

Pacific CSO Position on the Post Cotonou Agreement

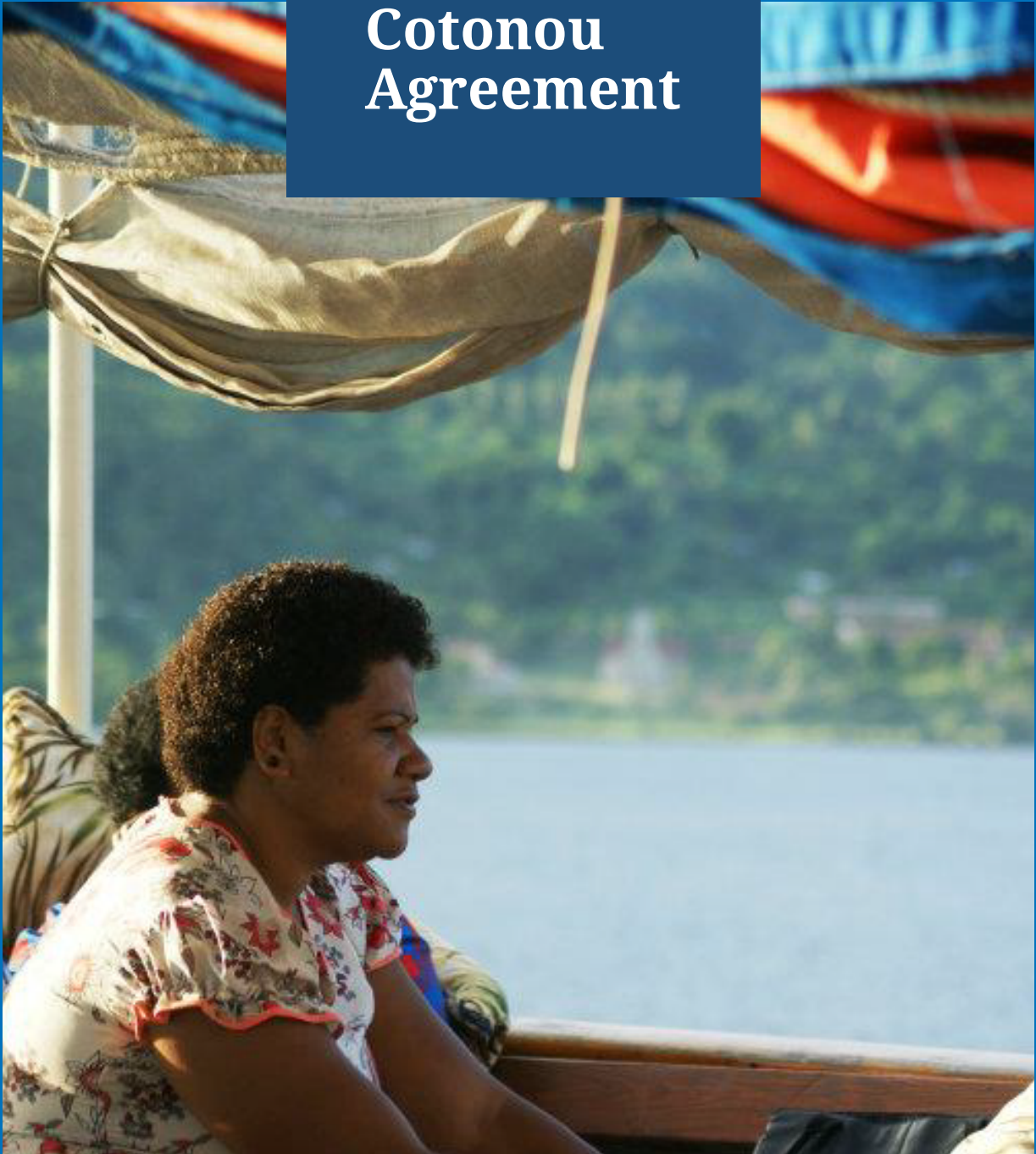


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Briefing Paper for Pacific ACP (PACP) negotiators submitted by Pacific Civil Society Organisations on the Post Cotonou Agreement ¹

21st February 2019

Overview:

If Pacific ACP (PACP) states enter negotiations with the European Union (EU) on a Post Cotonou Agreement without due process and a thorough and inclusive regional and national consultative framework, it will be contrary to the spirit of the Cotonou Partnership Agreement (CPA), which involved wide participation of both states and non-state actors (NSAs). It is also potentially dangerous as well as counter-productive as it could ultimately deny the region prospects for sustainable and equitable development.

The current Cotonou Partnership Agreement (CPA) expires in 2020 and the EU and its African, Caribbean and Pacific (ACP) partners have begun preparations towards a successor to the CPA. The ACP Council adopted a negotiating mandate on 31 May 2018 and the EU Council adopted the EU negotiating directives on 22 June 2018. The two Chief Negotiators launched negotiations² on 28 September 2018 in the margins of the United Nations General Assembly (UNGA) meeting in New York. First rounds of technical negotiations between the European Commission and the ACP began in Brussels on October 18, and on December 5th to agree on practical modalities, structure and strategic priorities.

From the outset, the EU has been forthcoming in its approach, and open about its agenda. However, the devil is buried in the details and Pacific ACP states will require adequate time to study the EU's proposals; understand their intent; develop appropriate responses that are not EU-centric and that protect the integrity of the region and the right of Pacific Island states to develop at their own pace, and negotiate on their own terms. There is increasing concern, that the ACP is under-prepared to strategically negotiate with the EU, and will likely accommodate the EU's negotiating position.

This already seems to be the reality with the adoption of new modalities for high-level political decision-making (on the sidelines of the UNGA) under the pretext of efficiency. In addition, the ACP has adopted the structure of a foundational agreement and three separate regional agreements against its insistence of one single undertaking. With means of implementation, a key element of interest to ACP being deferred to a later date in negotiations, bringing uncertainties beyond 2020. Unrealistic time frames for negotiations and the proposed conclusion of the Agreement by the middle of this year have also split ACP capacities into parallel negotiations on both the foundational document as well as regional partnership agreements.

PACP negotiators need to be cautioned against a rush to complete negotiations for a binding treaty that is extensive in its coverage. Due process for national consultations including with parliamentarians,

¹After a series of consultations in 2018 and 2019 this Paper has been prepared by a collective of Pacific Civil Society Originations (DAWN, Diva, FCOSS, Oxfam Regional, PANG PIANGO, PICAN, PYC).

²The EU Commissioner of International Cooperation and Development, Neven Mimica (EU) and the Minister of Foreign Affairs of Togo, Professor Robert Dussey (ACP).

local councils, media, academia, trade unions, indigenous peoples and local communities, civil society actors and private sector, will be required to guide negotiators.

