

25 June 2018

Consultation on ACP-EU Partnership Agreement
European Commission Directorate-General for International Cooperation and Development
Post-Cotonou Task Force

Trade Union Movement Contribution

The ITUC welcomes the opportunity offered by the Directorate-General for International Cooperation and Development and the Post-Cotonou Task Force to provide recommendations on the future of EU-ACP relations (ACP – African, Caribbean, and Pacific Group of States), and notably the revision of the Cotonou Partnership Agreement (CPA). Our position is based on dialogue and input from our trade union colleagues in ACP countries, and notably from the sub-Saharan countries, as well as from trade unions affiliated to the European Trade Union Confederation (ETUC).

The revision of the CPA framework provides both the ETUC and ITUC with the opportunity to continue advocating for a mutually beneficial partnership between Europe and ACP countries, taking into account historical partnership relations, promoting fair trade, ensuring respect of labour rights and creating decent jobs both in Europe and in the ACP countries.

On the occasion of the formal adoption of the Cotonou Partnership Agreement in 2000, the ETUC and ITUC issued a joint statement to positively acknowledge the framework agreement as a unique model of North-South cooperation in light of the comprehensive scope of its three pillars of cooperation – and this also because of its objectives of poverty eradication, in line with sustainable development and the gradual integration of ACP countries in the world economy. The ETUC and ITUC acknowledged the following positive elements in the CPA:

- legally binding, contractual nature of the agreement; CPA framework as a predictable multi-annual development cooperation tool;
- regional approach (going beyond bilateral approach) – regional integration as strategic priority;
- social and human development as priority domains of development cooperation;
- institutional framework consisting of joint institutions based on the principle of equal partnership and joint planning, monitoring and evaluation of the program, aiming at ownership;
- multilateral approach, participation of non-state actors not only at the level of development cooperation but also at the level of political dialogue and in monitoring of trade agreements;
- suspension of cooperation in order to remedy violations of human and labour rights and rule of law as the basis for political dialogue;
- social and labour rights as inseparable from all efforts for growth and economic development;

- transparency as a principle of development cooperation and a basis of good public management;
- differentiation between ACP countries based on their level of development;
- decentralised cooperation and increased responsibility of ACP countries for joint programming;
- inclusion in the agreement of crosscutting issues: gender equality, youth, environment, cultural development.

Trade unions would like to first and foremost see that any revised CPA, after 2020, would maintain these basic elements in the revised framework. For the ACP, it is important to focus on structural transformation as a pillar to promoting industrialisation and sustainable and inclusive development.

In light of the revision of the Cotonou Partnership Agreement, we call on the EU to ensure the mainstreaming of the following principles throughout the development cooperation and the political and trade chapters:

- **the promotion of decent work and freedom of association (SDG 8, including social protection);**
- **the fight against inequalities (SDG 10), including wage policies;**
- **enforceable labour and environmental clauses in trade agreements with conditionality in the pre-ratification stage and a strong chapter on sustainable development;**
- **the participation of non-state actors and the promotion of social dialogue as essential building stones for democratic governance.**

We believe that EU delegations in capitals of ACP countries should include labour attachés with close relations with both the national social partners and the international social partners (including the ITUC and its regional organisations) and with enhanced contacts with the European social partners, including the ETUC. We would encourage the EU to work closely with the International Labour Organization in the promotion and enforcement of labour standards.

In order to put decent work at the heart of the revised CPA framework, we call for the following:

1. **Revised trade and investment policies that support local productive capacities and promote decent work and universal social protection**

Industrialisation policies must enhance and support national productive capacities with a focus on the domestic and regional markets and should be anchored on the basis of creating decent work, social protection and foster inclusive development. Trade policy must be considered only to complement other structural transformation policies.

There is a highly asymmetrical trade and development relation between the EU and the ACP countries. In order to establish fair and just trade relations between the ACP countries and the EU, we advocate

that EU and African countries stop the current negotiations and withdraw from signed Economic Partnership Agreements (EPAs).

