



Re: EU-OACPS Partnership Agreement

(a) Background

1. The Partnership Agreement between the European Union (EU) and the members of the Organisation of African, Caribbean and Pacific States (OACPS), formerly known as the ACP Group of States, is a draft treaty covering a broad range of thematic areas including peace and security, sustainable development, migration and, notably, human rights (hereinafter, the “Agreement”). Negotiations on the Agreement began in September 2018 and formally concluded on 15 April 2021.¹
2. While the Agreement builds on, and is intended to replace, the Cotonou Agreement of 2000, its scope has been expanded to cover new areas, such as “Human Rights, Democracy and Governance in People-Centred and Rights-based Societies” and “Human and Social Development”. Under the guise of advancing *inter alia* gender equality and the empowerment of women, the document introduces several controversial elements, including language on “sexual and reproductive health and rights”, the implicit promotion of “comprehensive sexuality education” programs, and references to controversial, non-consensual political documents. The inclusion of these elements far exceeds the original scope of the negotiating mandate of the OACPS.²
3. The treaty moves far beyond relevant consensus-based, intergovernmentally negotiated agreements at the international level, including at the United Nations, thereby threatening to undermine national sovereignty on these critical issues. In particular, the Agreement purports to place its States Parties under an obligation to, *inter alia*, fully liberalize access to abortion, embrace so-called “sexual rights”, and adopt sex education programs that take into consideration the radical UNESCO guidance on comprehensive sexuality education, without due regard for parental rights. This approach lacks any basis in international law. In addition, it would commit States to coordinate negotiating positions in international fora on the basis of its provisions.³
4. The Agreement consists of a General Part applicable to all parties to the Agreement, and three Regional Protocols for Africa, the Caribbean, and the Pacific respectively, outlining priorities for each region. This memo provides a critical analysis of the

¹ European Commission ‘Post-Cotonou negotiations on new EU/Africa-Caribbean-Pacific Partnership Agreement concluded’ (15 April 2021)

<https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1552>.

² African, Caribbean and Pacific Group of States ‘ACP Negotiating Mandate for a post-Cotonou Partnership Agreement with the European Union’ (May 2018).

³ ‘Negotiated Agreement text initialed by the EU and OACPS chief negotiators’ (15 April 2021) Partnership Agreement Between the European Union and the members of the Organisation of African, Caribbean and Pacific States, art.1.5.

relevant provisions of both the Agreement's General Part and the Pacific Regional Protocol (for reference, see Annex below).

(b) Sexual and Reproductive Health and “Rights”

Relevant Provisions: General Part, Article 36.2

5. Article 36, paragraph 2 of the Agreement requires States to “commit to the full and effective implementation of the Beijing Declaration and Platform for Action and the Programme of Action of the International Conference on Population and Development and the outcomes of their review conferences *and commit to sexual and reproductive health and rights, in this context*”.⁴ It is important to stress that neither the Beijing Declaration and Platform for Action and the Programme of Action of the International Conference on Population and Development (ICPD), nor any of the intergovernmentally negotiated outcome documents of their review conferences, include references to “sexual and reproductive health and rights”.
6. The expression encompasses three elements: “sexual and reproductive health”, “reproductive rights”, and “sexual rights”. The former two are highly controversial and ambiguous, and their acceptance remains contested, as they are widely regarded as a euphemism to promote a “human right” to abortion. In this regard, it must be clarified that there is no ‘right to abortion’ under international law. Rather, States are under an obligation to protect the right to life of all persons, including the unborn.⁵ This is further confirmed by the Preamble of the Programme of Action of the 1994 International Conference on Population and Development (in whose context the abovementioned terms were adopted for the first time). Indeed, according to its paragraph 1.15, “[T]he International Conference on Population and Development does not create any new international human rights”.⁶
7. Similarly, so-called “sexual rights”, have never been agreed upon in any international human rights instrument or other consensus document. Though lacking a codified or otherwise agreed definition, the concept of “sexual rights” is an extremely controversial one, commonly interpreted by various actors as

⁴ ‘Negotiated Agreement text initialed by the EU and OACPS chief negotiators’ (15 April 2021), art. 36.2.

⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art. 6.

See also Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC). Art. 6 recognizes the inherent right to life of every child and establishes the obligation of States to “ensure to the maximum extent possible the survival and development of the child.” Art. 1 does not provide a lower limit on when the status of ‘child’ attaches. The Preamble further recognizes that, “the child ... needs special safeguards and care, including appropriate legal protection *before as well as after birth*”.

