### 1. What do the Fathers of the 2<sup>nd</sup> African Synod tell us?<sup>17</sup>

#### Proposition 30 – Land and Water

Since large stretches of fertile land and water resources are unscrupulously exploited by foreign and local investors in many African countries, causing the displacement and dispossession of poor persons and their communities, who are often powerless to oppose this "assault", this Synod urgently calls upon all governments to ensure that its citizens are protected from the unjust alienation of their land and access to water, which are essential goods of the human person.

The Synod Fathers urge that:

- the Church in Africa seek information and learn about land and water issues in local churches in order to educate the People of God and enable them to challenge unjust decisions in these matters;
- all negotiations on land deals be conducted in full transparency and with the participation of the local communities who may be affected;
- land alienation deals should not be contracted out nor signed without the free, prior and informed consent of the local communities concerned, nor should people forfeit their land without proper compensation;
- agricultural workers be guaranteed a fair wage in light of the fact that investments promote the creation of employment;
- promote the professional formation of youth in farming and the raising of animals as a way to stem the uncontrolled flight from the village to the cities;
- the models of agricultural production respect the environment and not contribute to climate change, soil depletion and the exhaustion of drinkable water reserves;
- food production for export not endanger food security and sovereignty the needs of future generations;
- traditional land rights be respected and recognized by the law; and
- water not be exploited as a private economic commodity without due attention to people's interests.

<sup>15</sup> Source : International Food Policy Research Institute (IFPRI, <http://farmlandgrab.org/7812>)

<sup>16</sup> Land registration and title deeds are valuable (even if complicated to acquire) for the local users of the land.

<sup>17</sup> Rome, 4-25 October 2009

They also argue for governments to be at the service of the poor and cite the need for access to land and water amongst several other measures in Proposition 17 (Social Justice and the Eradication of Poverty). On the other hand, in Proposition 47 (Women in Africa) they do not evoke the right of women to own land and be able to access credit facilities. What they do, in Proposition 29 (Natural Resources), is to establish the link between the exploitation of land resources, arms trafficking and contrived insecurity.

## 2. African civil society facing up to the way agricultural land is being taken over

3.

Here are a few examples of the many ways in which groups of men and women are defending their land.

**BENIN:** Political struggle. Farmer collaboration: the national trade union of family farmers (Synpa) carried out a review and discovered that 45% of the farmland in the commune of Djidia (Zou) had been bought up. Working with Helvetas, a Swiss organisation for development cooperation, Synpa organised a 4-day workshop at the end of January 2010 to reflect and draw up a plan to resist large-scale land acquisition. Amongst its conclusions, Synpa decided to ask the government and parliament to:

- prohibit large-scale purchase of land by foreigners
- limit the amount of land that can be acquired by Benin nationals accused of financial speculation.

**MADAGASCAR:** The diaspora is coming to the aid of the local population who can be afraid to speak out openly. The Collective for the Defence of Malagasy Land-TANY was set up in response to the transaction announced by Daewoo Logistics in the press<sup>18</sup>. It aims to help towards the defence of the land by clarifying the situation and trying to understand the legal system better so as to be able to dialogue with those who have power. It also compensates for the meagre local media by disseminating information for the Malagasy people living on the island.

**AFRICA:** AFSA, the Alliance for Food Sovereignty in Africa, represents small farmers (agricultural and livestock), hunters and gatherers and the native populations right across Africa. It urges African leaders to reject what it calls the takeover of African land and food production systems<sup>19</sup>. AFSA maintains that African governments are not doing enough to protect food sovereignty, biodiversity and their populations' livelihood. It fears that the farming practices generally adopted by foreign investors on large areas of land will increase local food insecurity, at the same time adding to carbon emissions and climate change.

## CLIMATE: Post-Copenhagen

If there is no concrete action, certain developing countries will lose more than 50% of their agricultural revenue between now and 2100 because of the climate and new norms and regulations that restrict trade in view of carbon emissions. This also affects agricultural products and fertilisers<sup>20</sup>.

The Interstate Committee for the Fight against Drought in the Sahel<sup>21</sup> recommends West African countries to develop their own financial and scientific capability. It is hoping to establish a research group on the environment and climate in Africa similar to the Inter-governmental Panel on Climate Change (IPCC).

The African renewable energy industry needs to be strengthened and protected from the threats arising from the Economic Partnership Agreements and for this the negotiators must have close contact with the technical experts. States should combine the Global Environment Facility (funds for climate change adaptation) and Aid for Trade in order to develop economic infrastructure and production capacity in the farming, fishery and livestock sectors and to manage water resources. However, this is difficult to put into place as the Aid for Trade is still bilateral while the GEF is global.

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<sup>18</sup> <http://terresmalgaches.info/>

<sup>19</sup> For an example, see: [www.foodfirst.org/en/node/2670](http://www.foodfirst.org/en/node/2670)

<sup>20</sup> [www.ictsd.net/news.tni](http://www.ictsd.net/news.tni) and [www.acp-eu-trade.org/eclairage](http://www.acp-eu-trade.org/eclairage)

<sup>21</sup> [www.cilss.bf/](http://www.cilss.bf/) (soon to be available in English)

AFSA is preoccupied with certain proposals that aim to reduce climate change but that could further encourage the acquisition of land and erode food sovereignty in Africa even more. Of particular concern are carbon trading, agrofuels and biochar (charcoal from biomass). During the climate change talks in Copenhagen in December 2009, AFSA called for concrete action leading to the prioritisation of small-scale farming<sup>22</sup>.

### **WATER: International Water Day (22nd March 2010)**

Dirty water kills more human beings than all forms of violence, including war<sup>23</sup>. The theme "Clean Water for a Healthy World" hopes to draw attention to the fact that both the quality and the quantity of water are under threat. We are in the middle of the international decade (2005-2010) for action on water with the theme "Water for Life". Water is at the heart of the Millennium Development Goals.

Christine Fouarge

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<sup>22</sup> Source : AfricaFiles No.22479 :East Africa : Farmers concerned about land grabs (12 December 2009)

<sup>23</sup> <http://www.unwater.org/worldwaterday/flashindex.html>