We encourage a completely new mandate from both sides, one that explicitly guarantees that the agreement will not affect the current generous market access enjoyed by all Least Developed Countries, nor that it will ask for reciprocity in market access as long as these countries remain “least developed” in the UN Human Development Index. The agreements should be negotiated between the EU and African regional integration communities.

Before starting trade discussions, the EU and the ACP countries should identify economic activity and sectors where trade opening would be beneficial for the creation of decent jobs, particularly for women, young people and other vulnerable groups. This impact assessment must involve evidence from several sources, including international organisations, employers and trade unions, and civil society, and be transparent. When impact assessments show negative effects on particular sectors, it is best to leave those sectors outside the agreement until the conditions are ready.

The mandate and the negotiations should aim at the following:

- I. ensuring that EPAs do not limit the public policy space of ACP countries to promote key policies to develop domestic economic activity of increasing added value and to increase benefits from value chains including by local content rules and technology transfer requirements;
- II. allowing ACP countries to protect their agriculture and industry, including their food security – if negative effects are foreseen, governments in ACP countries must have the right to exclude their agricultural sector from the negotiations;
- III. providing development assistance, including technical assistance and financial support for the structural transformation of the ACP countries’ economies towards higher value and more productive economic activities;
- IV. excluding public services and basic services related to the realisation of economic and social rights, and in particular, the right to healthcare and education, basic mobility and water and energy supply;
- V. avoiding liberalising public procurement because local governments should be in a position to require social and environmental conditions in their contracts and to award contracts to domestic companies to promote local and regional development;
- VI. supporting and advancing regional integration processes in Africa through conclusions of agreements with existing regional bodies;
- VII. including a strong and enforceable labour chapter to ensure full protection and enjoyment of workers’ and trade union rights. The ratification and implementation of the Fundamental Principles and Rights at Work, the ILO governance Conventions and up-to-date ILO Conventions, as well as other instruments such as the forced labour protocol and ILO Conventions on health and safety at work, must be a pre-condition for entering in EU trade negotiations.

Moreover, an independent trigger mechanism in case of violations is necessary, for example, through the setting up of an independent labour secretariat as part of the EPA trade agreement’s institutional machinery. Also, the EPAs must be accompanied by a monitoring mechanism involving the social

partners. The determination of a violation of labour rights must rely on the expertise of the ILO supervisory mechanisms and be consistent with their findings. These monitoring bodies must be properly financed and supported by the European Commission to allow a meaningful trade union participation of EU and ACP trade unions that lack the necessary resources.

Domestic Advisory Groups (DAGs) – the monitoring bodies of EU Free Trade Agreements (FTAs) in general, and of EPAs in particular, composed of civil society groups – are important to ensure that commitments made by governments to respect ILO instruments are enforced once an agreement has been signed.

The EU must take action to enforce respect of human rights by its private enterprises in ACP countries, and ensure compliance with social and environmental standards according to the UN Guidelines on Business and Human Rights by requiring mandatory human rights due diligence in European companies' operations. It should also adopt and apply conditionality social clauses for enterprises applying for grants or loans or contracts under development programmes.

2. Promoting social and civil dialogue and non-state actor participation

Over the past few years, ACP countries have recorded alarming growing levels of shrinking space for civil society, violations of the freedom of association and expression, and restrictions on the right of access to information. According to the ITUC 2018 Global Rights Index, six out of the ten worst countries of the world for workers are ACP countries.

The EU should, in the context of the revised CPA framework, promote good democratic governance by enhancing the promotion of national civil and social dialogue and the participation of non-state actors in the three pillars of the CPA. This participation should be ensured also in its development cooperation program, in monitoring and evaluation, as well as in trade agreements and political dialogue.

In 2000 the EU introduced very innovative practices in development cooperation of ACP non-state actors' participation. The participation of non-state actors should be maintained as a key element of the revised CPA framework to ensure democratic governance. In practice, non-state actors' involvement in the CPA framework is limited; consultations of non-state actors is sparse and without much influence on political choices made by the EU. The access to funds for non-state actors is very limited, and funds are underutilised due also to the very heavy procedural constraints.

