

Update on the Impact of the European Union - Central America Association Agreement on Women

By Elisa Buzzi and Catherine Poyner

Introduction

The Association Agreement (AA) between the European Union and Central America was signed on 29 June after years of negotiation.

CAWN's research report produced in 2007 made recommendations that would ensure women's rights were considered as part of the trade agreement. This addendum analyses the extent to which these recommendations have been included in the trade agreement.

Key recommendations and extent to which these have been followed by the AA

1. Emphasize the commitment to human rights

The Impact Assessment of Trade Sustainability commissioned by the European Commission¹ states that the implementation of the agreement may have an impact on human rights and labour and environmental standards, particularly in Central America.

The recommendation made by CAWN was that human rights protection should be an integral part of the trade agreement. By increasing labour standards and improving working conditions, women and vulnerable groups are particularly positively impacted.

¹ Ecorys et al, Trade Sustainability Impact Assessment of the Association Agreement to be negotiated between the EU and Central America, September 2009 ('SIA').

The Association Agreement

Human rights protection is cited twice in the Agreement: in Part I, Title I (Nature and scope of the agreement) and Part IV, Title VIII (Trade and Sustainable Development).

Title I, Article 1.1 of the Agreement obliges Parties to ensure respect for fundamental human rights in their territories².

Unlike the aspects of the Agreement relating to trade rules, there is no specific mechanism for monitoring the implementation of the human rights clause, nor a subcommittee dedicated to human rights and democracy issues³. It appears that human rights and democracy issues are to be discussed within the organs established by the Agreement, such as the Association Council, the Association Parliamentary Committee, which has recommendatory powers, and the Joint Consultative Committee, representing civil society, which has a consultative role⁴. It is also possible that human rights and democracy issues will be raised in the context of the organs established under the sustainable development title, as the Civil Society Dialogue Forum and the Board on Trade and Sustainable Development.

Article 355 on the fulfillment of the obligations, states: "If a Party considers that another Party has

² Art 1.1 of the AA: "Respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, and for the rule of law, underpins the internal and international policies of both Parties and constitutes an essential element of this Agreement".

³ The Trade Chapter of the European Union Association Agreement with Central America, study commissioned by the Directorate-general for external policies, Policy Department, European Parliament, March 2012, p. 38.

⁴ The Trade Chapter of the European Union Association Agreement with Central America, p. 38.

failed to fulfill an obligation under this Agreement, it may have recourse to appropriate measures”.

According to a study commissioned by the European Parliament⁵ a violation of the human right clause ipso facto constitutes a ‘material breach’ which in turn is deemed to be a ‘case of special urgency’ entitling the other party to adopt ‘appropriate measures’. However, these measures are undefined and “ It is understood that suspension would be a measure of last resort”, art. 355.3.

The text on Trade and Sustainable Development (Title VIII) replaces the obligations that currently govern the relations of the Central American countries with the European Union under the regime of the generalized system of preferences (GSP Plus) in environmental and labour issues⁶.

In the section relating to the multilateral labour standards and agreements, the Parties reaffirm their commitments to respect and promote the principles regarding the fundamental rights which are the subject of the fundamental ILO Conventions, (art. 286.1) and their commitment to “effectively implement” the eight fundamental ILO Conventions⁷ (286.2).

The Association Agreement states the willingness of the States to effectively implement these Conventions but does not oblige the signatories to ratify and effectively implement all the 27 international conventions and agreements on human rights, environment and democratic governance, included in Article 9 of the GSP Plus. Under the GSP Plus’ regime, the beneficiaries must provide comprehensive information on the legislation and other measures taken to effect implementation. Failure to comply can result in GSP Plus concessions being suspended⁸.

⁵ The Trade Chapter of the European Union Association Agreement with Central America, p. 38.

⁶ Informe de Resultados sobre el cierre de la negociación con la Unión Europea, Madrid 2010, Ministerio de Relaciones Exteriores de Costa Rica. <http://www.aacue.go.cr/informacion/rondas/CA-UE/Cierre/2010-05-18%20Principales%20Resultados.pdf>

⁷ Contained in the ILO Declaration of Fundamental Principles and Rights at Work of 1998

⁸ The Trade Chapter of the European Union Association Agreement with Central America, p. 17.

The AA does not mention the Convention on the Elimination of All Forms of Discrimination against Women (1979)⁹.