This paper is aimed at, providing a basic understanding of Pacific civil society concerns around the current draft EU/ACP negotiating framework, and provide some strategic direction for the consideration of Pacific interests in key engagement opportunities.

What is the Post Cotonou Agreement?

The Post Cotonou Agreement will be the core political, economic, social, environmental, and cultural framework governing EU relations with Africa, Caribbean and Pacific (ACP) states. The agreement will portray the relationship as an equal and mutually beneficial partnership, based on common foundations, objectives, principles, priorities and increased cooperation, and will be structured on three regional partnerships i.e. EU-Africa; EU-Caribbean and EU-Pacific. Under the EU proposed institutional framework, the agreement will be for 20 years and is likely to include review clauses.

The process towards the agreement needs to reflect the special and differentiated circumstances and needs of Small Island Developing States and LDCs, and recognize that the EU/ACP negotiating partnership stems from historical and existing sites of inequality.

The proposed EU-Pacific Partnership envisioned by the EU will replace the EU's Strategy for Pacific Islands³. EU will leverage the presence of their Overseas Countries and Territories, particularly their role in regional integration, to bolster this agreement in their favour.

What is different about the contexts of the CPA and the Post Cotonou Agreement?

The CPA reflected a marked departure from its predecessor, the Lomé Convention, which was the first agreement between the EU and ACP states. Lomé was a non-reciprocal aid and development agreement under which ACP countries enjoyed preferential access to EU markets and higher prices for their exports of agricultural products such as sugar and bananas, and fish, as well as development aid. It was based on what Dr. Roman Grynberg alluded to as Europe's 'post-colonial obligations'.⁴

Major geo-political changes, however, followed the end of the Cold War: a period of capitalist triumphalism, 18 years of IMF and World Bank imposed neoliberal economic restructuring in developing countries and, most significantly, the establishment of the World Trade Organization (WTO) in 1995 with its institution of a rules-based international trade regime, driven by and favoring the interests of Northern based multinational corporations.

The CPA was thus framed as a non-reciprocal partnership, supposedly aimed at helping ACP states 'adapt progressively to the new conditions of international trade' and committing the partners to 'WTO-com-

³<http://www.eufp.eu/eu-pacific-strategy>

⁴ Grynberg, Roman (1997) 'Towards a North-South Monologue: A Pacific Response to the Green Paper on Relations between the European Union and the ACP Countries', ECDPM Working Paper No 25, Maastricht.

patible trading arrangements' (Articles 1 and 36 (1)). Phasing out preferential market access for ACP exports to the EU was built into the CPA, moving ACP economies to compete in the theoretically 'level playing field' of free trade.

Negotiations on Economic Partnership Agreements (EPAs), between the EU and ACP states, which the EU subsequently initiated with the aim of opening up ACP economies to European investors and suppliers of goods and services, saw only two Pacific Island states, Papua New Guinea and Fiji (2007), initial the iEPA under duress. In 2018 however two more Pacific states were approved for accession by the EU (Solomon Islands and Samoa) and Tonga informed the EU of its intention to accede. The EPA was strongly opposed by NGOs in all ACP regions including in Europe. Only the Caribbean states signed a comprehensive EPA. For Pacific ACP states, the prolonged EPA negotiations were a costly exercise and were fraught with some unwelcome EU belittling and bullying.

Despite the failures of the EPA to deliver real development to PACP countries it looks as though the European Union will once again, through the Post Cotonou Agreement, push for enhanced and undistorted access for European investments to PACP resources.

The Post Cotonou Agreement is also being negotiated in a radically changed geopolitical context. The Eurozone debt crisis from the end of 2009, Europe's unforeseen migration crisis triggered in part by NATO's intervention in 2011 in the widening Middle East crisis, increased membership of the EU (28 members in 2013, compared with 15 in 2000) with many new members having no direct former colonial relationship or economic obligation to developing countries, the crisis of climate change and the Paris Agreement, the UN 2030 Agenda on SDGs and Brexit, provide a backdrop to the EU's current position in relation to ACP states. What the EU negotiates under this new agreement will have to benefit the Europeans as a matter of principle.

While the SDGs provide a visionary, multilateral framework that is intended to be transformative and inclusive, and that should encourage learning from sustainable development challenges of the past, in the present era of a rush for the earth's remaining resources, the EU is aggressively pushing for ACP countries to give European investors undisturbed access to ACP natural resources, including marine resources.⁵ It is clear that EU interest in Africa surpasses that in the other ACP regions, although their interest in accessing the resources of the Pacific Ocean is undisguised.

The Post Cotonou Agreement will see the closure of the European Development Fund when EDF 11 expires in 2020, by which year all Pacific Island Countries (PICs) are expected to have graduated from LDC status. Thereafter all development funds will be in one bucket or envelope, and allocated in accordance with priorities under the agreement.

⁵ See EU raw materials strategy, <http://ec.europa.eu/growth/sectors/raw-materials/>

The EU is also seeking to impose compulsory coordination among ACP states in pursuing their economic and political agendas, including joint positioning in international organizations and meetings, for instance at the World Trade Organization (WTO). This should not be agreed to. PACP should protect its policy space and its right to choose who they coordinate or align themselves with in international organisations.

Pacific CSO's concerns: The concerns of Civil Society Organisations include, but are not limited to, the following:

1. The Pacific must push the EU in negotiations for the PCA to urgently and concretely scale up its Climate Change actions in a time bound manner (10 years) in line with Pacific priorities, and to lead the global community to move to limit global temperature below 1.5C.

The issue of Loss and damage (L&D) was a key ask by Pacific Island states during the Paris Agreement Negotiations and they were very successful in securing the inclusion of L&D as a key pillar of the Paris Agreement. PACP states must ensure that L&D is also part of the final Post Cotonou text on Climate Change.

2. That this will be an agreement that binds Pacific Island states, locking us into a relationship with the EU that will stifle and prohibit us from following an independent development path. That the treaty needs to place importance on the promotion and respect of Pacific resources, knowledge and ownership for building sustainable peace at all levels, as the EU details interventions that frame a model of governance and development that impose upon Pacific values and undermine genuine Pacific regionalism.
2. The Pacific needs appropriate time to conduct the necessary assessment, consultations and consolidation of its development priorities. Pacific CSOs are strongly for development priorities that are determined inclusively with parliamentarians, local councils, media, academia, indigenous peoples and local communities, trade unions, civil society actors and the private sector.
3. The Pacific needs to consider the implications of the proposed end of the EDF in the broader context of our longstanding dependency on aid, which predisposes us to manipulation by outside interests. The new modality of development cooperation proposed by the EU, which is tied to a binding agreement that includes a raft of undertakings and processes to advance a continued agenda of neoliberal policies that serves the EU's interests, could also be replicated by other traditional donors and partners. We should not be led into this agreement by an addiction to aid.
4. As outlined in its raw materials strategy, the EU is open about its interests in accessing raw materials in the ACP region. It wants access to the Pacific Ocean and its resources to advance claimed 'blue' and 'green' investments that are, in reality, driven by the commercial interests of European corporations, which aim to plunder the oceans. The Pacific, with the largest Ocean on earth, is indeed now at the center of a rush for Ocean resources, particularly deep-sea mineral

and genetic resources. These are highly contentious issues, strongly resisted by people across the Pacific. The need for sustained investments over the long term for transitional support programmes in conflict prone areas such as the Melanesian sub-region.