⁶ International Conference on Population and Development, ‘Programme of Action’ (Cairo, 1994), art. 1.15.

encompassing *inter alia* matters of sexual orientation and “gender identity”, including marriage and family, as well as abortion.⁷

8. Clearly, the Agreement’s promotion of “sexual and reproductive rights” in Article 36, paragraph 2 of its general part falls short of States’ human rights obligations relating to the protection of the right to life, but also threatens State sovereignty on an issue that falls squarely under national jurisdiction. Furthermore, it constitutes a flagrant overreach of the negotiating mandate adopted by the Member States of the OACPS in 2018, which did not include the abovementioned matters among its objectives and cross-cutting themes.⁸

(c) Sexual and Reproductive Health Services

Relevant Provisions: Pacific Regional Protocol 49.6

9. Under Article 49, paragraph 6 of the Pacific Regional Protocol, States are required to “enact policies and design programmes that aim at achieving universal access to affordable, comprehensive and integrated quality sexual and reproductive health services.”⁹
10. At the intergovernmental level, the term “reproductive health services” is defined by the Programme of Action of the International Conference on Population and Development as including *inter alia* abortion, although with specific caveats designed to limit and constrain its scope as well as to safeguard State sovereignty on this matter.¹⁰ These caveats are set out in paragraph 8.25 of the Programme of Action, according to which “In no case should abortion be promoted as a method of family planning” and that “every attempt must be made to eliminate the need for abortion.” The same article also asserts that “any measures or changes related to abortion within the health system can only be made at the *national or local level* according to the national legislative process.”¹¹ In this regard, it must also be recalled that, upon adoption of the Programme of Action of the ICPD, various Member States entered reservations on the inclusion of abortion in the concept of

⁷ See e.g. World Health Organization ‘Defining Sexual Health’ <<https://www.who.int/teams/sexual-and-reproductive-health-and-research/key-areas-of-work/sexual-health/defining-sexual-health>>. International Planned Parenthood Foundation ‘Sexual rights: an IPPF declaration’ (October 2008) <https://www.ippf.org/sites/default/files/sexualrightsippfdeclaration_1.pdf>.

⁸ African, Caribbean and Pacific Group of States ‘ACP Negotiating Mandate for a post-Cotonou Partnership Agreement with the European Union’ (May 2018).

⁹ ‘Negotiated Agreement text initialed by the EU and OACPS chief negotiators’ (15 April 2021), Pacific Regional Protocol, art. 49.6.

¹⁰ International Conference on Population and Development, ‘Programme of Action’ (Cairo, 1994), art. 13.14b).

¹¹ *Id.*, art. 8.25.

"reproductive health" as a service, or as a dimension of the terms "sexual and reproductive health" and "reproductive rights," among others.¹²

11. Because the references to "sexual and reproductive health services" contained in the Partnership Agreement fail to take into account the carefully negotiated protections for the right to life and State sovereignty in matters relating to abortion, these provisions can be regarded as effectively requiring that States Parties legalize abortion under any circumstances, including as a method of family planning, and as such must be rejected in the strongest possible terms.
12. It is worth noting that the Agreement contains various references to "sexual and reproductive health commodities" and "health-care services".¹³ While none of these terms is explicitly defined in any consensus-based international document, or understood as including abortion, great caution must be exercised when accepting the relevant provisions. Should they decide to become bound by this treaty, States must avoid any ambiguity and clearly declare upon ratification that their interpretation of these terms does not include abortion or other procedures, goods or services that are contrary to national law.

(d) Comprehensive Sexuality Education

Relevant Provisions: Pacific Regional Protocol, Article 49.6

13. In addition to sexual and reproductive health services, Article 49, paragraph 6 of the Pacific Regional Protocol also calls on States to "enact policies and design programmes" on "sexual education programmes, taking into consideration the UNESCO international technical guidance on sexuality education, as appropriate".¹⁴
14. The abovementioned technical guidance promotes so-called "comprehensive sexuality education" (CSE), a curriculum adopting a supposedly "rights-based" approach to sex education to promote 'sexual exploration', abortion and radical understandings of gender and sexual identity.¹⁵ Comprehensive sexuality education (CSE) curricula adopt a supposedly "rights-based" approach to sex education to promote 'sexual exploration', abortion and radical understandings of gender and sexual identity. It instructs children to explore their sexuality and advocate for their "sexual and reproductive health and rights" from a young age, all under the guise of ensuring children's health and empowerment. Instead of focusing on risk prevention and responsible and healthy relations, CSE explicitly rejects traditional family values and gender roles and severely interferes with the liberty of parents to educate their children in conformity with their moral and religious convictions, as enshrined in

¹² Id., 187.