Trade unions call on the EU to actively promote human and trade union rights as prerequisites for democratic and transparent governance, and as key elements of the trade, development cooperation and political dialogue chapters.

Trade unions should be considered strategic partners, in the context of the revised CPA framework, to achieve development objectives, universal social protection and decent work. To do so, trade unions will work closely in alliance so as to identify in each ACP country credible, representative and democratic unions which actively strive to promote and defend workers' rights. The revised CPA could also be a

key tool to strengthen the capacity of trade unions to be credible vehicles for development and decent work, including social protection and the reduction of inequalities (including wage policies).

Realising social and economic rights of citizens – Promoting decent work, freedom of association (SG 8) and the fight against inequalities (SDG 10)

Decent work is at the core of inclusive and sustainable development. It allows for a livelihood for workers and their families, it reduces poverty and inequalities and ensures inclusive growth that leaves no one behind. Decent work is defined by its four pillars: job creation, rights at work, social protection and social dialogue. Through job creation, strong social protection systems and quality public services, better working conditions and access to democratic decision-making, people, communities and countries can lift themselves out of poverty, improve livelihoods, engage in local development and live together in peace. This happens only when work is decent, environmentally sound and productive, provides living wages and is underpinned by labour rights and accessible to all men and women workers alike, regardless of their migration status.

A key challenge to the realisation of decent work in ACP countries is the growing informalisation of work, which takes up to 90 per cent of jobs, as well as the surge of precarious work, even in formal workplaces. Workers in the informal sector of the economy and workers in the grey zone of precarious working conditions suffer exclusion from decent work across the board of the four pillars of the agenda on decent work: exclusion from productive jobs with decent living wages, exclusion from rights at work, exclusion from social protection and exclusion from trade union rights and social dialogue. The profile of informal sector and precarious workers is that of typically young workers, women and migrant workers who should therefore receive attention as special target groups in our programs and policies.

At the same time, freedom of association is under attack by governments, even though there is substantial evidence that unions and collective bargaining reduce inequality by raising wage floors, contributing to poverty eradication and to building sustainable economies. Also, collective representation democratises workplaces, allowing workers to gain a fair share of the income their work produces and to negotiate decent working conditions. For this, the promotion of freedom of association and ILO core labour standards should be central to the implementation of the new CPA framework.

In the framework of the revised CPA, we call for more support to scale up the ILO Decent Work Country Programs (DWCP) as exist to date in 30 of the 79 ACP countries. The Decent Work Country Programs reflect national priorities of the social partners, and the DWCP is the outcome of a tripartite social dialogue and wields large ownership.

Our recommendation is equally to support the promotion of universal access to social protection with a focus on establishing national social protection floors. The ILO recommendation No. 202 exhorts all member States to set out policies and programs for the establishment of a national social protection floor through social dialogue and with the participation of credible and representative relevant actors in civil society. The EU can actively support the participation of social partners and relevant and credible non-state actors in the social protection policies and programs promoted in the framework of revised ACP.

Of equal importance is ILO Recommendation No. 204 concerning the Transition from the Informal to the Formal Economy. This recommendation represents a real paradigm shift for the ILO. It is the first instrument on the informal economy and stipulates that all workers have equal rights at work, whether in formal or informal work places. The recommendation appeals to governments to develop integrated policy frameworks to facilitate this transition based on the four pillars of the Decent Work Agenda. These policy frameworks need to be developed in national social and civil dialogue platforms.

Clearly, the absence of a DWCP often corresponds to the lack of social dialogue and to the absence of democratic space and low levels of freedom of association. The EU can play a very valuable role in promoting the participation of non-state actors and strengthening social dialogue in the framework of programs on social protection and on transition from the informal to the formal economy.

Moreover, financing better social and labour protection will need better and more efficient taxation and especially the implementation of progressive taxation policies in order to address inequalities while generating revenues in an equitable way; eliminating tax exemptions of many privileged groups and putting greater emphasis on the fight against corruption, tax havens and illicit financial flows; and ensuring European businesses' and private companies' regular reporting on tax payments – all the above in the context of the impact on sustainable development and human rights. Therefore, promoting progressive taxation policies should be a cornerstone of the revised CPA framework.