5. The EU's interests in Pacific fisheries is also openly declared, and may involve an agenda of interfering in regional fisheries management arrangements, including through the WTO, where they want countries of the three ACP regions to adopt a common position, which should not be agreed to. PACPs should protect their policy space, and their right to choose who they coordinate or align with in international meetings or negotiations.
6. The ACP institutional set-up was designed to serve the interests of the EU in the post-colonial era. The development aspirations of Pacific Island states may not be well served by the overall mandate of the ACP block.
7. Other major powers like China and the US are now entering the Pacific with their own agendas -the Belt and Road initiative and countering China respectively - offering similar or counter proposals. Pacific Island states need the space and time to look at their own development goals and options, in this frenzied new era of geo-political and economic rivalry, with different partnership models.
8. That the PCA reflects the unique challenge of the PACP region and the urgency of the unfinished business of decolonization which is totally averse to a people centred, stable and peaceful Pacific region.

What are the alternatives?

The SAMOA Pathway⁶ offers a collectively agreed framework that needs to be prioritized for implementation. It was endorsed by SIDS leaders in 2014, in the lead up to Rio + 20 and aimed at meeting the challenges faced by SIDS in their pursuit of sustainable development.

The implementation of commitments made under the different SDG goals, and especially under Goal 13 on Climate Action and Goal 14 on Oceans, needs prioritization in the Pacific.

Priorities for the Pacific Region agreed to by the meeting of PACP Leaders in Nauru in 2018.⁷

The Pacific needs to immediately convene a broader development conversation that takes a consultative, open and transparent approach to deciding Pacific-specific development goals and priorities that are not externally conceptualized or influenced, foreign led or donor-driven.

⁶<http://www.sids2014.org/index.php?menu=1537>

⁷ Ocean governance through the Blue Pacific identity; Safeguarding the regions' resources and security; Elevating the Blue and Green Economy to the forefront; Commitment to addressing climate change and disaster resilience; Economic partnership; Supporting youth and vulnerable groups.

This conversation needs to include a space to strategically look at the growing geopolitical and economic interests in the Pacific region by the economic North, across sectors and particularly in relation to access and use of the region's natural resources.

The establishment of a wider consultation mechanism to consider the Post Cotonou Agreement at national and regional levels is imperative given the wide-ranging and long-term implications of the agreement. At the very least, the Pacific ACP states need to demand that more time be given to allow for due process.⁸

ANNEX 1 STRATEGIC PRIORITIES:

Title I: People centered, Rights Based, Peaceful and Stable Societies.

At first glance, the Negotiating Directives for a Partnership Agreement between the European Union and its member states and the ACP, looks to be comprehensive and thorough in its intent to build people centered, rights based, peaceful and stable societies through the agreement.

This is particularly evident when one considers the document alongside the ACP Negotiating Mandate adopted on 30th May 2018 by the ACP Council of Ministers which outlines very generally the parties' aspirations for democracy, peace, security, post conflict reconstruction and rehabilitation and recognizes that these issues are directly related to sustainable development.

The lack of details and content in ACP's negotiation mandate is worrying in that it has not articulated what may be core objectives for such a partnership agreement to Pacific communities and peoples. In the absence of these details, it is unclear how Pacific mandates for peace, security and people centered development are articulated in the Framework for Pacific Regionalism, Boe Declaration and successive Forum Leaders' mandates can be successfully encapsulated in the agreement.

EU's HR, Democracy and Good Governance vs. the ACP's Culture and Development

EU's intentions are encompassed under eight key features although there are variations in the language that signal placing of emphasis on particular components of human rights, democracy and good governance.

What must be noted is that even with the 8 key features, there are demarcations about what the agreement will ensure and what parties must commit to. These are summarized below

Agreement to:

- a) ensure parties commitment to promote, protect, fulfil HR and fundamental freedom, democracy, rule of law, non-discrimination, equality, solidarity aligned to UN charter
- b) include commitment to support enabling space for CSOs
- c) include commitment to support Independent judiciary
- d) include commitment to support anti-corruption and public integrity which is also to include aid monitoring (focused on utilisation)
- e) include commitment to statistical systems for monitoring of reforms for sustainable development

Parties must commit to:

- f) good governance through domestic and international policies – this will be a fundamental part of the agreement –and shortcomings in the achievement and fulfilment of essential and fundamental elements pose challenges for the partnership
- g) Promote/facilitate All HR – equal access to opportunities for all members regardless of ethnicity, gender, age, disabilities, religion, beliefs, sexual orientation and gender identity. Commitment to fight against racism, discrimination xenophobia and related intolerance and recognition, advancement of rights of Indigenous Peoples.

- h) foster inclusive political processes - e.g. participation of women and youth in politics, media freedom, freedom of expression as key to democracy

The differences in the text in this section – particularly emphasis placed on what the agreement will encompass and what the parties should commit to – provide useful insights for exploring opportunities that may exist under these broad themes.

In comparison, the ACP negotiating mandate calls for the integration of culture into national strategies and sectoral policies, particularly those related to gender, employment, education, trade, tourism, environment, climate change and natural disaster risk reduction as it recognized the role of culture and multiculturalism in building social cohesion and peace.

It also recognized that any gains in sustainable development can be reversed if there are no resources, instruments or policy buffers dedicated to minimizing vulnerability and building resilience.

While this summary is not exhaustive of ACP mandates on these issues, what the document outlined lacked substance, therefore limiting the scope of any analysis on these themes. What can be surmised, however, is that the ACP still needs to better articulate goals – qualitative at the least - particularly as it relates to culture and development.

For instance the Pacific bloc could have begun to encapsulate qualitative goals pertaining to gender equality that may have come out of the 13th Triennial Conference of Pacific Women and 6th Meeting of Ministers for Women in 2017.

It must also be noted that the ACP mandate on vulnerability and resilience building does not make mention of any existing capacities for resilience and more so, the need for localization or the potential for value adds to existing resilience practices or capacities in the Pacific region.