According to a study commissioned by the European Parliament, the Conventions not included could be interpreted as falling under the human rights clause in Art.1 of the Agreement, but in general the scope of the Title VIII of the AA is narrower and the enforcement mechanism arguably weaker than is the case with GSP Plus¹⁰.

These obligations are similar to those found in other free trade agreements, but there are certain omissions. In particular the Agreement does not make any reference to ILO Convention N.169 on indigenous and tribal rights¹¹, as specifically recommended by the Sustainability Impact Assessment (SIA, p. 91)¹². Moreover, the Agreement is not required to ratify the Statute of Rome establishing the International Criminal Court¹³.

Another difference between the GSP and the Agreement is the lack of enforcement. Whereas the GSP Plus can be withdrawn in case of violation of these requirements, Title VIII is subject neither to the Agreement’s normal dispute settlement procedures (that include provision for compensation or withdrawal of concessions) nor the mediation provisions¹⁴.

There is no dispute resolution provision of labour standards and Chapter VIII does not conclude punitive effects, such as fines or trade sanctions, against the repeated violation of labour rights.

These sustainable development obligations are monitored by a joint Trade and Sustainable Development Board (Article 294).

Civil society has been involved in the shaping of the AA, both through national Advisory Groups

⁹ The Trade Chapter of the European Union Association Agreement with Central America, p. 18.

¹⁰ The Trade Chapter of the European Union Association Agreement with Central America, p. 17.

¹¹ This convention has not been ratified by El Salvador or Panama, or by any EU Member State except for Denmark, the Netherlands and Spain.

¹² The Trade Chapter of the European Union Association Agreement with Central America, p. 40.

¹³ Art.17.4 “It remains the sovereign decision of every State to decide the most appropriate moment to adhere to the Statute of Rome”.

¹⁴ Article 284.4

(Article 294), and in a bi-regional Civil Society Dialogue Forum (Article 295). These groups will continue to influence and make recommendations on the implementation of the AA and there may be some room for discussion on human rights and democratic principles¹⁵.

The Trade and Sustainable Development Board has overall responsibility for resolving disputes arising from sustainable development obligations. In cases involving the general obligations, an unresolved dispute may be referred to a Panel of Experts. The Panel has the power to examine whether there has been a failure to comply with the relevant obligations and can make non-binding recommendations for the solution of the matter (Article 299). A report is published, and the relevant party must respond with an appropriate action plan, the implementation of which is then monitored by the Trade and Sustainable Development Board (Article 301). There are, however, no specific remedies for non-compliance¹⁶.

Furthermore, there is no mechanism for triggering an investigation by way of individual petition, as is common in US free trade agreements including CAFTA-DR. This differs from the GSP Plus scheme under which preferences can be unilaterally withdrawn¹⁷.

As indicated above, there is a substantial overlap between the human rights clause and the sustainable development title¹⁸. The obligations under the title on sustainable development are essentially unenforceable, but core labour standards may fall under the human rights clause of Article 1, and be enforceable by the "appropriate measures"¹⁹.

On the other hand, the weakness of enforcement makes a difference in the case of social issues that do not rise to the level of human rights violations. These include general environmental issues, as

well as certain non-core labour issues, and other social impacts²⁰.

According to the European Parliament study, because of the alignment between sustainable development and human rights, the powers in Article 355 can be used to suspend benefits under the Agreement. However, there is no dedicated committee or body to monitor compliance²¹ so the likelihood of concrete action being taken appears remote.

It is possible, although far from certain, that other bodies such as the Association Committee, the Association Parliamentary Committee or other bodies monitoring compliance in the field of sustainable development could be used to monitor human rights²².

It is positive that the human rights clause in the Agreement offers a means to enforce the human rights clauses in the Agreement, but it is not clear whether the powers in the Agreement will be used. The European Parliament study recommends that the European Parliament review the monitoring of compliance with human rights once the Agreement is implemented and if the Parliament is not satisfied it should press for the establishment of committee dedicated to this task²³.

2. Include a gender perspective in the Sustainability Impact Assessment and the Agreement

CAWN's 2007 report recommended the use of sex-disaggregated data and gender indicators in the design, execution and analysis of the SIA to identify the potential for difference impacts on women and men. The report also recommended that the AA should incorporate a gender perspective and include mechanisms to promote the rights of women and ensure equal opportunities.

Due to the successful lobbying of social organizations in Central America a gender

¹⁵ The Trade Chapter of the European Union Association Agreement with Central America, p. 40.