3. **A rights-based approach to mobility and migration**

Rising xenophobia and the unprecedented scale of human displacement during recent years highlight the urgent need for a global commitment to fair migration and coherent, rights-based policies. The UN Global Compact on Safe, Regular, and Orderly Migration represents a historic opportunity to address this need. The Compact could serve as an important vehicle to recognise the root causes that compel people to migrate, and to encourage pathways out of irregularity. It must enhance regular migration channels that promote shared prosperity and advance workers' rights. However, in today's challenging political climate, there is also a risk that the Compact could shirk humanitarian obligations, failing to provide protections from deportation regimes and abusive temporary or circular work visa programs. Labour migration governance will only be successful if it adheres to human and labour rights standards and does not further criminalize migrants or empower the private sector to dictate the terms of migration governance. It is time for States to move beyond temporary or circular migration programs and put the focus on regularization, humanitarian resettlement, and policies that promote sustainable development and decent work for all in countries of origin, transit and destination.

A rights-based approach to labour migration should promote:

Collective worker voice and participation.

- ***Freedom of association and the right to collective bargaining.*** Migrants and refugees must be guaranteed full and equal rights and protections, including the right to form and join a union and to collectively bargain for fair compensation and treatment. Freedom of association is an

enabling right which shifts the power dynamics, enabling workers to protect and advance their interests through collective actions, as well as negotiations with employers. Without realizing this shift, we can never hope to reverse entrenched patterns of discrimination and exploitation against migrant workers. Removing barriers to organizing is critical to defending excluded workers of all sorts, because unions provide concrete mechanisms to enforce labour standards and remedy disputes.

- ***Authentic social dialogue.*** Workers and trade unions must have a clear role in State decision-making and implementation of labour migration policy and monitoring of outcomes, including as they relate to the creation of new channels for migration. The ILO's tripartite structure of consultations (between the government and workers' and employers' representatives) should be a central governance mechanism for global, regional and national labour migration policy, and a necessary vehicle for economic and social integration of refugees and migrants.
- ***Adherence to international standards.*** Labour migration policy must be firmly based in international human rights as well as humanitarian and labour law, requiring governments to commit, explicitly, to aligning their legislative frameworks with the relevant instruments. It must promote the ratification of the ILO core conventions as well as the migration-specific conventions¹. The ILO should be the lead UN agency on the governance of labour migration, as it has a rights-based, constitutional mandate and expertise in labour.

Commitment to decent work and sustainable development. Labour migration policy should protect and empower workers in countries of origin, transit and destination, and produces positive labour market outcomes for all working people, regardless of race, gender or immigration status.

- ***In origin countries.*** Labour migration policy must address the root causes of displacement and complement and support the decent work commitments enshrined in the sustainable development goals, reducing the need to migrate as a means of survival. Migration policy must not be used as a substitute for meaningful development strategies that create decent work in origin countries. Development aid budgets must not be used as a means to compel governments to tighten borders and accept forced returns while disregarding the human rights of migrants and refugees.
- ***In destination countries.*** Labour migration policy must promote an agenda for fair migration and decent work for all. They must be evidence-based, relying on actual labour market needs assessments, and designed in consultation with the social partners (trade unions and

¹Relevant instruments to include the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Core Conventions: C87 on Freedom of Association, and Protection of the Right to Organise; C98 on the Right to Organise and Collective Bargaining, and the Migration-specific Conventions: C97 Migration for Employment Convention; C143 Migrant Workers (Supplementary Provisions).

employers' organizations). This approach would avoid the use of models that empower employers to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work. Refugee resettlement and regularization programmes must emphasize effective labour market integration.

- **Policy coherence.** States must ensure coherence between migration and labour law and policy, along with economic and social policies that promote positive labour market and sustainable development outcomes in both origin and destination countries.

Non-discrimination mandates. Labour migration policy should combat xenophobia and racism, end all forms of discrimination, and ensure equal treatment and access to justice and quality public services for all.