Peace, security and justice: Deep rooted conflicts and the Colonial Hangover

Unlike the previous sections, the ACP position on issues of peace, security and justice emphasizes at the outset the need to address deep rooted causes of conflict and instability.

Under the themes peace, security and democracy, the ACP group emphasizes its recognition that sustainable development can only be achieved when there is peace, stable security, good governance and respect for human rights, democratic principles and the rule of law.

The ACP alludes to the Port Moresby Declaration in emphasizing the group's commitment to embedding a culture of peace and underscoring regional integration and intra ACP cooperation in this regard. While it acknowledges that significant progress has been made in conflict resolution, consolidation of democratic practices and the rule of law amongst other things, it clearly articulates that the new agreement should support efforts to advance peace, security and democracy in accordance with SDG 16.

The EU's intent may be similar in framing, particularly as it reiterates that there cannot be sustainable development without peace and security and vice versa. However, when compared in detail, the EU's position and elaborate strategies for an "integrated approach to conflict and crises" seem to diverge from the deep rooted causes of conflict and stability as explicitly expressed by the ACP group.

As a result, its propositions about what the agreement will emphasize and what parties will need to ensure – noting again the slight variations in language and therefore emphasis – despite its good intentions, seem to ignore the historical relationship of the EU as colonial masters to the ACP and the complexities that may underlie such negotiations.

A glaring example is the ACP's inability to link issues of deep rooted conflict and instability it mentions at the outset to the legacies of colonialism, thereby potentially weakening the sustainability of peace building interventions proposed by the EU for the ACP regions.

Notable too is the EU's explicit intent on parties improving resource governance particularly extractives to prevent conflicts compared to ACP's vague references to strengthen democratic institutions' responsible management of natural resources for sustainable development. This particularly needs to be reframed to ensure regional approaches and needs are prioritized, recognizing that natural resources have always been a contentious and resisted issue in the Pacific.

Anti-corruption and integrity systems are another point of divergence as EU's emphasis on these issues is consistent while ACP's approach has been to obscurely group these under organized crime. Pacific governments, if not all of ACP, must be encouraged to scale up its emphasis on this particular theme or face an imposition of models of integrity that are disconnected from Pacific relational values.

Pacific Practices for Pacific Stability

Section 5: EU- Pacific Partnership of the EU Negotiating Directives outlines more specifically the EU's Pacific-specific intent from the Basis for (their) Cooperation to what is expected of parties concerning security, human rights and good governance.

These provide a number of entry points for addressing longstanding issues of concern particularly to Pacific civil society organizations around

- a) Effective and independent national human rights institutions and the need for a regional human rights mechanism that contributes to regional peace and stability;
- b) The unfinished business of decolonization which is totally averse to a people centred, stable and peaceful Pacific region.
- c) The need for sustained investments over the long term for transitional support programmes in conflict prone areas such as the Melanesian sub region.
- d) The importance of promotion and respect of Pacific resources, knowledge and ownership for building sustainable peace at all levels, as the EU details interventions that frame a model of governance that impose upon Pacific values and undermine genuine Pacific regionalism.

ANNEX 2 STRATEGIC PRIORITIES:

Title II Human and Social Development

The First Round of Negotiations between the EU and ACP resulted in convergence on 5 titles, the second of which is Human and Social Development. This section raises issues and key concerns relevant to Human and Social Development and highlights red flag issues for PACP states in the ACP Negotiating Briefs on Cross Cutting Issues.

Neoliberal Economic Policies Severely Undermine Human and Social Development

We support the ACP position that the Post Cotonou agreement be aligned to Agenda 2030 and the SDGs as the overarching development framework, and that it prioritize reduction of poverty, addressing inequalities, and progress towards the SDGs. We also endorse the EU and ACP states convergence on Human and Social Development as one of the 5 titles.

We point out, however, that human and social development cannot be achieved by economic growth alone. Economic growth does not ‘trickle down’; it must be accompanied by redistribution for the benefits of growth to be shared. The dominant economic model of neoliberalism, which is not questioned in the ACP Negotiating Briefs, favors business and higher income earners. It has enabled obscene concentrations of wealth in the hands of a very few, both within countries, and globally, while impoverishing the mass of ordinary people⁹. Addressing the resulting crises of poverty and extreme economic inequality, which was first exposed in Oxfam’s report to the World Economic Forum in 2014¹⁰, demands a radical shift away from the neoliberal economic model, and an explicit commitment to this should be made by PACP states. Such a shift is imperative if PACP states genuinely wish to meet the SDGs and achieve human and social development. Redistribution requires, *inter alia*, returning to a more equitable, progressive income tax system, so that higher income earners pay a fairer share of tax.

Economic, Social and Cultural Rights and Human and Social Development

Economic redistribution through taxation is also fundamental to States’ ability to deliver on their commitments to economic, social and cultural rights, which are progressively realized, based on the availability of State resources. We remind PACP governments that the Draft ACP Negotiating Brief on Pillar III (Political Dialogue and Advocacy) lists among the objectives of Political Dialogue: (e) highlighting the indivisibility of human rights and a balanced treatment [of] economic, social and cultural rights. ESC rights under the ICESCR include firstly the right of all peoples to self determination, specifically to ‘freely determine their political status’ (Art. 1); the right to an adequate standard of living including adequate food, clothing and housing, and to ‘the continuous improvement of living conditions’ (Art 11); the rights to education, to the highest standard of health, to safe and affordable housing, water and sanitation; the right to work, to just and favorable conditions of work, including fair wages and safe and healthy

⁹ According to Oxfam (2017) the eight richest men own the same amount of wealth as the 3.6 billion people who make up the poorest half of humanity. See: An economy for the 99 percent, Oxfam, 16 January 2017 <https://www.oxfam.org/en/pressroom/pressreleases/2017-01-16/just-8-men-own-same-wealth-half-world>

¹⁰ See Working for the Few: Political Capture and Economic Inequality, Oxfam, 2014, <https://www.oxfam.org/en/research/working-few>

working conditions; the right to form and join trade unions that function freely, and to strike in pursuit of improved wages and conditions (Art 8). ESC rights are fundamental to human and social development, especially in developing countries.

The ACP Negotiating Briefs on Cross Cutting Issues include a detailed elaboration on improving access to basic health systems in ACP countries. While the language of rights is not used, and there is no explicit mention of the high cost of patented medicines protected by the pharmaceutical industry, WHO is cited as reporting that out of pocket payments account for one third of total health care spending in most low income countries, and it is noted that this alone pushes families into poverty. Well-resourced and managed public health systems are critical for human and social development.

