

# Trading away our rights? Free trade and human rights in the Pacific Islands.

By Wesley Morgan

## **In pursuing an aggressive free trade deal with ex-colonies in the Pacific, the European Union risks undermining human rights in the region.**

During 2008, the EU is looking to sign off on new free trade deals with 76 countries in Africa, the Caribbean and the Pacific (ACP) that it says will provide new investment and improve the business environment in those countries.

The Europeans have tried to make these deals seem as ‘development-friendly’ as possible, by naming them Economic Partnership Agreements (EPAs).

However, the European Commission (who is responsible for negotiating free trade agreements on behalf of EU governments) has come under fire for pursuing EPAs that are ultimately about the EU’s own trade interests.

Trade experts, academics, parliamentarians, World Bank and UN officials, not to mention farmers’ organisations, trade unions and NGOs, have all raised concerns that the deals would be bad for development, would endanger livelihoods, and would deny ACP countries the flexibility to use the policies they need in order to develop<sup>1</sup>.

One of the more serious concerns raised is that the EPAs will undermine human rights, particular the right to the highest attainable standard of health, by making medicines more expensive in ACP countries.

Intellectual property rights are often included in free trade agreements with the aim of protecting the patent rights of pharmaceutical companies – to grant the designers of a drug a monopoly over the production and sale of that drug in the agreement’s party countries.

It is not disputed anywhere that competition in drug manufacturing (with the introduction of generic drugs to compete with monopoly patents) leads to cheaper medicines – sometimes up to 95 per cent cheaper.

Therefore signing agreements that protect or extend the patent rights of pharmaceutical companies can put medicines out of reach of many people (particularly the poor in developing countries).

Under the World Trade Organisation (WTO) agreement on Trade Related Intellectual Property Rights (TRIPS), pharmaceutical companies are granted a 20 year monopoly on the use of a patented invention.

The intellectual property rights provisions the EU is seeking to include in an EPA with Pacific island countries remain top secret, but the terms of the EPAs already signed with countries in the Caribbean are ‘TRIPS+’ provisions – they go well beyond those required by the WTO.

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<sup>1</sup> Oxfam International (2008) *Partnership or Power Play? How Europe should bring development into its trade deals with African, Caribbean and Pacific countries*. Oxfam Briefing Paper 110, 21 April 2008.

Of the 14 island countries in the Pacific Islands Forum, only four countries are even members of the WTO, and TRIPS does not apply to most Pacific Island countries.

If Pacific governments sign a TRIPS (or TRIPS+) style agreement on intellectual property as part of an EPA their ability to provide affordable medicines to their people would be reduced.

As things stand today, many Pacific governments could import or manufacture generic medicines to provide to the public at much cheaper rates than their patented alternatives.

This could prove to be particularly important for Pacific Island countries facing the growing health burden of an HIV/AIDS epidemic.

Even by *pursuing* TRIPS or TRIPS+ style provisions as part of EPA negotiations with Pacific Island countries, European governments are in contravention of their own human rights obligations in relation to health.

Under the International Covenant on Economic, Social and Cultural Rights (which most EU States are party to) State parties are obliged to take steps (individually or through international assistance and cooperation) towards the full realization of Covenant rights (article 2(1), as interpreted by CESCR General Comment No. 3 (1990)). In relation to the right to health, this includes the obligation to respect the right to health in other countries, to give due attention to the right to health in international agreements and to take steps to ensure those agreements do not adversely impact on the right to health (article 12, as interpreted by CESCR General Comment No. 14 (2000))<sup>2</sup>.

Clearly, *even the act of putting on the negotiating table* an agreement that would have the effect of making medicines less accessible in Pacific countries comprises a failure of the EU to meet its human rights obligations.

To sign a trade agreement that makes medicine less accessible to the poor in their countries would also be in contravention of the human rights obligations of Pacific Island States that are party to the International Covenant on Economic, Social and Cultural Rights.

Pacific governments should not sign into law any EPA (or interim-EPA) until independent evaluations and impact assessments of those agreements have been completed.

Concerns about intellectual property rights provisions and their implications for access to medicines, are just one of many concerns about these far reaching agreements.

We know that any EPA with the EU is unlikely to attract any new significant business investment in the region<sup>3</sup>.

If a free trade deal undermines human rights in the Pacific, and is detrimental to development in the region, then Pacific Island Governments really have no reason whatsoever to sign them.

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<sup>2</sup> Committee on Economic, Social and Cultural Rights (CESCR), *General Comments No.14 (2000), The right to the highest attainable standard of health*. E/C.12/2000/4, 11 August 2000.

<sup>3</sup> AV Hughes (2004) *Distant Prospects: Promoting investment in the Pacific through an ACP-EU agreement*. Pacific Islands Forum Secretariat.

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