¹⁶ Ibidem.

¹⁷ The Trade Chapter of the European Union Association Agreement with Central America, p. 40.

¹⁸ Ibidem.

¹⁹ The Trade Chapter of the European Union Association Agreement with Central America, p. 41.

²⁰ Ibidem,

²¹ The Trade Chapter of the European Union Association Agreement with Central America, p. 43.

²² Ibidem.

²³ The Trade Chapter of the European Union Association Agreement with Central America, p. 43.

perspective has been included in the SIA in the section on social impacts. However, the study suggests analyzing in more detail the effects for women and vulnerable groups²⁴ and recommends including issues on gender equality and discrimination²⁵. The SIA also recommends monitoring the gender equality impacts throughout various policy initiatives and increasing the opportunities for positive gender impacts²⁶.

The Association Agreement

The Agreement does not explicitly require the ratification of key conventions that protect and promote women's rights, such as the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol²⁷, and the OAS Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará"). Article 47 of the Agreement introduces a gender perspective which reaffirms that "co-operation shall help to strengthen policies, programmes and mechanisms aimed at ensuring, improving and expanding the equal participation and opportunities for men and women in all sectors of political, economic, social and cultural life, in particular in view of the effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Where appropriate, affirmative actions in support of women shall be envisaged".

According to Article 47.2: "Co-operation shall promote the integration of the gender perspective in all relevant fields of co-operation, including public policies, development strategies and actions as well as indicators to measure their impact".

The gender equality issue appears in the Co-operation Chapter several times²⁸, but there is no concrete obligation for the States to take steps to include gender equality measures.

²⁴ Ecorys et al, Trade Sustainability Impact Assessment of the Association Agreement to be negotiated between the EU and Central America, p. 17.

²⁵ Idibem, p 91.

²⁶ Idibem, p.93.

²⁷ Honduras and Nicaragua did not ratify the Optional Protocol.

²⁸ Art.32.2: Conflict Prevention and Resolution, Art. 42: Employment and Social Protection, Art. 43: Education and Training, art. 44: Public Health, Art 46: Vulnerable Groups.

3. Promote gender equality in employment and support the creation of a regional centre for equality in employment

According to several studies and the EIS itself in Central America, women tend to have less access to the labour market and earn less than men²⁹. They are more common in the informal sector and they face horizontal and vertical segregation. The textile industry remains the largest employer of female labour³⁰.

The recommendation is planned to promote equality in employment and support the creation of a regional centre for employment equity which would contribute to the eradication of discrimination in the workplace, including sexual harassment, discrimination because of sex or pregnancy and salary inequity³¹. These measures should also include foreign investors.

According to the SIA the "AA can stimulate the improvement of labour standards ... this is under the provision that firms in the Central America region do not lower wages and standards in a competition for scarce Foreign Direct Investment (FDI) and thereby start a "race to the bottom" in labour regulations. Policy initiatives in this field have a large influence over which effect may come to dominate."³²

The Association Agreement

The implementation of labour standards is monitored by the Board on Trade and Sustainable Development (see point 1). The text of the Agreement does not stipulate the creation of a regional centre for gender equality in employment and the monitoring of the effects of the Agreement on women.

²⁹ Ecorys et al, Trade Sustainability Impact Assessment of the Association Agreement to be negotiated between the EU and Central America, p. 77.

³⁰ Tessa McKenzie, How is the EU-CA Association Agreement likely to affect women in Central America? CAWN, Agenda, October 2007, p. 3.

³¹ CAWN, Briefing paper, March 2008, p.4.

³² Ecorys et al, Trade Sustainability Impact Assessment of the Association Agreement to be negotiated between the EU and Central America, p.16.

4. Support and promote women's organisations and their effective participation in public life

CAWN recommended that clear mechanisms for strengthened civil society participation in the implementation of the Agreement should be included, with a particular focus on the full participation of women's organizations and alliances in relation to all areas of the Agreement³³. This recommendation is particularly important because participation in public life and the inclusion of women in political decision-making strengthens their voice and allows for more powerful lobbying of policies.

The negotiations of the AA have developed an interesting process of dialogue between women's organizations in Central America. There have been several meetings, including joint meetings with European networks. This process has allowed for women's empowerment and the forging of relationships and partnerships that will continue to contribute to shape the implementation of the AA.