Protecting the Right to Regulate in the National Interest and Human and Social Development

PACPs must insist on embedding in the foundational agreement recognition of their right to regulate in the national interest, which is founded in the right to development (adopted by the UNGASS Declaration in 1986) and also in Art 1 of the ICESCR, under the right of self-determination of all peoples, which explicitly includes the right 'to freely pursue their economic, social and cultural development'. This will ensure that PACPs can make law and policy to support human and social development without infringing the proposed binding agreement that may tie them to following neoliberal economic reforms that undermine national interests, or prevent them from adopting trade policies to address the NCDs (or any other) epidemic.

The right to regulate in the national interest also means preserving the right to use taxation to support the provision of social services; regulating to ensure workers are paid living wages and enjoy fair working conditions across all economic and production sectors and especially in industries linked with global supply chains; prioritizing universal access to publicly-funded and high quality education and health services at all levels, including universal access to good quality drugs at affordable prices; ensuring universal access to safe, climate-proof and affordable housing, safe water and sanitation; and instituting or strengthening non-contributing social protection systems for those working in the informal sector, who are not covered by contributing systems like provident funds.

Protecting Semi-Subsistence Livelihoods, Communal Land Ownership and Resource Bases

Safeguarding semi-subsistence livelihoods and the communal land ownership systems on which they are based, and protecting natural resource bases are fundamentally important to human and social development in PACPs. Subsistence or semi subsistence livelihoods support a majority of our region's people. The EU- Pacific Partnership Agreement under Title ii: Inclusive and sustainable economic development seeks to dismantle bottle necks requiring parties to enable legal environment that may seek to once again challenge the communal land ownership in the Pacific. Safeguarding and supporting these systems will ensure national food security as well as provide protection against impoverishment through dispossession, resource depletion and environmental despoliation.

To further protect the natural environment and the livelihoods of those who depend on it, PACPs should also seek to embed in the Post Cotonou agreement recognition and compliance with :

- i) the principle in environmental law of *Polluter Pays*, which makes the party responsible for producing pollution responsible for paying for the damage to the natural environment. This is especially important given the tragic histories in our region of social and environmental devastation caused both by destructive extractive industries (phosphate, copper and nickel mining), nuclear and missile testing under colonialism; and ongoing and new mining projects involving multinational companies operating extraterritorially in PACP states.

It is all the more urgent with the enormously risky experimental seabed mining due to commence in the Pacific Ocean. The EU has not only openly declared its interest in deep sea mining in its Negotiating Directives for the PCA, it has been supporting the facilitation of DSM since 2011 through the SPC-EU EDF 10 Deep Sea Minerals Project.

- ii) the principle embedded in the UN Declaration on the Rights of Indigenous People which was widely supported by EU states when it was adopted by the UNGASS in on 13 September, 2007, of *Free, Prior and Independent Consent (FPIC)*.

In support of Human and Social Development, PACP states are encouraged to seek a commitment in the agreement to creating economically and socially equitable societies – the problem of growing inequality in our region has been formally raised by the Secretary General of PIFS, Dame Meg Taylor. To ensure the most equitable sharing of ‘the fruits of growth’ referred to in the EU’s Negotiating Directives, PACPs must seek a specific commitment in the agreement to decent work, living wages and safe working conditions across global supply chains.

Gender Equality

We support the ACP’s commitment to give voice to women, promote their active participation in policy dialogue and development cooperation programs that safeguard their interests – e.g. viz natural disaster risk management, SRHR, equal access to education, domestic violence, social, economic and political opportunities. We recommend that the institution of Temporary Special Measures (TSMs) be specifically included as a commitment in the PACP protocol to ensure women’s representation in national parliaments and local government councils.

We would also like to see strong commitments from PACP states to working towards achieving gender equality and realizing women’s substantive rights, and cooperating to eliminate all forms of sexual and gender based discrimination and violence.

We strongly advise that the ACP language of ‘gender perspective’, which is meaningless, be replaced by language that refers to ‘gender equality’ or ‘gender equitable’ policies, as in, ‘Ensure that all policies are gender equitable as a key contribution to the achievement of the SDGs’.

We urge the PACP states to strongly affirm promotion, protection and fulfillment of all human rights, and

to commit to full and effective implementation of CEDAW, the Beijing Programme of Action, ICPD Programme of Action and all S&RH&Rs for all persons, in all their diversities.

Persons with Disabilities

We expect PACP states to fully implement the Convention on the Rights of Persons with Disability (CRPD) and commit to increasing and improving access to education and training opportunities in all fields and at all levels for persons with disabilities, as well as to ensuring that persons with disabilities are properly consulted on policies and programmes intended to benefit them.

Access to Sufficient, Affordable, Safe and Nutritious foods

To improve domestic food supply and ensure food security, we urge PACP states to commit to improving technical and financial support for, and returns to, food farmers; to commit to using the mechanism of price control to ensure that basic and healthy food items are affordable; and to ensure that PACPs retain policy space to impose taxes on unhealthy foods, whether imported or domestically produced.

Population Growth and the Demographic Dividend

We support the ACP Negotiating position of preserving the acquis of the Cotonou Agreement and creating a framework for consultative processes with representatives of youth on ACP-EU Development Cooperation programs (at regional, national and community levels) and promoting policy dialogue and consultations on Migration, Climate Change, Health Challenges, Education, Entrepreneurship and Political Dialogue (ACP Negotiating Briefs- Cross Cutting Issues). We also seek commitments to increased investment in publicly funded education/training and health services to ensure the outcome of a highly productive young workforce.

ANNEX 3 STRATEGIC PRIORITIES:

Title III Inclusive Sustainable Economic Growth and Development

It is close to two decades since the Cotonou Partnership Agreement (CPA) came into being. Its promise was that European aid, in the context of comprehensive reciprocal trade liberalization and economic deregulation, and managed by politics of mutual respect, would contribute to modernize the ACP economies and deliver the proclaimed benefits of globalization. That has turned out to be a false prospect. The Post-Cotonou negotiations are an important moment to re-shape the future relationship between African Caribbean and Pacific (ACP) States and the European Union (EU). Both come to the table with negotiating mandates that speak the language of wanting to build a more prosperous, sustainable and peaceful ACP – such goals are laudable and should be pursued. However, the stark power imbalance in these negotiations and the competing interests often mean that it is the powerful's understanding of those goals that usually are realised.

Key Outcomes:

This section will focus on the positions and mandates of the EU including the EU/PACP Partnership and ACP that relate to inclusive sustainable economic development pillar of the Post Cotonou negotiations. Under Pillar I, the ACP has wisely chosen to ensure that a key outcome of the negotiations is no binding commitments on market access in investment, services trade, trade in goods or industrialisation – this extends to not accepting any “World Trade Organization (WTO)-Plus” outcomes. In addition to this is the language that supports protection of the policy space of ACP countries to ensure that they can pursue the policies they need in order for their industries to move up value chains. Further is the goal on the cross cutting issues of technology transfer, innovation, research and development which aim to be supported by regulatory frameworks that can assist these.