¹³ 'Negotiated Agreement text initialed by the EU and OACPS chief negotiators' (15 April 2021), art. 29.5 & Pacific Regional Protocol, art. 49.6.

¹⁴ Id., Pacific Regional Protocol, art. 49.6.

¹⁵ UNESCO 'International technical guidance on sexuality education' (2018).

international law.¹⁶ The promotion of CSE is vocally and consistently rejected at the UN and related international fora.

15. In addition to neglecting the role and rights of parents in such sensitive a matter as the education of their children, the inclusion of references to the UNESCO International Technical Guidance on Sexuality Education in in these provisions would effectively commit States to promoting CSE, and thereby threatens to undermine parental rights in the education of their children, as well as eroding traditional family values by directly targeting children with a harmful, ideological agenda.

(e) Elevation of political commitments to the status of international obligations

Relevant Provisions: General Part, Article 36.2; Pacific Regional Protocol, Article 49.6

16. In addition to the explicit promotion of radical agendas on human sexuality, the Agreement also elevates States' political commitments under a number of controversial soft-law documents to the status of treaty obligations.
17. According to Article 36, paragraph 2 of the general part of the Agreement, "the Parties commit to the full and effective implementation of the Beijing Declaration and Platform for Action and the Programme of Action of the International Conference on Population and Development and the outcomes of their review conferences..."¹⁷ By committing states to the "full and effective implementation" of these international agreements, the provision disregards national sovereignty in determining the extent and nature of implementation. The Programme of Action of the ICPD clearly states that "the implementation of the recommendations contained in the Programme of Action is the sovereign right of each country, consistent with national laws and development priorities, with full respect for the various religious and ethical values and cultural backgrounds of its people, and in conformity with universally recognized international human rights."¹⁸ As mentioned above, several States submitted reservations and interpretive declarations on several controversial elements of the document.¹⁹ Similarly, paragraph 9 of the Beijing Declaration and Platform for Action establishes that "the implementation of this Platform ... is the sovereign responsibility of each State".²⁰
18. In addition to the Programme of Action of the ICPD and the Beijing Declaration and Platform for Action, references to the outcomes of their review conferences are

¹⁶ Jokin de Irala, Alfonso Osorio, Carlos Beltramo, Silvia Carlos, Cristina López del Burgo 'The Politics of "Comprehensive Sexuality Education"' (11 April 2014) Center for Family and Human Rights <https://c-fam.org/briefing_paper/the-politics-of-comprehensive-sexuality-education/>.

¹⁷ 'Negotiated Agreement text initialed by the EU and OACPS chief negotiators' (15 April 2021), art.36.2.

¹⁸ International Conference on Population and Development, 'Programme of Action' (Cairo, 1994), 10.

¹⁹ Id., 187.

²⁰ World Conference on Women 'Beijing Declaration and Platform for Action' (1995), art. 9.

highly problematic, as several of them were neither the subject of an intergovernmental negotiation, nor held under the auspices of the UN General Assembly. Furthermore, some of these documents have been drafted at the regional level, thereby not representing the position of all Member States on such sensitive issues as sexuality and reproductive health. By committing to the full and effective implementation of “the outcomes of their review conferences” in a binding treaty, attempts could be made to penalize States Parties for upholding their legitimate, sovereign positions on these matters, as opposed to the non-consensual norms advanced in these regional reviews.

19. The same is true of certain documents referenced in the regional protocols. Article 49, paragraph 6 of the Pacific Regional Protocol states: “The Parties shall support the effective implementation of the Asian and Pacific Ministerial Declaration on Population and Development, as appropriate.”²¹ The Outcome of the Sixth Asian and Pacific Population Conference of 2013, like the documents adopted by its regional counterparts, promotes CSE and sexual and reproductive rights, including for children. It also calls on States to prohibit practices such as “parental consent requirements to receive health services, including: (i) sexual and reproductive health services”.²² The Ministerial Declaration failed to achieve consensus, with several States voting against or abstaining. Several reservations were also made, opposing language on “reproductive rights”, sexual orientation and “gender identity”.²³
20. The provision calls for the implementation of this document “as appropriate”. However, this qualifier is too weak to offset the dangerous language contained in it. Even if not strictly binding on States, the implicit endorsement of the non-consensual document may compromise national sovereignty on policies related to abortion, sex education and related areas.