- **Inclusion and outreach.** States must reject the ongoing criminalization of migrant workers, highlight the positive contributions of migrants and refugees, and take active measures to combat xenophobia and racism.
- **Equal treatment.** States must reverse the patterns of racialized and gendered inequality fostered by temporary labour migration programs and prolonged conditions of irregularity. Non-discrimination and equal treatment in respect to wages and working conditions, as well as protection against exploitation, violence and harassment, must be grounding principles.
- **Gender Equality.** Labour migration policy must uplift the rights and agency of women rather than reinforce gendered power relations. To this end, it must explicitly incorporate provisions on non-discrimination and equal treatment of men and women with respect to employment, wages, working conditions and social security benefits, as well as provisions on appropriate health care, and an explicit prohibition on pregnancy testing. Of equal importance are protection measures concerning violence against women in the migration process and in the country of destination.
- **Access to justice.** Workers, irrespective of their presence or legal status in a State of residence, must have access to effective dispute resolution mechanisms and appropriate remedies in case of rights violations. For this to occur without risk to migrants of intimidation or deportation, States must maintain a firewall between immigration enforcement and other functions of law enforcement, including police authorities and labour inspectorate functions.
- **Access to social protections.** States must make social protections accessible and portable and invest in programs that combat social exclusion through the provision of health care and public services, and through quality education and training, including skills upgrading as well as language and vocational training. All migrants, regardless of status, must be able to access public services without fear or discrimination. Thus, States must establish a firewall between public services and immigration control.
- **Access to quality education.** Labour migration policy should ensure the right to free quality education for all migrant children, youth and adults. In addition to basic and post-basic education, migrants should have access to quality early childhood, language and technical, vocational education and training programmes. Particular measures should be taken to enable unaccompanied minors and undocumented children to have access to quality education. Destination country governments should recognise the qualifications of migrants, including those of migrant and refugee teachers as an important pathway to employment and decent work

Diverse channels for regular migration. Given that serious humanitarian concerns gave rise to this process, labour migration policy should prioritize regularization schemes and rights-based channels—which allow migrants the freedom to move, settle, work, and fully participate in society—over expanding temporary or circular work programs.

- **Pathways out of irregularity.** States must commit to maximize opportunities for irregular migrants to regularize their status. We cannot move forward with a responsible strategy to promote safe and regular migration without at the same time addressing the pressing needs and acute exploitation of millions of migrant workers who currently lack status and rights.
- **Humanitarian commitments.** Labour migration policy must acknowledge asylum, refugee resettlement, and other relief programs as essential forms of safe and regular migration. Given the scale of displacement and suffering, it is counterproductive to separate vital refugee commitments from the broader framework of migration governance.
- **Enfranchisement, permanence and family unity.** Labour migration policy must promote regular migration channels that ensure full labour rights, facilitate social and family cohesion, and provide options for permanent residence and meaningful participation in civic life.

Just models for labour migration. Labour migration policy should empower migrants and reduce employers' control over the process. This framework should be guided by principles to ensure equity, and to safeguard rights and standards for all.

- **Worker control of status.** Migrant workers must not be tied to a single employer or forced into indefinite seasonal or circular migration for work. Visa policies must take the needs of workers fully into account, ensuring transferability of work visas to facilitate mobility and increased agency in the labour market. Workers must be able to exercise the option for family unity, permanent residency and eventual citizenship if they desire it.
- **Secure and direct employment.** Labour migration programs must not be used to expand precarious work by deliberately making previously permanent jobs insecure, temporary or contingent, or by facilitating subcontracting, privatization or third-party employment models.
- **Recruiter regulation.** The recruitment industry should be regulated through mandatory, enforceable mechanisms rather than voluntary programmes, with a view to eliminating destructive and exploitative practices. The ILO's "General Principles and Operational Guidelines on Fair Recruitment" must be embedded into the framework on the governance of migration, and States must adhere to these principles, including a commitment to ban recruitment fees that, whether paid upfront or through deductions, can lead to debt bondage and forced labour.