The ACP key outcomes on Pillar I contain many aspects that would ensure that the outcome of the Post-Cotonou negotiations do not undermine the sovereignty of the PACPs. However, as will be discussed below, the areas of cooperation and the modes of implementation relating to these outcomes may in fact play to the EU's favour and work to undermine their primary goal in supporting PACP development. On the other hand the core of the negotiating mandate produced by the EC comprises the same list of issues that the EU has been seeking to impose on ACP (and other developing) countries in the aftermath of the establishment of the WTO and throughout the EPA negotiations – ranging from enhanced access for and protection of European investors in ACP countries to undisturbed access to ACP natural resources, including marine resources. Furthermore, just as in the EPAs, the European Union has given itself the prerogative of deciding on the configuration of the ACP that it would prefer for the new agreement. In addition the EU wants to use the post-Cotonou agreement to bind the ACP into compulsory coordination and joint positioning in international organisations and meetings, including at the WTO.

Given the rushed time frame and an ambitious road map for completion of negotiations by summer of 2019, the relative unpreparedness of the ACP compared to the EU is likely to repeat the familiar template in which, rather than enter negotiations on autonomous terms to deliver real development, the ACP adjusts itself to the negotiating agenda of the EU and thereby reproduces the imbalances at the heart of

earlier Cotonou negotiations.

Key Pacific CSO concerns:

Civil Society Organisations reiterate their key demands that any future EU-ACP trade and investment framework should:

- protect PACP producers, as well as domestic and regional markets;
- respect the principles of non-reciprocity and special and differential rights particularly for LDC's, SIDS and developing countries;
- exclude pressure for trade and investment liberalisation;
- support the policy space of PACP countries to formulate and pursue their own development strategies to transform their primary commodity economies and adopt strategies for development based on the needs and priorities of the peoples therein,
- PACP must be able to choose their own allies and formulate their own positions in the international fora, including at the WTO.

Under its "Basis for cooperation" the EU states that one of the concrete measures that PACP states will take under a Post-Cotonou agreement is "ensure sustainable access and management of natural resources". This is further expanded in the EU's section on "Blue growth" which states that PACP will take concrete measures to "ensure fair, responsible and undistorted access to extractive sectors, including seabed mining, for all economic players". Whilst this language may sound benign the motivation is to ensure that EU investors have access to customary land and natural resources in the region - including seabed minerals which remain highly contentious issue amongst Pacific people.

As free trade agreements, the discredited Economic Partnership Agreements (EPA's) have no place in any future Post Cotonou relationship with Europe.

- Thus, further planned or intended negotiations aimed at broadening or deepening the EPAs by the European must cease.
- The EPAs that have been so far adopted must not be implemented. We express solidarity with the countries that have so far refused to sign any form of EPAs.
- PACP leaders have "identified that ensuring the long-term sustainability and viability of the region's fisheries resources is a priority". Any reference by the EU to fisheries agreement and their access or management should be treated with great caution regarding Post-Cotonou negotiations.
- PACP countries and EU must seek among the many existing viable alternatives options most suited to the development goals of PACP countries.

PACP Governments must concentrate on delivering on their long-standing obligation to their peoples of a vision and agenda for the inclusive, equitable and gender-sensitive transformation of their economies, driven by their own self-determined national and regional imperatives, built primarily on their human and natural (including marine) resources, and in a manner that best equips their societies to meet the challenges of our times.

ANNEX 4 STRATEGIC PRIORITIES:

Title IV Climate Change, Environment and Resilience

Summary of the Climate Change Negotiation- ACP Mandate

The Cotonou Agreement provides a critical platform for the Pacific to push its priorities on Climate Change to the EU. The EU is a signatory to the United Nations Convention on Climate Change (UNFCCC), and as a developed country party, it has specific obligations under the UNFCCC towards developing countries such as the Pacific Small Island States. Under the UNFCCC, the EU has responsibilities to not only reduce their member states' domestic emissions but to also provide support (i.e. finance, capacity building and technology transfer) to developing countries, especially those that are considered to be particularly vulnerable to the impacts of Climate Change. Pacific Island countries, as small island states (SIDS) under the UNFCCC, are recognised as vulnerable and are considered to be 'special' and 'unique' because of their geographical locations and small economies.

In 2015, 195 countries including the Pacific and the EU ratified the Paris Agreement. The Paris Agreement is an ambitious agreement where parties agreed to work collectively to limit global temperatures at 2C. This agreement also recognised the importance of financing towards building resilience in developing countries and most importantly, it also recognised that there is a limit to adaptation/resilience building for developing countries.

The point beyond adaptation/resilience is known as Loss and Damage, and as frontline victims of Climate Change, loss and damage is a current reality for Pacific islanders. We, in the Pacific, are already losing islands (e.g. in Solomon Islands), our coastal communities are already being relocated (e.g. in Fiji) and some small Pacific countries are expected to become totally inhabitable with the next 20-50 years due to Climate Change. Pacific countries are experiencing extreme climate induced disasters (Category 5 cyclones), flooding and droughts etc, at a level like never before. These climate-induced disasters have rolled back significant development gains in the past years and have forced the Pacific Island states into a constant state of recovery and rebuilding. There is a limit to how much our domestic resources can cater to these, and the level, as well as the urgency of support (financial, capacity building and technology transfer) from developed country partners, is critical. It is also important to note that global emissions were at an all-time high in 2017, after 3 years of being flat- this is unacceptable to Pacific Island states in light of the Paris Agreement and the fact that for several Pacific Island countries climate change poses an existential threat. The Pacific negotiators must commit the EU to do more to ensure that high-emitting EU member countries reduce their emissions.

The latest special report of the IPCC on a 1.5C world clearly indicates that we now only have 10 years before global warming reaches the 1.5C mark. At the 1.5C mark, forecasted damages will be catastrophic and some impacts will be irreversible.

With the urgency of this 10-year time frame in mind, PACPs must push for EU commitment in the agreement to take the strongest actions to scale up EU member states' current ambitions and substantially reduce their emissions. They must also push for accelerated and increased EU support (finance, capacity

building and technology transfer). The EU has ratified both the 1992 UNFCCC as well as the Paris Agreement, and the Pacific must hold EU accountable to these commitments.