(f) Recommendations

21. The draft Agreement represents a major threat to national sovereignty on sensitive issues such as human sexuality, the protection of life, and marriage and the family. Some aspects of the Agreement fall beyond the scope of the negotiating mandate of the OACPS and, if ratified in its current form, threaten to bind its Member States to support positions that are not only in direct contradiction of its national laws and values, but also would result in a violation of their obligations under international human rights law. Beyond the harmful impact the ratification of this instrument would have at the national level, the adoption of the Agreement as a framework for EU

²¹ ‘Negotiated Agreement text initialed by the EU and OACPS chief negotiators’ (15 April 2021), Pacific Regional Protocol, art.49.6.

²² Economic and Social Commission for Asia and the Pacific ‘Asian and Pacific Ministerial Declaration on Population and Development’ Sixth Asian and Pacific Population Conference (2013), para.112.

²³ *Id.*, 38.

and OACPS Member States to “establish common positions in the framework of the United Nations and other international and regional organisations and forums” has the potential to dramatically impact the development of international human rights law in the future.²⁴

22. In light of the aforementioned, the following priority avenues of strategic action are recommended to governments for consideration:

- a. Partner with likeminded States to formally denounce the overreach of the ACP negotiating mandate for a post-Cotonou Partnership Agreement with the European Union of 30 May 2018, and demand the deletion or, in the alternative, the immediate renegotiation of provisions of the draft Partnership Agreement and relevant Regional Protocols related to “sexual and reproductive health and rights” and “reproductive health services”, namely:
 - i. Article 36, paragraph 2, of the Partnership Agreement (Part II, Title III, Chapter 3);
 - ii. Article 49, paragraph 6 of the Pacific Regional Protocol (Title V, Chapter 2);
- b. Oppose the signature, provisional application, and conclusion of the Partnership Agreement and the Pacific Regional Protocol;
- c. Oppose the ratification of the Partnership Agreement and the Pacific Regional Protocol, in accordance with relevant domestic procedures;
- d. Without prejudice to the ratification of the Partnership Agreement and the Pacific Regional Protocol, enter reservations to the following provisions:
 - i. Article 36, paragraph 2, of the Partnership Agreement (Part II, Title III, Chapter 3);
 - ii. Article 49, paragraph 6 of the Pacific Regional Protocol (Title V, Chapter 2).
- e. Formulate a conditional interpretative declaration specifying that the meaning of the terms “sexual and reproductive health”, “reproductive health”, “sexual and reproductive health and rights”, “sexual and reproductive health commodities”, “sexual and reproductive health services”, “sexual and reproductive health-care services, information and education” does not include abortion or any other procedures, goods or services that are against national law;

²⁴ ‘Negotiated Agreement text initialed by the EU and OACPS chief negotiators’ (15 April 2021), art. 1.5.

- f. Formulate an interpretative declaration stating that the development and provision of “sexual education programmes” will be undertaken with full respect for the rights of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions, and that in no way does any reference to the UNESCO International Technical Guidance on Sexuality Education contained in the Partnership Agreement and the relevant Regional Protocol impose an obligation to incorporate comprehensive sexuality education in national school curricula.

Annex: Key Red-line Provisions of the Draft Partnership Agreement

General Part

Art. 29(5) - The Parties shall support **universal access to sexual and reproductive health commodities and healthcare services**, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes.

Art. 36(2) - The Parties commit to the full and effective implementation of the Beijing Declaration and Platform for Action and the Programme of Action of the International Conference on Population and Development and the **outcomes of their review conferences** and commit to **sexual and reproductive health and rights**, in this context.

Pacific Regional Protocol

Art. 38(4) - The Parties shall support measures to enhance a rights-based approach to development, encompassing all human rights, and take the necessary steps to ensure, inter alia, equality and non-discrimination for all in the enjoyment of human rights, including access to and control over the resources and services essential for the right to an adequate standard of living. These include, but are not limited to, the rights to education, health, **including sexual and reproductive health**, food, drinking water and sanitation, adequate housing, work and justice. The steps to be taken for the realisation of these rights shall include accessible services addressing the causes and adverse impacts of climate change and the promotion of fair and equitable distribution of resources.

Art. 49(6) - The Parties shall commit to the full and effective implementation of the Beijing Declaration and Platform for Action, the Programme of Action of the International Conference on Population and Development, and **the outcomes of their review conferences**. They shall enact policies and design programmes that aim at achieving universal access to affordable, comprehensive and integrated quality **sexual and reproductive health services** with adequate counselling, information and **sexual education programmes, taking into consideration the UNESCO international technical guidance on sexuality education**, as appropriate, as well as the **delivery of sexual and reproductive health-care services**. The Parties shall support the effective implementation of the **Asian and Pacific Ministerial Declaration on Population and Development**, as appropriate.