The Association Agreement

The text of the Agreement provides mechanisms for civil society participation. Article 11 of the General and Institutional Provisions establishes the inclusion of European Union and Central America civil society representatives to the consultation and implementation phase of the AA.

The Co-operation Part sets among its principles the promotion and support for civil society participation (Art. 25 and 30) even in the process of regional integration (Art.72).

Article 32 promotes a comprehensive policy of peace, including the prevention and resolution of conflicts. This policy "shall ensure equal political, economic, social and cultural opportunities for all segments of society, reinforce democratic legitimacy, promote social cohesion and an effective mechanism for peaceful conciliation of the interests of different groups, and encourage an active and organized civil society, in particular making use of existing regional institutions".

The text establishes a Joint Consultative Committee as a consultative body of the

³³ CAWN, Briefing paper, March 2008, p.3.

Association Council. Its work shall consist in submitting the opinions of civil society organisations to this Council regarding the implementation of the Association Agreement (Art.10). The AA also establishes a bi-regional Civil Society Dialogue Forum relatively to the aspects of sustainable development, which has a consultive role (Art.295) although the text explicitly says that "for greater certainty, policy making and other such typical government functions shall not be delegated to the Civil Society Dialogue Forum". However, the text makes no specific reference to women's participation.

5. Protect government ownership of public services

CAWN's 2007 report recommended that health and education services should be excluded from trade liberalization, as well as natural resources such as water, since these services are directly linked to the well-being of the population³⁴. This recommendation has particularly relevance for women's rights as women are over-represented in the public sector and are therefore are greatest risk of losing their jobs as the emphasis shifts further towards privatization³⁵. Privatization would also be expected to lead to increases in the cost of essential services is expected to increase and the health and education of women is the most likely to be negatively affected³⁶.

The Association Agreement

Health services, education and water supply are included in the process of trade liberalization because they are not among the exceptions included in Articles 163 and 169, relating to cross-border supply of services and establishment in economic activities. However, Article 159.2 provides that "Nothing in this Title shall be construed to require the privatization of public undertakings or public utilities services supply in the exercise of governmental authority or to

³⁴ Recommendations to prevent some of the EU-CA Association Agreement's negative impacts for women, CAWN, Agenda, October 2007, p.8.

³⁵ CAWN, Briefing paper, March 2008, p. 2.

³⁶ Tessa Mckenzie, How is the EU-CA Association Agreement likely to affect women in Central America? CAWN, Agenda, October 2007, p. 3.

impose any obligation with respect to government procurement”.

In addition, each Central American country has negotiated a list of commitments on establishment and supply of services (Article 166 and Article 172) that can be found in Annexes X and XI of the Agreement.

All CA countries have included exceptions relating to the achievement of socioeconomic objectives including measures to protect socially or economically disadvantaged groups or indigenous peoples³⁷. Costa Rica, El Salvador, Guatemala and Honduras include a provision that economic activities considered as public utilities or public services may be subject to a public monopoly or to exclusive rights granted to natural or juridical persons, public or private³⁸.

Honduras, Nicaragua, El Salvador and Panama reserve the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, as well as any social services when they are established or maintained for a public purpose. Nicaragua states that economic activities or services considered as public services or public utilities are unbound, which are subject to a public monopoly.

According to the present formulation of the Agreement, the privatization of public services is possible and depends on the will of the individual States.

Conclusion

It is clear that all of the key recommendations listed by CAWN in its 2007 research report on the Association Agreement between the EU and Central America have been acted on to some extent. There has been the inclusion of the voices of Central American civil society voices in the consultation regarding the agreement and a gender perspective has been included in the Sustainability Impact Agreement.

However, this addendum shows that the AA still lacks a gender perspective and that the specific potential impacts of the AA on women have not been included in the document itself. Furthermore, despite the positive rhetoric, no concrete mechanisms for monitoring the impact of the AA on women have been established. This means that even if the AA is proven to have a negative impact on women, or other vulnerable groups, the likelihood that any action will be taken is low.

It will be crucial that civil society groups in Central America monitor the impact the AA is having on women and that groups in the UK and worldwide continue to lobby on their behalf

³⁷ The Trade Chapter of the European Union Association Agreement with Central America, p. 30.

³⁸ Annex XI; List of commitments on cross-border supply of services. Costa Rica, p. 36, El Salvador p. 62, Guatemala p. 88, Honduras p.114, Nicaragua p. 140, Panamá p. 170.