Moreover, the Pacific should use the Post Cotonou Agreement to demand strong commitments (especially climate finance) towards adaptation/resilience building from the EU, in light of the disappointing outcome at the COP 24. COP 24 was of great significance as it mandated a rulebook on how to operationalise the Paris Agreement. CSOs, together with most vulnerable countries like the Pacific Islands Countries, were disappointed with the rulebook that was agreed upon at COP 24. It lacked the robustness needed in terms of commitments from developed countries in light of the IPCC 1.5C Report. For example, the demand for more transparency on climate finance, predictability of finance and the need to start a robust process of setting a new global climate finance goal were weakened by developed countries. Financing for loss and damage was met with very strong opposition from certain parties. The post-Cotonou Agreement offers an opportunity for PACPs to push the EU, to meet its obligations to the PACP region with regard to Climate Change, including climate financing.

Key Negotiation Positions

We have looked at the current positions stated in the ACP text on climate change and it is in our opinion very weak and does not clearly articulate the key priorities of the Pacific.

In engaging in the post Cotonou agreement on climate change, the central negotiating positions must be:-

(1) TIME BOUND POLITICAL DECISIONS [10 year window]

It is very important that the PACPs enter this negotiation highlighting the urgency of the problem Pacific Island countries face. This is clearly indicated in the IPCC 1.5C report. Pacific negotiators for the PCA must ensure that they frame negotiation elements within this context. The EU must be pushed to tailor its proposed support package under the PCA to the context of the IPCC's 10-year 1.5C warming mark.

(2) TARGET BELOW 1.5

The Pacific must push the EU in negotiations for the PCA to urgently and concretely scale up its Climate Change actions in line with Pacific priorities, and to lead the global community to move to limit global temperature below 1.5C. The special IPCC report on 1.5C clearly indicates that a 1.5C will be devastating to sensitive Pacific ecosystems and vulnerable economies. For example at 1.5C, world sea levels will rise by 48cm by 2100, there will be a 100% risk increase of flooding, increased risks of water and food security, 70% of the world's coral reefs will be lost by 2100 etc. Even if we were to achieve a reduction in the 1.5C mark, some of the damage will be permanent. The Pacific must make it clear to the EU in the PCA negotiations that Climate Change is a matter of survival for Pacific peoples, and that support (finance, capacity building and technology transfer) provided under the PCA over the next 20 years must be in line with this Pacific reality.

(3) SCALE UP FINANCIAL SUPPORT FOR ADAPTATION AND RESILIENCE BUILDING IN THE PACIFIC

The Pacific must make it very clear to the EU, that adaptation and resilience building is our priority.

The prioritization of mitigation activities in the Pacific through the NDCs framing (nationally determined contributions) is mitigation centric, and does not take into account support for adaptation and resilience building. The Pacific region's total emissions is less than 1%. Even if the region were to go Green, our contributions to reducing global emissions will be insignificant. It is EU member states that must reduce their emissions.

In addition, the NDC's focus on large-scale investments will hardly benefit the most vulnerable in society (women, elderly, children, people with disability, etc.). Adaptation and resilience building will become critical within the next 10 years (as per the IPCC 1.5C report). The Pacific needs the EU to focus on supporting adaptation and resilience building, and at both the national and the community level as this is the level where the impact of Climate Change is felt the most.

(4) LOSS AND DAMAGE

The issue of Loss and damage (L&D) was a key ask by Pacific Island states during the Paris Agreement Negotiations and they were very successful in securing the inclusion of L&D as a key pillar of the Paris Agreement. We must make clear to the EU that while we need urgent and scaled up support for adaptation and resilience, there is a LIMIT to our adaptation/resilience capacities. PACP states must ensure that L&D is also part of the final Post Cotonou text on Climate Change. L&D is a Pacific reality, and the EU must ensure that as a developed country party to the PCA, it provides financial support to Pacific Island countries already experiencing loss and damage. Currently L&D is missing from the ACP negotiation text and this is UNACCEPTABLE from the perspective of the CSOs. PACP governments are first and foremost responsible for the protection of all its citizens. L&D as a result of climate change must be incorporated into the agreement. It is already a matter of urgency for PACPs, and it will become all the more urgent within the next 10 years.

(5) FINANCE

Accessing predictable and adequate climate finance has always been a key ask of Pacific Island states. The priorities of the Pacific region must be reflected in the Post Cotonou text and not be side-lined by the priorities of Africa and the Caribbean. Within the broader Asia Pacific region, the Pacific only receives 4%-6% of the climate finance that comes to the Asia Pacific region. It is critical to ensure, because we will be negotiating as a group, that Pacific needs and Pacific priorities are strongly articulated in all PCA related text.

PACP states must also be firm in demanding that climate finance for adaptation comes in the form of grants. Mitigation finance must come in the form of concessional loans. Non-concessional financing to fund climate actions in the Pacific is unacceptable and immoral. The Pacific must also keep a look out for 'innovative' funding such as 'insurance' and other market based instruments (as well as private sector financing) that might be pushed forward by the EU as this could be a strategy to sidestep their obligations as stipulated in the 1992 Convention as well as the Paris Agreement.

(6) CONTEXTUALIZATION OF THE PACIFIC IS LACKING

We are already beginning to see from the ACP position that the needs and the concerns of the Pacific

are being excluded. It is important for our Pacific negotiators to strongly push for language that reflects Pacific context and priorities in the PCA text.

(7) LACK OF INCLUSIVE LANGUAGE

The absence of inclusive language in the current ACP position is really concerning. Vulnerable groups like women, children, the elderly, and people with disability, gives significance to Pacific claims. They are and must be the centre of our response to Climate Change. The Pacific must push for more inclusive language to be used in the text of the agreement, and CSOs are best placed to provide this.

(8) PRIORITIZATION OF REGIONAL CAPACITIES RATHER THAN NATIONAL/LOCAL CAPACITIES

It is critical that the benefits of the post Cotonou agreement be realised by our national governments as well as local communities. The Pacific region is diverse; our sovereign states are capable of making and implementing decisions on matters of national interest. The current mode of delivering aid to the Pacific region through regional institutions has unfortunately reaped very little benefits to our respective countries and most importantly the communities.

ANNEX 5 STRATEGIC PRIORITIES:

Title V: Migration and Mobility

During the first round of negotiations in New York on September, 2018, the EU and ACP agreed to include Migration and Mobility as one of the five converging strategic priorities. Both bodies have negotiating positions for migration and mobility - for the EU, it is embedded in its Strategic Priority VI; while for the ACP, its negotiating position is under Section V which is embedded on Pillar 3, Political Dialogue and Advocacy. Some key themes identified from the two negotiation mandates that are included in our matrix are:

- (i) Political commitment and cooperation that is underpinned by the legal ambits of international law, EU competence and national competence.*

Both the negotiating position of EU/ACP made references to genuine partnerships, shared responsibility, political commitment and dialogue on migration; and in full respect of international law, international human rights law and when applicable, international humanitarian law and international refugee law. The ACP highlighted the *'rights of migrants'*¹¹ framework which is guided by the legal instruments of human rights. This pertains to non-discrimination and the right to free movement by all persons in relation to migration. It can also be said that both positions acknowledge a rights based approach that is solely guided by the EU's Global Approach to Migration and Mobility (GAMM). Interestingly, the ACP position on returning irregular migrants is aligned to EU's policy on *'Return and Readmission Processes to Country of origin'*¹².

¹¹ This is based on OHCHR Migration and Human Rights.

¹² See https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en

Within these legal instruments, both negotiating positions made references to the protection of refugees and migrants and also to combatting Trafficking in Human Beings (THB). There are references that recognize the imperative to accord humanitarian actors the support they need to complement state efforts in order to prevent human tragedies related to migration (through the migration routes).

In addition, the ACP position dictates that development aid must not be used to negotiate restrictive border controls; especially for the processing of asylum seekers/refugees. This is aligned to the Addis Ababa Action Agenda (AAAA) on financing for development; especially on the need for credible means of implementation of development aid that is aligned to the SDGs. Unfortunately in the Pacific, we have witnessed the use of development aid in this context; as in the case of Australia's offshore detention centers for asylum seekers on Nauru and Manus Island.

(ii) Addressing the root causes of irregular migration and forced displacement

Both EU and ACP positions made references to addressing the root causes of migration; the EU position generally highlights irregular migration and forced displacement with specificities that are linked to south-south migration, climate change induced migration and displacement induced migration. The ACP position was specific in the sense that it identifies the various root causes that need to be addressed such as those arising out of conflicts, fragile security, limited economic opportunities, food and nutrition crises and environmental challenges. It can be deduced that environmental challenges would include climate change induced migration or migration induced by natural disasters such as volcanic eruption, landslides or tsunami which requires humanitarian assistance.

(iii) Safe, orderly and regular migration

Both positions made reference to creating and applying necessary leverage to reap the dividends of safe, orderly and regular migration through policies, instruments and tools, including development, trade and visa policies. The ACP specifically indicated the need to create enabling conditions such as fair visa regimes that will promote legal migration.

(iv) Diaspora and Mobility Schemes

Both mandates acknowledge the contribution of diaspora communities to the development of their country of origin through remittances, transfer of knowledge, experience and technology. The ACP position was very specific in highlighting the need to remove obstacles associated with remittances and visa waivers.

The ACP position was also specific to promoting areas that will enhance fruitful exchanges (mobility) and these include tourism, trade and services, culture and sports. For PACPs tourism, trade and services plus sports are areas in which we could potentially reap some benefits provided that there is an open visa regime in place between the EU and our countries. There would certainly be a benefit for our sports people especially those playing rugby who are already plying their trade in EU countries.

Red Flags for PACPs

Based on our reading of the EU/ACP negotiating positions, a number of *red flags* were identified. These include:

(i) GCM as an overarching framework for migration and mobility

There is a need to adopt the provisions of the *Global Compact for Safe, Orderly and Regular Migration*¹³ as an overarching framework to inform this priority. The GCM is a non-legally binding agreement that speaks to both the EU and ACP negotiating positions. It is premised on a set of guiding principles such as: people centered, HRBA, International Cooperation, gender responsive, child perspective and whole of government and society approach. The GCM as a framework would provide linkages between migration and mobility and the other four strategic priority areas of convergence for the Post Cotonou agreement and would ensure *'migration with dignity.'*

(ii) Development Aid as a tool for setting up refugee/asylum processing in the Pacific

The PCA must ensure that development aid is not used as a carrot to lure Pacific countries into opening their borders to refugees/asylum processing centers such as those set up in Nauru and Manus Island by the Australian Government. STOP dumping Refugees in camps in the Pacific Islands.

(iii) Development Cooperation and Humanitarian Assistance

Development cooperation must consider climate change induced displacement and other humanitarian emergencies in the Pacific. Specifically, there is a need to use the Grand Bargain Agreements of the World Humanitarian Summit as a reference point that informs development cooperation during humanitarian crisis; with a focus on the localization agenda. This is linked to Strategic Priority IV on Climate Change, Environment and Resilience.

(iv) Addressing root causes of irregular migration and forced displacement.

There are two key reference points for this; one being related to the 'quest for self-determination' and the other is on climate change induced displacement. The quest for self-determination of West Papua is a key area that needs the urgent attention of the EU especially as it was a former colony of the Dutch Government a member of the EU, and there are a lot of West Papuans living in Europe as a result of the conflict. PCA must ensure that EU countries support the quest for self-determination of its former colonies. In terms of climate change, the PCA should make specific commitments to emissions reduction and adherence to Paris Agreement commitments - this is to address the root courses of climate induced relocation/displacement/migration.

¹³ See https://refugeesmigrants.un.org/sites/default/files/180326_draft_rev1_final.pdf

(v) Self Determination of EU territories

The PCA which places emphasis on Overseas Territories, must ensure that the role of overseas territories, does not hamper the quest for self-determination/political independence of French territories - namely Kanaky (New Caledonia) and Maohi Nui (French Polynesia). France should STOP sending French migrants to bolster voter numbers for the referendum. The EU mandate: (g) "The Parties will commit to adopting effective integration policies for those who reside legally on their territories" is a bit vague and may hamper the quest for self-determination of French territories in the region.

(vi) Combatting Terrorism and Human Trafficking in the Pacific

Ensure that the PCA does not open that Pandora's Box for terrorism and human trafficking in the Pacific

(vii) Provide supporting services to deportees

Ensure that supportive mechanisms are in place for the return of irregular migrants to their country of origin.

(viii) Sports Contracts and Remittances

Ensure that sports agents do not manipulate our players with their contracts. PCA must ensure that our players are treated fairly, with respect, and that there is no discrimination or exploitation faced in their line of work. In addition, it must lower the cost of transferring remittances.

(ix) Need for an open visa regime between the Pacific and the EU

The PCA needs to facilitate fair visa regimes between the Pacific and EU. Currently, a few countries in the Pacific enjoy short term visa waivers while others have to travel to another country to personally lodge and obtain their visa – adding to the burden of travel costs.

A. Pacific Specific Asks

- (i) Short Term visa waiver especially for CSOs accredited to EU Institutions and travelling to meetings for durations of one week or less..
- (ii) Reduce the cost of transferring remittances

Note:

Based on further analysis of the EU and ACP Negotiating position, it can be deduced that we are simply reacting to EU's position. Most of the positions in the ACP's negotiating brief were related to the EU policy.

After a series of consultations in 2018 and 2019 this Paper has been prepared by a collective of Pacific Civil Society Originations (DAWN, Diva, FCOSS, Oxfam Regional, PANG PIANGO, PICAN, PYC).